



Nicholls State University

## **Procedures for the Resolution of Title IX Sexual and Interpersonal Misconduct Complaints Against Students, Faculty, Staff, Affiliates, and Non-Affiliates**

*Note: These **Procedures for the Resolution of Title IX Sexual and Interpersonal Misconduct Complaints Against Students, Faculty, Staff, Affiliates, and Non-Affiliates** are effective on August 1, 2021. The new Sexual and Interpersonal Misconduct Policy and its three corresponding Complaint Procedures (including this Procedure) apply to conduct that occurs on or after August 14, 2020. Conduct occurring on or before August 13, 2020 will be handled under the University's Sexual Misconduct/Title IX Policy and the corresponding Complaint Procedures.*

*These procedures will include the following requirements and rights for both Respondents and Complainants:*

- The parties will receive copies of the Sexual and Interpersonal Misconduct Policy and Procedures applicable to their case, which will include information about available supportive measures and the process for submission and consideration of evidence that may be used during a hearing or disciplinary proceeding.
- The parties may be accompanied by and may consult with an advisor or support person of their choice throughout the proceedings, although the availability of an advisor may not significantly delay any meeting. The University will have reasonable measures to provide for the involvement of the advisor, which will be applied equally.
- The Respondent will receive notice of an allegation of sexual misconduct that will include the date, time, and location, if known of the alleged incident, including a specific statement of policies allegedly violated.
- The complaint resolution process, including the investigation and any hearing and disciplinary proceedings, will be impartial and conducted by individuals who does not have a conflict of interest or bias and who will have not less than annual training on the University's Sexual and Interpersonal Misconduct Policy and Procedures.

- The Respondent is presumed not responsible for the alleged conduct until a determination regarding responsibility has been made by a preponderance of the evidence at the conclusion of the applicable complaint resolution process.
- The parties will have equal opportunities to inspect and review evidence obtained in an investigation that is directly related to the allegations.
- The parties have an equal opportunity to present evidence and witnesses on their behalf during a hearing or proceeding, and each party will be provided with timely and equal access to relevant evidence that will be used during any disciplinary process conducted under the Sexual and Interpersonal Misconduct Policy.
- There may be restrictions on evidence considered by the fact finder, including evidence regarding the prior sexual history or character evidence.
- The parties may not personally and directly question each other during an investigation or any complaint resolution process conducted under the Sexual and Interpersonal Misconduct Policy and Procedures.
- The parties will receive written notice of the results of a hearing or disciplinary proceeding not later than 7 business days after a final determination of a complaint (not including time for an appeal) unless good cause for additional time is shown, and the parties will be informed of any appeals process.
- If the opportunity is made available to appeal a determination based on a perceived procedural error, previously unavailable evidence that could significantly impact the outcome of the case, or a sanction that is disproportionate to the findings, both parties will be permitted to appeal decisions regarding responsibility or sanctions.
- The University will not disclose the identity of the parties, except as necessary to carry out disciplinary proceedings under its Sexual and Interpersonal Misconduct Policy and Procedures or as permitted under state or federal law.

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## I. Overview and Applicability

These Procedures are used to investigate, adjudicate, and resolve allegations of Title IX Sexual and Interpersonal Misconduct, as defined in the [Sexual and Interpersonal Misconduct Policy](#), brought against Nicholls State University students (undergraduate, graduate, full-time, and part-time), employees (faculty and staff), and affiliates (together, the “NSU Community”). These Procedures may be used to resolve allegations of Title IX Sexual and Interpersonal Misconduct against non-affiliates.

These Procedures apply only to complaints of Title IX Sexual and Interpersonal Misconduct, defined in the [Sexual and Interpersonal Misconduct Policy](#), which occurred on or after August 14, 2020. They differ in some important ways from the procedures that are used when other allegations of Sexual Misconduct, also defined in the [Sexual and Interpersonal Misconduct Policy](#), are made.

## II. Definitions

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### Advisor

A person selected by a party to be present at and provide support to the party during any meeting or hearing related to these Procedures. An Advisor may be the same or a different person than the Hearing Advisor utilized by a party during the hearing stage of the Formal Resolution Process.

### Complaint

A report, in writing, of Title IX Sexual and Interpersonal Misconduct submitted by a complainant to the Title IX Coordinator, the Dean of Students, the Office of Judicial Affairs (OJA), the Equal Opportunity Office (EOO), or a Deputy Title IX Coordinator. A “Complaint” may be submitted by submitting an [Incident Report Form](#) located at

### Complaint Resolution Process

The University’s process of reviewing, investigating, adjudicating (including appeals), and resolving allegations of Title IX Sexual and Interpersonal Misconduct. This

complaint resolution process includes several steps and resolution options that are explained in detail in these Procedures.

### **Complainant**

Any person who has reported being or is alleged to be the object of conduct that would constitute Title IX Sexual and Interpersonal Misconduct and, at the time of filing a Complaint or Formal Complaint, is participating or attempting to participate in a University program or activity.

A Complainant may include any member of the Nicholls State University community, including students, faculty, administrators, and staff members, visitors, applicants for employment or admission, or other participant in a University education program or activity.

### **Education Program or Activity**

Locations, events, or circumstances over which the University exercises substantial control over both the respondent and the context in which the Title IX Sexual and Interpersonal Misconduct occurs, and also includes any building owned or controlled by a student organization that is officially recognized by Nicholls State University.

### **Final Investigative Report**

The report created by an investigator during the Formal Resolution Process that summarizes the relevant evidence.

### **Formal Complaint**

A document filed by a complainant with a signature or other indication that the complainant is the person filing the formal complaint, or signed by the Title IX Coordinator, alleging Title IX Sexual and Interpersonal Misconduct against a respondent about conduct within the University's education program or activity and requesting initiation of the Procedures to investigate the allegation of Title IX Sexual and Interpersonal Misconduct.

### **Formal Resolution Process**

Resolution of a Formal Complaint alleging Title IX Sexual and Interpersonal Misconduct through a process described in Section XII, which includes an investigation, hearing, and appeal.

### **Hearing Advisor**

An Advisor who attends the hearing during the Formal Resolution Process and asks questions of the parties and witnesses during the hearing. A Hearing Advisor may be the same or a different person than the Advisor utilized by a party during other stages of the complaint resolution process.

### **Informal Resolution Process**

Resolution of a Formal Complaint alleging Title IX Sexual and Interpersonal Misconduct through a process described in Section XI, which requires the consent of both the complainant and respondent.

### **Respondent**

Any person who has been reported to have engaged in conduct that would constitute Title IX Sexual and Interpersonal Misconduct. A Respondent may include any member of the Nicholls State University community, as well as people who do not have an affiliation with Nicholls State University.

### **Supportive Measures**

Measures taken by the University upon notice of a sexual and interpersonal misconduct report, or Formal Complaint alleging Title IX Sexual and Interpersonal Misconduct to restore or preserve equal access for a complainant or respondent to the University's education and work environments.

### **Third-Party Report**

Report by a third party (not the Complainant or Respondent) of conduct that would constitute Title IX Sexual and Interpersonal Misconduct to the Title IX Coordinator, Dean of Students, OJA, EOO, or a Deputy Title IX Coordinator.

### **Third-Party Reporter**

Any person who files a Third-Party Report. A Third-Party Reporter may include any member of the Nicholls State University community, including students, faculty, administrators, and staff members, visitors, applicants for employment or admission, participants in a NSU program or activity, or a non-affiliate with knowledge of an incident of Title IX Sexual and Interpersonal Misconduct.

### **III. Rights of the Complainant and Respondent during the Complaint Resolution Process**

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The Title IX Sexual and Interpersonal Misconduct complaint resolution process is designed to be accessible, prompt, equitable, and impartial. Throughout this process, both the Complainant and Respondent have the following rights:

- You have the right to be treated with respect, dignity, and sensitivity.
- You have the right to supportive measures without filing or participating in a Formal Complaint.
- You have the right to meet with the Title IX Coordinator and discuss and develop supportive measures to restore or preserve equal access to the school's educational programs or activities. You are not required to accept supportive measures. Supportive measures cannot be disciplinary, punitive, or place an unreasonable burden on other students.
- You have the right to receive information about the University's Sexual and Interpersonal Misconduct Policy.
- You have the right to not be retaliated against. No University or other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by the Title IX or because the individual has made a report or complaint, testified, assisted, or participated or declined to participate in any manner in an investigation or proceeding under University policy. Parties have a right to file a complaint of retaliation with the Title IX Coordinator.
- You have the right to assurance that personnel involved in the complaint resolution process will not have a conflict of interest or bias, and all parties will have the appropriate training on all aspects of the Sexual and Interpersonal Misconduct Policy and applicable procedures.
- You have the right to a reasonable prompt and thorough complaint resolution process, including appeals.
- The Complainant and the Respondent may have an advisor or their choice that may be, but is not required to be, an attorney and may inspect or review evidence.
- You have the right to be provided with written notice of the date, time, location, participants, purpose of investigative interviews, and sufficient time to prepare for such interviews, when your participation is invited or expected.
- You have the right to notification, in writing, of the case resolution, including the outcome of any appeals, and the final determination.
- The Respondent maintains a presumption of non-responsible for the alleged conduct, and the determination regarding responsibility shall not be made prior to the conclusion of the grievance process.

- You have the right to a live hearing involving the presentation of witnesses and evidence, and questioning by advisors of all parties and witnesses.
- You have the right to an impartial and unbiased investigation and resolution of the allegations. The burden to investigate is on the Investigator, but all Parties have the right to gather evidence or information and provide it to the Investigator. All Parties will be afforded the opportunity to review evidence and information gathered as part of the investigation and provide their feedback.
- You have the right to not participate in the Grievance Procedures. If you decline to participate in the Grievance Procedures, your lack of participation will not be construed against you.
- The Complainant maintains the right to withdraw the Formal Complaint at any time by submitting a withdrawal in writing. The Complainant maintains the right to not be pressured or compelled to withdraw the Formal Complaint.
- The Formal Complaint may be informally resolved if both Parties agree in writing. Parties have the right to not be pressured or compelled to participate in Informal Resolution. Informal resolution is not an option in cases involving a student making allegations of Title IX Sexual and Interpersonal Misconduct against an employee.
- You have the right to appeal the decision(s) made or any sanctions imposed to the University's Provost or Chief Human Resources Officer
- You have the right to file a Formal Complaint pursuant to Nicholls State University's *Policy Prohibiting Workplace Discrimination, Harassment, and Retaliation*.
- You have the right to file a criminal complaint with your local police department or report to the Department of Human Services.
- You have a right to file a complaint with the federal agency charged with enforcing Title IX- The United States Department of Education, Office of Civil Rights (OCR).
- Under Nicholls State University policy, lying or giving false information either verbally or in writing to a university employee may result in disciplinary consequences.

In addition, the University will provide confidentiality and/or privacy to the extent possible, consistent with applicable law and University policy, during the complaint resolution process. Specifically, the University will disclose information about its investigation and resolution of Title IX Sexual and Interpersonal Misconduct complaints only to those who need to know the information in order to carry out their duties and responsibilities. It will inform all University personnel participating in an investigation, proceeding, or hearing that they are expected to maintain the confidentiality of the process.

Neither the Complainant nor the Respondent are prohibited from discussing the allegations under investigation, gathering and presenting relevant evidence, or

obtaining the assistance of advisors, family members, counselors, therapists, clergy, doctors, attorneys, or other resources, both prior to and during the complaint resolution process (only advisors are permitted to attend the hearing).

## **IV. Preliminary Matters**

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### **A. Timing of Complaints.**

The Complainant must be participating in or attempting to participate in an education program or activity of the University at the time the complaint is made in order to initiate a Formal Complaint under these Procedures. Timely reports of Title IX Sexual and Interpersonal Misconduct are strongly encouraged to maximize the University's ability to gather evidence, and conduct a thorough, impartial, and reliable investigation. If the Respondent is in the final semester of their program, the University may withhold that student's Nicholls State University degree pending conclusion of the complaint resolution process.

### **B. Effect of Criminal Proceedings.**

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The filing and processing of a complaint of Title IX Sexual and Interpersonal Misconduct under these Procedures is separate from and independent of any criminal investigation or proceeding. Nicholls State University will not wait for the conclusion of any criminal investigation or proceedings to begin its own investigation although the University may delay temporarily the fact-finding component of the investigation while the police are gathering evidence. Neither law enforcement's determination as to whether or not to prosecute a Respondent nor the outcome of any criminal prosecution is determinative of whether Title IX Sexual and Interpersonal Misconduct occurred under the University's [Sexual and Interpersonal Misconduct Policy](#).

### **C. Effect of a Pending Complaint on the Respondent.**

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If the Respondent is a current Nicholls student, no notation will be placed on the Respondent's transcript of a complaint or pending disciplinary action prior to the conclusion of the complaint resolution process. However, if the Respondent withdraws from Nicholls State University while a Title IX Sexual and Interpersonal Misconduct complaint is pending, the Respondent's transcript will reflect a withdrawal and a notation of pending disciplinary action subject to modification to reflect the outcome of the disciplinary action.



If the Respondent is a current Nicholls employee, no notation of an ongoing Title IX Sexual and Interpersonal Misconduct complaint will be placed in the employee's personnel file prior to the conclusion of the complaint resolution process and any applicable appeals or further internal proceedings arising out of the complaint resolution process. However, if the employee resigns from their position at Nicholls State University prior to the conclusion of the complaint resolution process, the employee's personnel file will reflect their resignation and a notation of a pending complaint resolution process, subject to modification to reflect the outcome of the complaint resolution process if there is an outcome.

## **D. Protections for Individuals, Third Party Reporters, and Witnesses ("Amnesty").**

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An individual who files a Complaint or Formal Complaint of Title IX Sexual and Interpersonal Misconduct, or who serves as a third-party witness during the complaint resolution process, will not be subject to disciplinary sanction by the University for his or her own personal consumption of alcohol or other drugs at or near the time of the alleged sexual misconduct, provided that such violations did not and do not place the health or safety of any other person at risk. However, the use of alcohol or drugs does not excuse sexual misconduct and a person who has been incapacitated through the use of alcohol and drugs (or by any other means) cannot give effective consent to sexual activity. The University may initiate an educational discussion or pursue other educational remedies regarding alcohol or other drugs.

## **E. Advisors**

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1. Right to Choose Advisor. The Complainant and Respondent have the right to choose an Advisor and/or Hearing Advisor to be present at and provide support to the party during any meeting or hearing related to these Procedures.
2. Role of Advisor During Meetings and Interviews. The Advisor may not speak or ask questions on behalf of a party, otherwise participate in, or in any manner delay, disrupt, or interfere with meetings, interviews, or other events prior to the hearing.
3. Role of Hearing Advisor During Live Hearing. During the hearing phase of the Formal Resolution Process described below in Section XII the parties are not permitted to question each other or the witnesses. Each party is required to have a Hearing Advisor during the hearing who will question the other party and witnesses at the hearing. Other than at a live hearing for the sole purpose of questioning the parties, a Hearing Advisor may not speak on behalf of a party or otherwise participate in, or in any manner delay, disrupt, or interfere with the hearing.
4. Appointment of Advisor During Hearing. If a party does not have a Hearing Advisor to serve on their behalf during the hearing, the party should immediately contact the

Hearing Facilitator assigned to the matter at [titleix@nicholls.edu](mailto:titleix@nicholls.edu) at least 2 days in advance to discuss the appointment of a Hearing Advisor by the University to conduct the questioning at the hearing on behalf of that party. The University reserves the right to provide a party with a different Hearing Advisor to ask questions of the other party and witnesses on behalf of that party if the party's selected Hearing Advisor does not comply with the rules described in this section.

## **F. Declining to Participate.**

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A Complainant and/or Respondent may decline to participate in the complaint resolution process. Based on the circumstances, the University may continue the complaint resolution process without the Complainant's and/or Respondent's participation, but doing so may impact the availability of evidence and the University's ability to proceed fairly and effectively.

## **G. Anonymous Reports and Complaints.**

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Anonymous reports of Title IX Sexual and Interpersonal Misconduct will be investigated by the Title IX Coordinator or their designee, to the extent possible, to assess the underlying allegations and to determine if supportive measures can be provided. However, anonymous reports usually limit the University's ability to investigate, respond and provide remedies, depending on the information that is provided.

If a Complainant initiates the Formal Resolution Process under these Procedures, the University is obligated to notify the Respondent of the Complainant's identity. In cases where the Complainant wishes to remain anonymous, but the Title IX Coordinator determines that it is necessary to file a Formal Complaint to initiate the complaint resolution process, the University is obligated to disclose details about the allegations to the Respondent, including the Complainant's identity if known.

## **H. Time Frame for Complaint Resolution.**

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The University will seek to resolve every complaint of Title IX Sexual and Interpersonal Misconduct within 90 calendar days after the filing of a Formal Complaint, including appeals. Time frames may be extended for appropriate reasons, including but not limited to the complexity of a case; the availability of the parties, a party's advisor, or witnesses; concurrent law enforcement activity; the need for language assistance or accommodation of disabilities; or at certain times of the academic year (for example, during breaks, study periods or final exams).

In the case of significant delay, the University will provide a written explanation to the parties, including an estimate of the anticipated additional time that will be needed as a result of the delay.

## **I. Prohibition on Retaliation.**

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It is illegal and a violation of the University's [Sexual and Interpersonal Misconduct Policy](#) to retaliate against a person for filing a complaint of Title IX Sexual and Interpersonal Misconduct or for cooperating in a Title IX Sexual and Interpersonal Misconduct complaint resolution process. Any person who retaliates against a person for reporting, filing a complaint of, participating in the investigation or adjudication of allegations of Title IX Sexual and Interpersonal Misconduct is subject to disciplinary action up to and including expulsion from the University or termination of employment at the University.

## **J. Notice.**

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The University's Title IX Coordinator, or designee, will give the Complainant and Respondent, respectively, a written explanation of their rights and options, and any available supportive measures, as soon as possible after a complaint is reported. EOO or OJA, as applicable, will also ensure that both the Complainant and Respondent are updated throughout the investigative process, including with timely notice of meetings where either the Complainant's or the Respondent's presence may be required.

## **K. Training.**

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The University will ensure that Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process under these Procedures will receive training in at least the following general areas:

- the definition of Sexual and Interpersonal Misconduct as provided in the [Sexual and Interpersonal Misconduct Policy](#);
- the scope of the University's education programs and activities, as defined in the [Sexual and Interpersonal Misconduct Policy](#);
- how to conduct an investigation under the University's Formal Resolution process, including hearings and appeals, and its Informal Resolution Process, as described in these Procedures; and
- how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.

Hearing Panel members will also receive specialized training on the technology that the University will use at the hearings in the complaint resolution process and issues of relevance of questions and particular types of evidence, such as the Complainant's prior sexual behavior.

Investigators will undergo specialized training on issues of relevance to assist them in their preparation of an investigative report that fairly summarizes relevant evidence.

The University's training materials do not rely on sex stereotypes and promote impartial investigations and adjudication of Formal Complaints. The training materials are available on the University's website

here: <https://www.nicholls.edu/titleix/prevention-training/>

## **L. Disability Accommodations.**

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Any party may request reasonable accommodations for a disability at any point prior to or during the complaint resolution process. No disability accommodation will be affirmatively provided that has not been specifically requested by the party, even if the party is receiving accommodations from the University for other programs or activities.

## **V. Who may file a Report, Complaint, or Formal Complaint of Sexual and Interpersonal Misconduct**

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The Title IX Sexual and Interpersonal Misconduct complaint resolution process may be initiated by the Complainant, the Title IX Coordinator, or a Third-Party Reporter, upon the filing of a Third-Party Report, Complaint, or Formal Complaint.

While the University will promptly review all Third-Party Reports, Complaints, and Formal Complaints of Title IX Sexual and Interpersonal Misconduct to determine the appropriate response, a Formal Complaint must be submitted to the University to initiate an investigation of an alleged policy violation and for the allegations to be resolved through the Informal and Formal Resolution Processes described below in Section XI and Section XII. A Formal Complaint may be filed by a Complainant or the Title IX Coordinator, as explained below.

## **A. Formal Complaints Initiated by Complainant.**

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Complainant may file a complaint or Formal Complaint against any person they believe responsible for that conduct.

## **B. Complaints Initiated by Title IX Coordinator.**

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In extraordinary cases, the Title IX Coordinator may, upon receiving a Complaint or Third-Party Report of misconduct that threatens the safety of members of the University community, initiate the complaint resolution process by filing a Formal Complaint. As set forth in the [Sexual and Interpersonal Misconduct Policy](#), reports of Sexual and Interpersonal Misconduct, undergo a Title IX Review to determine the appropriate response.

# **VI. How to file a Report, Complaint, or Formal Complaint of Sexual and Interpersonal Misconduct.**

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## **A. Filing A Third-Party Report or Complaint of Title IX Sexual and Interpersonal Misconduct**

To file a Third-Party Report or Complaint of Title IX Sexual and Interpersonal Misconduct, a Complainant or Third-Party reporter may submit a paper (hard copy) or electronic Incident Report Form to the Dean of Students Office, OJA, EOO, the Title IX Coordinator, Human Resources Office, or one of the University's Deputy Title IX Coordinators. Upon receipt of an [Incident Report Form](#), the Title IX Coordinator, or their designee, will contact the person who filed the Incident Report Form to determine the appropriate next steps, as described below.

A person who wishes to file a Third-Party Report or Complaint of Title IX Sexual and Interpersonal Misconduct may also call or meet with the Dean of Students Office, Human Resources Office, OJA, EOO, the Title IX Coordinator, or a Deputy Title IX Coordinator to discuss filing a Formal Complaint. Upon receipt of an [Incident Report Form](#), the Title IX Coordinator, or their designee, will contact the person who filed the [Incident Report Form](#) to determine the appropriate next steps, as described below.

## **B. Filing a Formal Complaint**

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In order to file a Formal Complaint, a Complainant must submit an [Incident Report Form](#) to the Title IX Coordinator or their designee. This Form is available through the Title IX Coordinator, Dean of Students Office, OJA, or EOO. The Form must include the Complainant's signature or other indicator that the person filing the Form is the Complainant.

As explained above, in extraordinary circumstances, the Title IX Coordinator may sign a Formal Complaint to initiate the Formal Resolution Process. The Title IX Coordinator need not submit an Incident Report Form to do so.

Any Formal Complaint must contain sufficient information to permit the Respondent to understand and respond adequately to the charges being brought, it need not reflect every detail related to the allegations, as additional information may be discovered during the investigation.

### **University Title IX Team**

- **Office of Title IX and Civil Rights Compliance**

Picciola Hall, Suite 132

985-448-4001

[titleix@nicholls.edu](mailto:titleix@nicholls.edu)

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## **C. University Officials With Authority.**

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The University has determined that the following administrators are officials with authority to address and correct Title IX Sexual and Interpersonal Misconduct. A University Official with Authority is a person who has the authority to institute corrective measures on the University's behalf, charges the University with actual knowledge of possible Title IX Sexual and Interpersonal Misconduct, and triggers the University's obligation to respond to a Third-Party Report, Complaint, or Formal Complaint.

In addition to the Title IX Team members listed above, these Officials with Authority listed below may also accept a Third-Party Report, Complaint, or Formal Complaints on behalf of the University:

- Provost and Vice President for Academic Affairs
- Vice President for Finance & Administration
- Vice Presidents for Student Affairs

## **VII. Available Processes, Initial Review, and Dismissal of Formal Complaints**

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### **A. Available Options and Processes.**

Upon filing a report or complaint of alleged Title IX Sexual and Interpersonal Misconduct, the following options are available to a Complainant:

- Supportive Measures (see Section VIII below). Supportive Measures are always available and are not dependent upon the filing of a Formal Complaint.
- Informal Resolution Process (see Section XI below). A Complainant must file a Formal Complaint to initiate the Informal Resolution Process. Both the Complainant and the Respondent have to agree to Informal Resolution.
- Formal Resolution Process (see Section XII below). The Formal Resolution Process is used to determine whether or not a Respondent engaged in Title IX Sexual and Interpersonal Misconduct in violation of the University's Sexual and Interpersonal Misconduct Policy and has three stages – investigation, hearing, and appeal. A Complainant must file a Formal Complaint to initiate the Formal Resolution Process.

### **B. Initial Assessment of Third-Party Report or Complaint**

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After receiving a Third-Party Report or Complaint of alleged Title IX Sexual and Interpersonal Misconduct, the Title IX Coordinator or their designee will contact the Complainant and do the following:

- Explain the availability of Supportive Measures, described below in Section VIII
- Describe the resolution processes available to the Complainant, including Supportive Measures, filing a Formal Complaint, Informal Resolution, and the Formal Resolution Process;
- Explain to the Complainant the process for filing a Formal Complaint.

If the Complainant does not wish to submit a Formal Complaint after a report or complaint is filed, the Title IX Coordinator will determine whether to initiate a Formal Complaint if the allegations identify misconduct that threatens the safety of members of the University community.

A Complainant may also elect to pursue a Formal Complaint at a later date.

## **C. Assessment & Dismissal of Formal Complaints by Title IX Coordinator.**

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If the Complainant files a Formal Complaint, the Title IX Coordinator will determine whether the alleged misconduct constitutes Title IX Sexual and Interpersonal Misconduct and, if so, may proceed to the Informal Resolution Process or Formal Resolution Process. Dismissal of a Formal Complaint by the University at any stage of the complaint resolution procedures is appropriate under the circumstances described below. The University will provide prompt written notice to the parties of a dismissal of a Formal Complaint at any stage, which will include the reasons for the dismissal.

If the Title IX Coordinator determines that some of the allegations in a Formal Complaint, if substantiated, may constitute Title IX Sexual and Interpersonal Misconduct and other allegations may constitute Non-Title IX Sexual and Interpersonal Misconduct, all of the allegations in the Formal Complaint may be resolved through these Procedures or, at the discretion of the Title IX Coordinator, those allegations that do not constitute Title IX Sexual and Interpersonal Misconduct may be referred out of the process set forth in these Procedures and handled through the applicable [Procedures for the Resolution of Complaints of Non-Title IX Sexual and Interpersonal Misconduct Against Students](#) or [Complaint Procedures for the Resolution of Complaints of Non-Title IX Sexual and Interpersonal Misconduct Against Faculty, Staff, Affiliates, or Non-Affiliates](#).

### **1. Mandatory Dismissal**



The University must dismiss a Formal Complaint (or any parts of the Formal Complaint) at the assessment stage or at any point prior to or during the investigation and hearing if:

- The alleged misconduct, even if proved, would not constitute Title IX Sexual and Interpersonal Misconduct as defined in the Sexual and Interpersonal Misconduct Policy;
- The alleged misconduct did not occur in the University's education program or activity;
- The alleged misconduct did not occur against a person in the United States; or,
- The Complainant is not participating in or attempting to participate in an education program or activity at the school at the time the Formal Complaint was filed.

Formal Complaints, or parts thereof, that are dismissed for any of the reasons listed above may also be referred by the Title IX Coordinator to the Procedures available for resolution of Non-Title IX Sexual and Interpersonal Misconduct through the [Complaint Procedures for the Resolution of Complaints of Non-Title IX Sexual and Interpersonal Misconduct Against Students](#), [Complaint Procedures for the Resolution of Complaints of Non-Title IX Sexual and Interpersonal Misconduct Against Faculty, Staff, Affiliates, or Non-Affiliates](#), or other applicable University processes.

## **2. Discretionary Dismissal**

The University may dismiss a Formal Complaint (or any parts of the Formal Complaint) at any point prior to or during the investigation and hearing if:

- The Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint (or any part(s) of the complaint);
- The Respondent is no longer enrolled in or employed by the University; or
- Specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the Formal Complaint (or any part(s) of the complaint).

Withdrawal of the Formal Complaint by the Complainant will ordinarily end the Informal or Formal Resolution Process. However, the University reserves the right to proceed with the Formal Complaint, even after the Complainant withdraws it, in order to protect the interests and safety of the Nicholls community.

## **VIII. Supportive Measures**

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Upon the filing of a Complaint, Third-Party Report, or Formal Complaint alleging Title IX Sexual and Interpersonal Misconduct, the Title IX Coordinator or a Deputy Title IX Coordinator will review the allegations and determine the necessity and scope of any Supportive Measures to restore or preserve equal access for a Complainant or Respondent to the University's education and work environments without unreasonably burdening the other party.

The range of Supportive Measures may include, but not be limited to:

- Providing access to counseling.
- Providing access to tutoring or other academic support.
- Moving the Complainant's or Respondent's on-campus residence.
- Adjusting the Complainant's or Respondent's work schedule (including leaves of absence), assignment, or location for University employment.
- In consultation with the Complainant's or Respondent's college and the Office of Academic Affairs, changing the Complainant's or Respondent's academic schedule (including leaves of absence) extending deadlines for examinations or other assignments, allowing the Complainant or Respondent to take an incomplete in one or more courses, allowing the Complainant or Respondent to drop (or retake) a course without penalty, allowing the Complainant or Respondent to attend class via web conference, or other course-related adjustments.
- Reassigning the Respondent or Complainant to another section, if the Complainant and Respondent are enrolled in the same lecture, discussion class, academic team, or project group.
- Issuing mutual administrative No Contact Directive.

In addition to the above, the University may remove a Respondent from its campus(es) if it determines, after an individualized safety and risk analysis, that a Respondent poses an immediate threat to the physical health or safety of any student or other person and that the threat arises from the allegations of Title IX Sexual and Interpersonal Misconduct. Such removal may include a temporary suspension or leave of absence. In such cases, the Respondent will be provided with notice and the opportunity to challenge the decision immediately following the removal. Any such removals will be subject to, and do not supersede, existing faculty and staff policies governing administrative suspensions and leaves of absence, such as the Policy and Procedure Manual.

The University will maintain as confidential any accommodations or Supportive Measures provided to the parties to the extent that maintaining such confidentiality would not impair the ability of the University to provide the accommodations or Supportive Measures.

An individual's failure to comply with restrictions imposed by Supportive Measures is a violation of University Policy and a basis for disciplinary action, up to and including expulsion from the University or termination of employment from the University.

## **IX. Complainant Request for Confidentiality**

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If the Complainant is willing to participate in the Formal Resolution Process, University officials will proceed as described in the Formal Resolution Process section below.

If the Complainant requests confidentiality or asks that the report or complaint of Title IX Sexual and Interpersonal Misconduct not be pursued, the University will, generally before taking any further steps, evaluate the Complainant's request in the manner set forth in Section V.A of the [Sexual and Interpersonal Misconduct Policy](#). The evaluation will be conducted by the Title IX Coordinator in consultation with a small number of University administrators as deemed necessary and appropriate under the circumstances.

Nevertheless, the Complainant's identity must be disclosed to the Respondent in order for a Complainant to pursue the Informal Resolution Process or Formal Resolution Process. If the Title IX Coordinator initiates a Formal Complaint, details about the allegations, including the identity of the parties if known, must be disclosed to both parties.

## **X. Responding to a Formal Complaint**

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### **A. Notification of the Parties.**

After the filing of a Formal Complaint by a Complainant or the Title IX Coordinator, the parties will be offered the opportunity to meet with the Title IX Coordinator. At that meeting, each party will be provided with a Notice containing the following information, in writing:

- An explanation of the process for investigating and adjudicating complaints of Title IX Sexual and Interpersonal Misconduct, including appeals.
- A copy of the Sexual and Interpersonal Misconduct Policy and these Procedures.
- A copy of the Formal Complaint which must include the following:
  - Identities of the parties involved in the incident (if known to the University);
  - The conduct that forms the basis for the allegations of Title IX Sexual and Interpersonal Misconduct; and
  - The date/time of the alleged incident (if known).

- A statement that the Respondent is presumed not responsible and that a determination regarding responsibility will be made at the end of the complaint resolution process.
- A statement that the parties may have an advisor of their choice, who may be an attorney, during the complaint resolution process, including during any meeting, interview, or hearing.
- A statement that the parties may inspect and review evidence during the complaint resolution process.
- A statement identifying any provisions in the University's codes of conduct or policies that prohibit knowingly making false statements or knowingly submitting false information during the complaint resolution process.
- A statement that the University will identify the date, time, location, participants, and purpose of all hearings, investigative interviews or other meetings with sufficient time for the party to prepare to participate;
- An instruction to the parties that they should not destroy any potentially relevant documentation in any format.
- An explanation of the prohibition against retaliation.
- If Supportive Measures have been imposed, an explanation of the scope of those measures and the parties' respective duties to comply with them.

The University will supplement the above notice if, during the course of the investigation of a Formal Complaint, additional allegations warranting investigation emerge.

## **B. Consolidation of Formal Complaints.**

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Formal Complaints filed by a Complainant against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one party against another party, may be consolidated into one Formal Complaint provided the allegations of Title IX Sexual and Interpersonal Misconduct arise out of the same facts or circumstances.

## **XI. Informal Resolution Process**

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At any time during the investigation of a Formal Complaint, the Complainant and a Respondent may choose to resolve a Formal Complaint through the Informal Resolution Process. Both parties must agree to participate in the Informal Resolution Process. Informal Resolution may include conflict mediation or a restorative conference with a University student or employee. Informal Resolution may be used in any case, except cases involving allegations of Title IX Sexual and Interpersonal Misconduct by a student against a University employee.

Either the Complainant or Respondent may choose to end the Informal Resolution Process at any time and commence or resume the Formal Resolution Process.

Because the outcome of the Informal Resolution Process is mutually developed and agreed upon by the parties, an appeal of the process and its result is not permitted. If the parties are unable to agree on a voluntary resolution during the Informal Resolution Process, the matter will be referred by the Title IX Coordinator for investigation.

## **XII. Formal Resolution Process**

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The Formal Resolution Process involves two stages: (1) an investigation by a trained investigator, concluding with a summary of the relevant evidence gathered during the investigation; and (2) a live hearing with questioning of both parties, after which a written determination regarding responsibility and sanction will be issued.

### **A. Relevant Standards and Burdens**

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In resolving Formal Complaints pursuant to the Sexual and Interpersonal Misconduct Policy and the Formal Resolution Process described below, the University will use a “preponderance of the evidence,” standard, which is whether the evidence presented at the hearing supports a finding that it is more likely than not that the Respondent engaged in Title IX Sexual and Interpersonal Misconduct in violation of the Sexual and Interpersonal Misconduct Policy.

In addition, throughout the Formal Resolution Process, the University bears the burden of proof and the burden of gathering sufficient evidence to reach a determination regarding responsibility. In other words, neither party is responsible for proving or disproving the allegation(s) of Title IX Sexual and Interpersonal Misconduct in a Formal Complaint.

### **B. Investigation of a Formal Complaint**

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1. **Investigators.** An investigator specifically trained in Title IX Sexual and Interpersonal Misconduct investigations and these Procedures will be designated to conduct a prompt, thorough, and fair investigation.
2. **Investigation Process.** The investigation generally will include the following:
  - a. **Party and Witness Interviews:** One or more interviews with the Complainant, the Respondent, and any witnesses.
  - b. **Gathering of Evidence:** The gathering of physical, documentary, or other relevant and available evidence, including law enforcement reports.
  - c. **Excluded Evidence:** Evidence gathered during the investigation process will exclude the types of evidence described in Section XII(C)(9), below.

- d. Presentation of Evidence: The opportunity to present written statements, identify witnesses, and submit other evidence. The University may encourage University students or employees to cooperate with the investigation as witnesses regardless of the parties' selection of witnesses.
  - e. Advance Notice of Investigation Events: Sufficient advance written notice of interviews, meetings, and hearing for the relevant party or witness to prepare.
3. **Opportunity to Review Evidence Prior to Completion of Investigative Report**

Prior to the completion of the Final Investigative Report, both parties (and Advisor or Hearing Advisor) may inspect and review evidence obtained as part of the investigation that is directly related to the allegations in the Formal Complaint. This evidence will include (a) evidence that is relevant to the allegations, even if the University does not intend to rely upon the evidence in reaching a determination regarding responsibility, and (b) inculpatory or exculpatory evidence that is directly related to the allegations, whether obtained from a party or other source.

The Title IX Coordinator, as appropriate, will make such evidence available to each party (and their Advisor, if any) in electronic format or a hard copy. The parties will have 10 days from receipt of such evidence to submit to the investigator a written response, which may include a request to review additional evidence. The investigator will provide the other party(ies) with a copy of any response submitted. The investigator will review the parties' respective written responses (if any) and may take additional investigative steps, as needed. The investigator may allow the parties an additional 10 day period to respond, in writing, to the written responses of the other party, including any new evidence provided.

All evidence made available to each party for inspection and review prior to the completion of the Final Investigative Report will be made available for use by the parties at the Hearing, including during questioning of parties and witnesses.

The parties are expected to provide all available relevant evidence to the investigator during the investigation. Any relevant evidence not submitted during the investigation may be excluded from consideration at the Hearing by the Chair if it is determined that such evidence was available to the party prior to the Hearing.

4. **Final Investigative Report**

The investigator will create a Final Investigative report that summarizes the evidence that is relevant to the allegations in the Formal Complaint. The Final

Investigative Report will include in appendices all relevant evidence that was made available to the parties for inspection and review. The investigator may redact irrelevant information contained in documents or evidence that are or is otherwise relevant and included in the Final Investigative Report.

In the Final Investigative Report, the investigator will not make a final determination as to whether a violation of the [Sexual and Interpersonal Misconduct Policy](#) occurred, or an appropriate sanction, reserving those decisions for the decision-maker during the hearing process.

After completing the Final Investigative Report, the investigator will simultaneously send to each party (and their Advisor(s), if any) a copy of the Final Investigative Report in electronic format or hard copy. A Complainant or Respondent may submit a written response to the Final Investigative Report to the investigator within seven (7) calendar days of the issuance of the Final Investigative Report. A party's written response to the Final Investigative Report may include any objections to the investigator's determinations about relevance of the evidence referenced in the Report, and will be provided with the Final Investigative Report to the Hearing Panel for pre-hearing review.

## C. Live Hearing Process

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After the completion of the investigation and the Final Investigative Report by the investigator, the University will conduct a live hearing ("Hearing") to adjudicate the allegations of Title IX Sexual and Interpersonal Misconduct in the Formal Complaint. A Hearing Panel will hear the evidence, make a final determination as to whether the conduct alleged in the Formal Complaint constitutes Title IX Sexual and Interpersonal Misconduct, and if so, impose sanctions, if any.

### 1. Hearing Facilitator.

The Title IX Coordinator will designate a Hearing Facilitator to coordinate all aspects of the Hearing for the parties, their advisors, witnesses, and the Hearing Panel.

### 2. Hearing Panel Selection / Conflict Checking.

Each Hearing will be conducted by a three-person Hearing Panel. Hearing Panel members will receive training on all aspects of the Sexual and Interpersonal Misconduct and these Procedures. The Hearing Panel members will be appointed by the Title IX Coordinator for all cases, and for student-respondent cases the Title IX Coordinator will consult with the Dean of Students. The Hearing Panels will be composed of the following members:

- Student-respondent cases: one student, one faculty member, and one staff member.
- Faculty-respondent cases: two faculty members and one staff member.
- Staff-respondent cases: two staff members and one faculty member.
- All other cases: one staff member, one faculty member, and one faculty or staff member selected at the discretion of the Title IX Coordinator.

Each Hearing Panel will have a chair, selected by the Title IX Coordinator, who is responsible for ensuring that the Hearing proceeds in accordance with these Procedures and making relevancy determinations with respect to each question that is asked during the Hearing. **The University may, in its discretion, appoint a Hearing Panel Chair who may be a third party and who will serve in the place of a staff member of the Hearing Panel. \***

The Hearing Panel will not include any person who has participated in any effort to resolve the Formal Complaint prior to the Hearing stage of the complaint resolution process. The Hearing Panel members will receive the names of the Complainant, the Respondent, and all witnesses, and must withdraw from the proceedings if their relationship to a party or witness, or other circumstances leads them to believe that they cannot judge the matter fairly, without a conflict of interest, and without a bias for or against Complainants or Respondents, both generally and as to the particular Formal Complaint that is being resolved.

The Title IX Coordinator, or their respective designee(s), will send a notice to the Complainant and Respondent, providing the names of the Hearing Panel members and informing them of their right to object to the participation of a Hearing Panel member. The objection must be in writing to the Title IX Coordinator and received within two (2) calendar days of the date of the notice, and must state the party's reasons for believing the Hearing Panel member has a conflict or is otherwise incapable of fairly judging the matter.

The Title IX Coordinator will decide whether an objection is justified, and that decision is final. When necessary, the Title IX Coordinator will select a replacement Hearing Panel member. Parties will have an opportunity to object to any Panel member selected as a replacement.

### 3. **Location of Hearing.**

A Hearing may be conducted with all parties physically present in the same geographic location or, alternatively, with some or all parties, witnesses, and other participants appearing at the Hearing virtually but in different geographic locations, by using a visual screen, videophone, closed circuit television, videoconferencing, or similar technology allowing the parties to simultaneously see and hear each other.



Upon timely request by the Complainant or Respondent, the Chair may accommodate concerns for the personal safety, well-being, and/or fears of confrontation of the Complainant or Respondent during the Hearing by providing separate facilities, provided the parties are able to simultaneously see and hear each other as described above.

#### **4. Pre-Hearing Procedures**

- *Timing and Notice.* The Hearing Facilitator will notify the Complainant, Respondent, and any witnesses of the time and location of the Hearing and will convene the Hearing Panel within fourteen (14) calendar days of the issuance of the Final Investigative Report. The parties are expected to cooperate in the scheduling of the Hearing.
- *Pre-Hearing Review.* Prior to the Hearing, the Hearing Panel will review all the written materials provided (in electronic format) by the Hearing Facilitator, including the Final Investigative Report and all appendices; the written response(s) (if any) of the Complainant or Respondent to the Final Investigative Report; and any other documents not previously submitted by the parties (except that the parties will not be permitted to submit any new or additional evidence at the Hearing without a showing that such evidence was not previously available to the party prior to the Hearing). All of the materials provided by the Hearing Facilitator to the Hearing Panel will also be shared in electronic format with the parties.
- *Pre-Hearing Meeting.* Prior to the Hearing date, the Hearing Facilitator will schedule individual meetings between the Chair and each of the parties and their respective advisors. At the meeting, the Chair will review the Hearing Panel procedures. In addition, the Complainant and the Respondent (and their advisors) will be provided with a list of witnesses, documents, and other evidence that the Hearing Panel may consider at the Hearing. The University reserves the right, through the Chair, to add witnesses to the witness lists with reasonable notice prior to the Hearing.

#### **5. Attendance at Hearing.**

If the Complainant or the Respondent fails to appear at the scheduled Hearing, the Chair may determine whether to postpone the proceedings or to direct that the Hearing proceed and adjudicate the Formal Complaint on the basis of the evidence

presented at the Hearing in accordance with these Procedures, provided the absent party was duly notified of the scheduled Hearing date, as outlined above.

## **6. Conduct of Hearing.**

The Chair will preside at the Hearing and will make relevancy rulings with respect to each question asked during the Hearing, and such other rulings as they deem necessary for the orderly conduct of the Hearing. No one other than the Hearing Panel members, the Complainant and Respondent, their respective advisors, witnesses (when called), and necessary University personnel may be present in the Hearing room or rooms during the proceeding. EOO or Dean of Students Office, as applicable, will work with other University personnel so that any witness or other person whose presence is required may participate in the Hearing.

## **7. Opening Statements.**

The Complainant and Respondent will each have the opportunity to present a brief (10-15 minutes) opening statement.

## **8. Questioning During the Hearing.**

Before a Complainant, Respondent, or witness answers any question at the Hearing, the Chair will first determine whether the question is relevant, and provide an explanation for any decision to exclude a question on the grounds that it is not relevant.

The Hearing Panel is permitted to ask questions of any party or witness participating in the Hearing. A party's advisor is permitted to ask questions of the party they are advising or a witness called by that party. The Chair may disallow or reframe any questions that are redundant, irrelevant, abusive, disrespectful, or unduly harassing.

Neither party may ask questions of the other party or any witness during the Hearing. Only a party's advisor may ask questions of the other party or witnesses. The advisor's questions must be asked directly, orally, and in real time. If a party does not have an advisor present at the live hearing, the University will appoint an advisor who may be – but is not required to be – an attorney, to conduct cross-examination on behalf of that party.

Both parties shall have the right not to answer questions during the Hearing; however, the exercise of that right shall not preclude the Hearing Panel from proceeding and evaluating the Formal Complaint on the basis of the final

investigative report and other relevant evidence submitted during the Hearing, subject to the following:

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

#### **9. Evidence Admissible at Hearing.**

The Hearing Panel will not consider the following types of evidence:

- Prior sexual behavior or sexual predisposition of the Complainant, except where the Chair expressly deems relevant testimony offered:
  - by one of the parties about the Complainant's and Respondent's shared sexual history in order to establish consent, provided, however, that the existence of a prior consensual dating or sexual relationship between the Complainant and Respondent by itself does not support an inference of consent to sexual contact; or
  - to prove that someone other than Respondent is responsible for the misconduct alleged in the Formal Complaint.

If such information is offered by the Complainant or Respondent, the other has the right to respond.

- Either party's medical, psychological, counseling and similar records without the written consent of the party whose records are being admitted.
- Any information protected under a privilege recognized under common law or statute unless the person holding that privilege has waived the privilege, including (but not limited to)
  - Domestic violence victims' counselor;
  - Sexual assault counselor-victim;
  - Social worker-client;
  - Allied mental health or human services professional;
  - Psychotherapist

- Attorney-client;
- Clergy; or
- Spousal.

#### **10. Applicability of Rules of Evidence and Procedure.**

The Hearing will not follow a courtroom model, and the rules of evidence and civil or criminal procedure do not apply. The Chair has the sole discretion to commence, recess, and reconvene the Hearing, and may suspend the Hearing at any time. The Chair will make any procedural decisions during the Hearing that he or she deems necessary to safeguard the integrity and fairness of the Hearing and to avoid undue delay. The Chair will determine the admissibility, relevance, and materiality of the testimony and information offered and may exclude any testimony or evidence that he or she determines to be cumulative or irrelevant. The Hearing Panel may take notice of facts or information within the knowledge of the University community or based on University records.

#### **11. Time Limits.**

The Hearing Panel may set reasonable time limits for any part of the Hearing. In cases where either the Complainant or Respondent opts not to participate in the Hearing, the Hearing Panel may still hear from the other.

#### **12. Hearing Continuation.**

If, prior to the conclusion of the Hearing, the Hearing Panel determines that unresolved issues exist that would be clarified by the presentation of additional evidence, the Chair may suspend the Hearing and reconvene it in a timely manner to receive such additional information. A suspension of the Hearing may not be based on a party's proposed introduction of documents or other evidence that could have been presented prior to the Hearing.

#### **13. Preponderance of the Evidence Standard of Review**

All decisions by the Hearing Panel will be made by majority vote and must be supported by a preponderance of the evidence.

#### **14. Audio Recording**

The Hearing Facilitator will arrange for the Hearing to be audio recorded. The Title IX Coordinator may arrange for the preparation of any transcript of the recording that they deem appropriate. The Complainant and Respondent will have the right to access a copy of the recording without cost, or to obtain a copy of the recording at their expense. The Hearing Panel's post-Hearing deliberations will not be recorded.

Personal cell phones and recording devices may not be used in the Hearing room to record the Hearing unless approved by the Chair in advance.

#### **15. Privacy of the Hearing.**

To comply with Title IX and FERPA, and to provide an orderly process for the presentation and consideration of relevant information without undue intimidation or pressure, the Hearing is not open to the public. Accordingly, documents prepared in anticipation of the Hearing (including the final investigative report, the parties' respective responses to the final investigative report (if any), documents, testimony, or other information introduced at the Hearing, and any recording or transcripts of the Hearing) may not be disclosed outside of the Hearing procedures, except as may be required or authorized by law.

#### **16. Maintenance of Records**

The audio recording of the Hearing, together with the documents, information and other evidence presented at the Hearing, will serve as the record of the Hearing proceedings and will be maintained by the Title IX Coordinator (for faculty, staff, affiliate, and non-affiliate cases) and Dean of Students (for student cases) as part of the Respondent's disciplinary record.

## **D. Completion of Formal Resolution Process**

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### **1. Hearing and Sanction Decisions**

After completion of the Hearing, the Hearing Panel will undertake its deliberations to determine responsibility as to each allegation in the Formal Complaint. The vote of the Hearing Panel itself will not be communicated to the parties. The members of the Hearing Panel are the sole arbiters of the weight of the evidence presented and the credibility of the witnesses who testified at the Hearing. The Hearing Panel will create a written hearing report ("Hearing Report") which will include the following:

- Identification of the allegations of Title IX Sexual and Interpersonal Misconduct included in the Formal Complaint;
- Description of the procedural steps taken from the receipt of the Formal Complaint through the Hearing;

- Findings of fact supporting the Hearing Panel’s determinations;
- Hearing Panel’s credibility determinations concerning admissible relevant evidence;
- Hearing Panel’s conclusions regarding Sexual and Interpersonal Misconduct violations;
- A statement of, and rationale for, the determination regarding responsibility as to each allegation in the Formal Complaint;
- The specification of remedies designed to restore or preserve equal access for the Complainant and/or Respondent to the learning or work environment; and
- Permissible grounds for and procedures available to the parties to appeal.

If the Hearing Panel determines that the Respondent is responsible for violating the [Sexual and Interpersonal Misconduct Policy](#), it will provide the Decision Maker with the Hearing Report to determine the appropriate sanction. After reviewing the Hearing Report, the Decision Maker will determine the appropriate sanction and prepare a sanction report that will include the statement of, rationale for, and duration of the sanction, any conditions to be observed during the sanction period, and the conditions for termination of the sanction (the “Sanction Report”).

As part of the sanctioning process, the Hearing Panel may, in consultation with the Decision Maker, determine that existing Supportive Measures stay in place for a prescribed period of time. The Hearing Panel may also impose new remedies or administrative actions based upon the investigation and hearing of the case.

## **2. Possible Sanctions for Violation of the Sexual and Interpersonal Misconduct Policy**

The sanction will be designed to eliminate the misconduct, prevent its recurrence, and remedy its effects, while supporting the University’s educational mission and Title IX obligations. Sanctions may also serve to promote safety or deter students, employees, affiliates, and non-affiliates from similar future behavior.

The following, individually or in combination, are a non-exhaustive list of potential sanctions for violations by students of the University’s [Sexual and Interpersonal Misconduct Policy](#).

- Expulsion from the University or program of the University.
- Suspension from the University or a program of the University for a specific period of time
- Deferred suspension from the University or a program of the University.
- Denial of graduation, diploma, or degree.

- Deferral of graduation, diploma, or degree for a specific period of time.
- Revocation or withdrawal of diploma or degree previously credited, awarded, or conferred.
- Withholding of course credit (for non-degree students).
- Withholding honors or awards.
- Separation from a University residence hall for a specific period of time.
- Disciplinary probation. Disciplinary probation may involve counseling with faculty or administrative staff; restriction of student privileges; prohibitions against participation in University activities or events, including athletic or non-athletic activities; and prohibitions against holding office or participating in student organizations or residence hall, school, or college organizations or activities.
- Disciplinary reprimand or warning.
- Substance use assessment.
- Restitution. The student will reimburse the University and/or other appropriate party for damage to or loss of property or for costs or expenses incurred by the University or other party. Restitution will be made at full cost of replacement or repair, and other expenses.

The following, individually or in combination, are a non-exhaustive list of potential sanctions for violations by faculty, staff, affiliates, and non-affiliates for violations of the University's [Sexual and Interpersonal Misconduct Policy](#) and are subject to existing employment policies and/or contracts governing the specific respondent:

- Counseling or training;
- Written warning/reprimand;
- Administrative leave of absence (without pay);
- Demotion;
- Change of work location or schedule;
- Suspension; or
- Termination of employment.

### **3. Communication of the Written Decision**

Within fourteen (14) calendar days from the conclusion of the deliberations of the Hearing Panel regarding responsibility and the Dean of Students or applicable dean or vice president regarding the sanction (or such longer time as the Chair may for good cause determine), the Chair of the Hearing Panel will simultaneously communicate the Written Decision on the Formal Complaint to the Complainant, the Respondent, the Title IX Coordinator, and the Dean of Students (in cases involving student respondents) or the applicable dean or vice president (in all other cases).

## **XIII. Appeal to the University Provost or Chief Human Resources Officer**

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The Complainant and Respondent each have the right to appeal the determination(s) regarding responsibility and disciplinary sanctions set forth in the Written Decision.

### **A. Grounds for Appeal.**

The Written Decision will be presumed to have been reached reasonably and appropriately, by a preponderance of the evidence. Therefore, a party may appeal the Written Decision determination only on the following grounds:

- a. Procedural irregularity that affected the outcome of the matter.
- b. New evidence that was not reasonably available at the time of the Hearing Panel's Decision and could affect the outcome of the matter.
- c. The Title IX Coordinator, investigator(s), Hearing Panel members, had a conflict of interest or bias for or against Complainants or Respondents generally, or the individual Complainant or Respondent that affected the outcome of the matter.

The filing of an appeal will not operate to stay the effect of sanctions imposed. However, the appeal may seek a stay or modification of the sanctions pending the final decision on the appeal. The Provost, Chief Human Resources Officer (as applicable) or their respective Designee, in their discretion, may suspend, stay, or modify sanctions imposed, subject to such conditions as either may deem appropriate.

### **B. Appeal Process.**

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Any appeal petition must be in writing and filed with the Title IX Coordinator within ten (10) calendar days of the date of receipt by the Complainant and Respondent of the Written Decision. The Title IX Coordinator may accept a late submission under extenuating circumstances.

In the case of complaints against staff members and non-affiliates, the Title IX Coordinator will direct the appeal to the Chief Human Resources Officer (or CHRO Designee) for review and disposition. In the case of complaints against faculty, students, and affiliates, the Title IX Coordinator will direct the appeal to the University Provost to determine the appropriate officer of the University to whom the appeal should be directed ("Provost Designee").

The Title IX Coordinator will also forward to the Chief Human Resources Officer, the CHRO Designee, Provost, or Provost Designee, as appropriate, the relevant record of



the matter. The Chief Human Resources Officer, CHRO Designee, Provost, or Provost Designee will limit their review of Written Decision to the following, which will be referred to as the “appeal record”:

- a review of the record of the original Hearing (including the audio recording); and,
- the appeal petition and response (if any).

The Chief Human Resources Officer or Provost or their respective Designee, as appropriate, will review the appeal record. The decision of the Chief Human Resources Officer, CHRO Designee, Provost, or Provost Designee will be in writing, with copies provided to the Complainant and Respondent, as well as the Title IX Coordinator and, in the case of student Respondents, the Dean of Students, and will be communicated simultaneously to both parties within fourteen (14) calendar days after receiving the appeal petition or any response.

### **C. Decision on Appeal.**

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The Chief Human Resources Officer or Provost or their respective Designee may:

- a. Affirm, modify, or reverse the Hearing Panel Decision as to responsibility of the Respondent.
- b. Affirm or modify (either to increase or decrease) the disciplinary sanctions imposed.
- c. Remand the matter for further investigation or a new hearing. This shall ordinarily be done in the case of procedural irregularity or new and relevant evidence, for an assessment of the weight and effect of the new evidence and a determination after consideration of the new facts.

If the Chief Human Resources Officer or Provost or their respective Designee remands the matter, they will specify whether the sanctions are to be maintained, modified, suspended, or reversed pending completion of the matter on remand.

The decision of the Chief Human Resources Officer or Provost or their respective Designee will be final, subject to Section XIV below.

### **D. Disciplinary Records.**

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The disciplinary files of students who have been suspended or expelled from the University are maintained in the Dean of Students Office for at least seven (7) years after the students’ departure from the University. A sanction of expulsion or suspension from the University or a program of the University will be entered on the student’s permanent record unless this provision is waived by the Dean of Students and the Provost concurs.

Faculty member disciplinary records will be stored in the faculty member's personnel file in the Office of Human Resources. Staff member disciplinary records will be stored in the staff member's personnel file which will be maintained in accordance with the University's record retention policy.

## **XIV. Imposition of Sanctions on Faculty/Staff; Re-Enrollment, Withdrawal, and Readmission of Students**

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### **A. Suspension or Termination of Faculty.**

Any disciplinary sanction that involves the suspension or termination of a faculty member will be conducted pursuant to the procedures outlined in the Faculty Handbook.

### **B. Disciplinary Actions against Staff.**

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Disciplinary sanctions involving staff will be consistent with any applicable University policies.

### **C. Re-Enrollment, Withdrawal and Readmission of Students.**

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- Re-Enrollment After Completion of Sanctions.

The University Registrar will be informed of all sanctions involving suspension or expulsion from the University or from a program of the University, and no student will be permitted to re-enroll in the University following such sanction unless they present evidence to the Title IX Coordinator, or their designee, of satisfaction of the sanction and receives appropriate permission for re-enrollment.

- Withdrawal and Re-Enrollment.

If a student voluntarily withdraws from the University or a program of the University while charges are pending, or as part of a negotiated settlement of such charges, this fact will be communicated to the University Registrar and the student will not be permitted to re-enroll unless they present evidence that appropriate permission for re-enrollment has been obtained. Such permission shall be granted solely at the discretion of the Decision Maker. If the student withdrew while charges against them were pending, permission for readmission

will be granted only after the charges have been resolved. If permission to re-enroll is not granted, the student may petition the Provost for permission, setting forth in their petition the relevant facts and the basis upon which the petition is made. The decision of the Provost will be final. Failure of a student to comply with a sanction or condition imposed or to obtain permission for re-enrollment in accordance with the above requirements may be a basis for denial of re-enrollment.

Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681) is a federal law that prohibits discrimination based on the gender of students and employees of educational institutions which receive federal financial assistance.

Nicholls State University and University of Louisiana System policies prohibit sexual discrimination in the form of sexual harassment, sexual assault, stalking, domestic violence, dating violence, and unauthorized distribution of sexual images or recordings.

This guideline complies with requirements of the United States Department of Education requirements as well as the provision of Louisiana's Board of Regents Uniform Policy on Power-Based Violence/Sexual Misconduct.