



Office of Title IX

2026-2027

Title IX Sexual Misconduct Policy

Be seen. Be heard.

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Title IX Sexual Misconduct Policy

THIS POLICY SEEKS TO COMBINE AND IMPLEMENT THE LEGAL, REGULATORY, AND POLICY REQUIREMENTS REGARDING SEXUAL HARASSMENT CONTAINED WITHIN:

- Title IX of the Education Amendments Act of 1972, 20 U.S.C. §1681 et seq., Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 34 CFR Part 106, 85 Federal Regulation 30,026 (May 19, 2020), as modified by applicable court orders
- Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act of 1990 (Clery Act)
- North Dakota Century Code Chapter 14-02.4
- North Dakota Century Code Chapter 12.1-20
- North Dakota Century Code Chapter 15-10-56
- North Dakota Century Code Chapter 44-04

POLICY STATEMENT

Minot State University adheres to all federal, state, and local civil rights laws prohibiting sex-based harassment in employment and education. The University does not discriminate in its admissions practices, employment practices, or education programs or activities on the basis of sex. As a recipient of federal financial assistance that operates education programs or activities, the University is required by Title IX of the Education Amendments of 1972 to ensure that all of its education programs and activities do not discriminate on the basis of sex. Sex Discrimination is prohibited under Title IX and by University Policy, and it includes Sexual Harassment, Sexual Assault, Dating and Domestic Violence, and Stalking.

The University also prohibits retaliation against any person opposing sexual harassment or retaliation or participating in any internal or external investigation or complaint related to allegations thereof.

Any University faculty member, employee, or student who acts to deny, deprive, or limit the educational, employment, residential, or social access, opportunities and/or benefits of any member of the University community on the basis of sex is in violation of the Sexual Harassment Policy.

Any person may report sex-based harassment (whether or not the person reporting is the person alleged to have experienced the conduct) in person, by mail, by telephone, by video, or by email, using the contact information listed for the Title IX Coordinator (below). A report may be made at any time (including during non-business hours).

Questions regarding Title IX, including its application and/or concerns about noncompliance, should be directed to the Title IX Coordinator. For a complete copy of the Policy, or for more information, please visit <https://www.minotstateu.edu/title9/> or contact the Title IX Coordinator.

Lisa Dooley, Ed.D., Title IX Coordinator

Office of Title IX

Memorial Hall, 4th Floor, Room 412

500 University Ave W., Minot, ND 58707 (701) 858-

3447

Email: lisa.dooley@minotstateu.edu • Web: <https://www.minotstateu.edu/title9/index.shtml>

1. Purpose

Minot State University (MSU) is committed to providing an educational and employment environment that is free from Sexual Discrimination, Harassment, and Retaliation for engaging in a protected activity.

MSU values and upholds the equal dignity of all members of its community and strives to balance the rights of the parties in the grievance process during what is often a difficult time for all involved. To ensure compliance with federal, state, and local civil rights laws and regulations, and to affirm its commitment to promoting the goals of fairness in all aspects of the Education Program or Activity, MSU has developed policies and procedures that provide a prompt, fair, and impartial resolution of allegations of Sexual Harassment, and Retaliation.

2. Scope

The Policy applies to all Employees, Students, and other individuals participating in or attempting to participate in MSU's Education Program or Activities, including education and employment. The Policy prohibits Discrimination on the basis of sex, including Title IX Sexual Misconduct (Sexual Harassment, Sexual Assault, Dating Violence, Domestic Violence, and Stalking, as defined by Title IX) and may be applied to incidents, patterns, and/or the institutional culture/climate, all of which may be addressed in accordance with the policy.

3. Notice of Nondiscrimination

The University adheres to all federal and state civil rights laws and regulations prohibiting discrimination in public institutions of higher education.

Minot State University (MSU) is committed to equal opportunity in education and employment. MSU does not discriminate on the basis of race, color, national origin, religion, sex, age, disability, sexual orientation, gender identity and expression, genetic information, marital or parental status, veteran status, citizenship status, public assistance status, participation in lawful off-campus activity, spousal relationship to a current employee, or other status protected by federal, state, or local law. This Title IX Policy addresses discrimination on the basis of sex. Complaints based on another protected status will be handled under the applicable MSU policy.

Questions, comments, or complaints regarding Sexual Discrimination and Title IX Sexual Misconduct may be directed to the Title IX Office. All other forms of discrimination (e.g., race) or harassment may be directed to the Vice President for Student Affairs or the Director of Human Resources, as appropriate. Complaints may also be filed with the U.S. Department of Education, Office for Civil Rights. Inquiries about Title IX may be referred to MSU's Title IX Coordinator, the U.S. Department of Education's Assistant Secretary for Civil Rights, or both.

The University will be promptly and effectively address incidents of Sexual Discrimination and Sexual Misconduct of which it has Notice using the applicable resolution process.

4. Policy Conflicts

This Policy will be interpreted and applied consistently with controlling federal and state law, SBHE policies, and NDUS procedures. If a conflict cannot be reconciled, controlling law, SBHE policy, or NDUS procedure governs, as applicable. A conflict with another MSU policy or procedure will be referred to the President or the President's designee for resolution. Speech or conduct outside this Policy may be addressed only under an applicable institutional procedure consistent with SBHE Policies 308.1 and 503.1.

5. Administrative Contact Information

Complaints or notice of alleged policy violations, or inquiries about or concerns regarding this policy and procedures, may be made internally to:

Lisa Dooley, Ed.D., Title IX Coordinator
Office of Title IX

Memorial Hall, 4th Floor, Room 412

500 University Ave W., Minot, ND 58707 (701) 858-3447

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6. External Contact Information

Concerns within OCR's jurisdiction may be directed to the U.S. Department of Education, Office for Civil Rights, 400 Maryland Avenue SW, Washington, DC 20202-1100; 800-421-3481; OCR@ed.gov; <https://www.ed.gov/laws-and-policy/civil-rights-laws/file-complaint>. Employment discrimination or harassment charges may be filed with the U.S. Equal Employment Opportunity Commission through its Public Portal or by calling 800-669-4000. A person also may contact the North Dakota Department of Labor and Human Rights regarding a charge within its jurisdiction. External filing periods differ by claim type and may continue to run during MSU's internal process.

7. Employee Reporting Obligations and Confidential Resources

All University faculty and employees (including Student-Employees), other than those deemed Confidential Employees, are **Mandatory Reporters** and must promptly report all known details of actual or suspected Sexual Discrimination, Title IX Sexual Misconduct, and/or Retaliation, to the Title IX Coordinator (or designee), although there are some limited exceptions. Supportive measures may be offered as the result of such disclosures without formal University action.

Nothing in this Section limits an Employee's right to make a good-faith report through any channel authorized by SBHE Policy 308.2. A University official who receives a report implicating this Policy will promptly route it to the Title IX Coordinator (or designee) as required by this Policy.

Complainants, especially those who wish to remain anonymous, may want to carefully consider whether they share personally identifiable details with Mandatory Reporters, as those details must be shared with the Title IX Coordinator (or designee).

If a Complainant expects formal action in response to their allegations, making a disclosure to any Mandated Reporter can connect them with resources to report alleged crimes and/or policy violations, and these employees will immediately pass reports to the Title IX Coordinator (and/or police, if desired by the Complainant or required by law), who will act when an incident is reported to them.

The following sections describe the University's reporting options for a Complainant or third-party (including parents/guardians when appropriate):

A. Confidential Resources

To enable Complainants to access support and resources without filing a Formal Complaint, the University has designated specific employees as Confidential Resources. Those designated by the University as Confidential Resources are not required to report actual or suspected Sexual Harassment, Retaliation, or Other Prohibited Conduct in a way that identifies the Parties. They will, however, provide the Complainant with the Title IX Coordinator (or designee)'s contact information and offer options and resources without any obligation to inform an outside agency or University official, except with the Complainant's authorization or, as required by law, professional obligations, or an imminent safety need.

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

- On-campus licensed professional counselors
- On-campus health service providers and staff
- On-campus members of the clergy/chaplains working within the scope of their licensure or ordination
- Community-based (non-employees):
 - Licensed professional counselors and other medical providers
 - Local rape crisis counselors
 - Domestic violence resources
 - Local or state assistance agencies
 - Clergy/Chaplains
 - Attorneys

Failure of a Mandatory Reporter, as described above, to report an incident of sexual harassment, retaliation, or other prohibited conduct of which they become aware is a violation of University policy and subject to disciplinary action for failure to comply or failure to report. An Employee Respondent, including

a Student-Employee Respondent, remains subject to independent reporting and cooperation requirements under SBHE Policies 308.1 and 308.2. The University will apply those requirements consistently with 34 C.F.R. § 106.71 and applicable constitutional and statutory protections governing compelled statements; nothing in this paragraph requires an Employee Respondent to waive the privilege against self-incrimination. Section G governs the Decision-maker's treatment of a Party's absence from the hearing or refusal to answer questions.

A Mandatory Reporter who is themselves a target of sexual harassment, retaliation, or other prohibited conduct under the Policy is not required to report their own experience, though they are encouraged to do so.

In addition, Complainants may speak with individuals unaffiliated with the University without concern that Policy will require them to disclose information to the institution without the Complainant's permission. Such individuals include:

- Licensed professional counselors and other medical providers
- Local rape crisis counselors
- Domestic Violence resources
- Local or state assistance agencies
- Clergy/Chaplains
- Attorneys

8. Jurisdiction

This Policy applies to MSU's Education Program and Activities, to conduct that takes place on property owned or controlled by the University, at University-sponsored events, or in any building owned or controlled by a University's -recognized student organizations.

The Policy may also apply to the effects of off-campus misconduct that limit or deny a person's access to the University's Educational Program or Activities. The University may also extend jurisdiction to off-campus and/or to online conduct when the conduct affects a substantial University interest.

Title IX Response Standard. When the University has Actual Knowledge of Title IX Sexual Harassment in its Education Program or Activity against a person in the United States, it will respond promptly in a manner that is not deliberately indifferent, meaning not clearly unreasonable in light of the known circumstances. The response will treat Complainants and Respondents equitably. The Title IX Coordinator (or designee) will promptly contact the Complainant to discuss available supportive measures, consider the Complainant's wishes, explain that supportive measures are available with or without a Formal Complaint, and explain how to file a Formal Complaint. Broader conduct may be addressed under other lawful University policies.

A substantial University interest includes:

- 1) Any action that constitutes a criminal offense as defined by law. This includes, but is not limited to, single or repeat violations of any federal, state, or local law.
- 2) Any situation in which it is determined that the Respondent poses an immediate threat to the physical health or safety of any student, employee, or other individual.
- 3) Any situation that significantly impinges upon the rights, property, or achievements of others, significantly breaches the peace, and/or causes social disorder.
- 4) Any situation that substantially interferes with the University's educational interests or mission.

For disciplinary action to be issued for Title IX Sexual Harassment under the Policy, the Respondent must be a MSU Student or Employee at the time of the Formal Complaint. For allegations other than Title IX Sexual Harassment, the University may issue disciplinary action under the Policy if the Respondent was a University Student, or Employee at the time of the alleged misconduct. If the Respondent is unknown or is not a member of the University community, the Title IX Coordinator will offer to assist the Complainant in identifying appropriate institutional and local resources and support options and will implement appropriate supportive measures and/or remedial actions (e.g., trespassing a person from campus). The University can also assist in contacting law enforcement if the individual would like to file a police report about criminal conduct.

All vendors serving the University through third-party contracts are subject to the policies and procedures of their employers.

When a Party is participating in a dual enrollment program, the University will coordinate with the Party's home institution to determine jurisdiction and coordinate providing supportive measures and responding to the Notice under the appropriate policy and procedures based on the allegations and identities of the Parties.

When the Respondent is enrolled in or employed by another institution, the Title IX Coordinator (or designee) can assist the Complainant in contacting the appropriate individual at that institution, as it may be possible to pursue action under that institution's policies.

Similarly, the Title IX Coordinator (or designee) may be able to assist and support a Student or Employee Complainant who experiences sexual misconduct and or sexual discrimination in an externship, study abroad program, or other environment external to the University where policies and procedures of the facilitating or host organization may give the Complainant recourse. If there are effects of that external conduct that impact a Complainant's education or employment environment, those effects can often be addressed remedially by the Title IX Coordinator (or designee) if brought to their attention.

9. Supportive Measures

The University will offer and implement appropriate and reasonable supportive measures to the Parties upon Notice of alleged Sexual Harassment and/or Retaliation. Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the parties, to restore or preserve access to the University's Education Program or Activity, including measures designed to protect the safety of all parties and/or the University's educational environment, and/or deter Sexual Misconduct, Sexual Discrimination, and or Retaliation.

The Title IX Coordinator (or designee) makes supportive measures available to the Parties upon receiving Notice or a Complaint. At the time that supportive measures are offered, if a Formal Complaint has not been filed, the University will inform the Complainant, in writing, that they may file a Formal Complaint with the University either at that time or in the future. The Title IX Coordinator (or designee) will work with a party to ensure that their wishes are considered with respect to any planned and implemented supportive measures.

The University will maintain the confidentiality of the supportive measures, provided that confidentiality does not impair the University's ability to provide those supportive measures. The University will act to ensure as minimal an academic/occupational impact on the Parties as possible. The University will implement measures in a way that does not unreasonably burden another party.

These actions may include, but are not limited to:

- a) Referral to counseling, medical, and/or other healthcare services
- b) Referral to the Employee Assistance Program (EAP)
- c) Referral to community-based service providers
- d) Student financial aid counseling
- e) Altering campus housing assignment(s)
- f) Altering work arrangements for employees or student employees
- g) Safety planning
- h) Providing campus safety escorts
- i) Implementing contact limitations (no contact orders) between the parties
- j) Academic support, extensions of deadlines, or other course/program-related adjustments
- k) Trespass, Persona Non Grata (PNG), or Be-On-the-Lookout (BOLO) orders
- l) Coordination with separate Clery Act timely warning obligations, when applicable
- m) Class schedule modifications, withdrawals, or leaves of absence
- n) Increased security and monitoring of certain areas of the campus
- o) Any other actions deemed appropriate by the Title IX Coordinator (or designee)

Violations of no contact orders or other restrictions may be referred to appropriate student or employee conduct processes for enforcement or added as collateral misconduct allegations to an ongoing resolution process under this Policy.

10. Online Sexual Harassment and/or Retaliation

University policies are written and interpreted broadly to include online manifestations of any of the behaviors prohibited below, when those behaviors occur in or have an effect on the University's Education Program and Activities or when they involve the use of University networks, technology, or equipment.

Although the University may not control websites, social media, and other venues through which harassing communications are made, when such communications are reported to the University, it will engage in a variety of means to address and mitigate the effects.

Members of the community are encouraged to be good digital citizens and to refrain from online misconduct, such as feeding anonymous gossip sites; sharing inappropriate content via social media; unwelcome sexual or sex-based messaging; distributing, or threatening to distribute, nude or semi-nude photos or recordings without consent; breaches of privacy; or otherwise using the ease of transmission and/or anonymity of the Internet or other technology to harm another member of the University community.

Student online speech will be subject to discipline under this Policy only when it satisfies an applicable Policy offense consistent with the First Amendment and SBHE Policy 503.1, including unwelcome protected-status harassment that is so severe, pervasive, and objectively offensive that a student effectively is denied equal access, quid pro quo harassment, or other unprotected or materially and substantially disruptive conduct. Speech that does not meet those standards may be addressed only through constructive, nonpunitive measures.

Employees' off-campus harassing speech, whether online or in person, may be regulated by the University only when such speech is made in an Employee's official or work-related capacity.

11. Prohibited Conduct

Students and Employees are entitled to an education and employment environment that is free of sexual misconduct, sexual discrimination, and retaliation. The Policy is not meant to inhibit or prohibit educational content or discussions inside or outside of the classroom that include germane, but controversial or sensitive, subject matters protected by academic freedom.

The sections below describe the specific forms of legally prohibited Sexual Misconduct, Sexual Discrimination, and Retaliation that are also prohibited under University policy. When speech or conduct is protected by academic freedom and the First Amendment, it will not be considered a violation of University policy, though supportive measures will be offered to those impacted, as appropriate. All offense definitions encompass actual and/or attempted offenses.

Any of the following offenses can be charged as or combined as pattern offenses, in which case the Notice of Investigation and Allegation (NOIA) will clearly indicate that both individual incidents and a pattern of conduct are being investigated. A pattern may be alleged when there is a potential substantial similarity between incidents in which the proof of one could make it more likely that the other(s) occurred, and vice versa. Patterns may exist based on target selection, behavior similarity, or other factors. Pattern-based evidence can offer corroboration of an allegation, and where a pattern is charged and found, it can be the basis to enhance sanctions accordingly.

Violation of any other University policies may constitute Sexual Misconduct or Sexual Discrimination when motivated by actual or perceived Protected Characteristic(s), and the result is a limitation or denial of education or employment access, benefits, or opportunities.

A. Discrimination

Discrimination is different treatment with respect to a person's employment or participation in an Education Program or Activity based, in whole or in part, upon the person's actual or perceived

Protected Characteristic(s). Discrimination also includes allegations of a failure to provide reasonable accommodations as required by law or policy, such as for disability, religion, or creed.

Discrimination can take two primary forms:

1) Disparate Treatment Discrimination:

- Any intentional differential treatment of a person or persons that is based on a person's actual or perceived Protected Characteristic(s) and that:
 - Excludes a person from participation in;
 - Denies the person benefits of; or
 - Otherwise adversely affects a term or condition of a person's participation in a University program or activity.

2) Disparate Impact Discrimination:

- Disparate impact occurs when policies or practices that appear to be neutral unintentionally result in a disproportionate impact on a protected group or person that:
 - Excludes a person from participation in;
 - Denies the person benefits of; or
 - Otherwise adversely affects a term or condition of a person's participation in a University program or activity.

B. Sexual Harassment

The Department of Education's Office for Civil Rights (OCR), the Equal Employment Opportunity Commission (EEOC), and North Dakota Century Code Chapter 14-02.4 regard Sexual Harassment, a specific form of discriminatory harassment, as an unlawful discriminatory practice. Acts of sexual harassment may be committed by any person upon any other person, regardless of the sex, sexual orientation, and/or gender identity of those involved.

Acts of Sexual Harassment may be committed by any person upon any other person, regardless of the Sex, sexual orientation, and/or gender identity of those involved.

The University has adopted the following definitions of Sexual Harassment in order to address the unique environment of an academic community. Two definitions are required by federal law. While they overlap, they are not identical, and they each apply as noted.

1) Title VII Sexual Harassment applies to situations where an employee is subjected to workplace Sexual Harassment.

- Unwelcome verbal, written, graphic, and/or physical conduct; that is severe or pervasive and objectively offensive; on the basis of sex, that unreasonably interferes with, limits, or effectively denies an individual's employment access, benefits, or opportunities.

Title IX Sexual Harassment, as an umbrella category, includes the offenses of sexual harassment, sexual assault, domestic violence, dating violence, and stalking. This definition applies to all formal complaints that fall within Title IX jurisdiction as determined by the Title IX Coordinator (or designee).

Sexual Harassment includes conduct on the basis of sex, that satisfies one or more of the following:

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

North Dakota Sexual Harassment also includes unwelcome sexual advances, requests for sexual favors, sexually motivated physical conduct, or other verbal or physical conduct or communication of a sexual nature when submission is made, expressly or implicitly, a term or condition of employment, public accommodations or services, or education; submission to or rejection of the conduct is used as a factor in decisions affecting

employment, public accommodations or services, education, or housing; or the conduct has the purpose or effect of substantially interfering with an individual's employment, public accommodations or services, or educational environment. Conduct meeting this State-law standard but not the federal Title IX definition will be addressed under the applicable nondiscrimination process and will not be dismissed solely for falling outside Title IX jurisdiction.

- 2. Sexual Harassment (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:

a. Rape (Gross Sexual Imposition):

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's consent.

b. Fondling:

The touching of the private body parts of another person for the purpose of sexual gratification, without the victim's consent, including when the victim is incapable of consent because of age or temporary or permanent mental incapacity.

Or, the Respondent caused or directed the Complainant's intentional touching of the Respondent's clothed or unclothed genitals, buttocks, groin, breasts, or other body parts, without the consent of the Complainant, for the purpose of sexual degradation, sexual gratification, or sexual humiliation.

c. Incest:

Nonforcible sexual intercourse between persons related to each other within the degrees in which marriage is prohibited by law.

d. Statutory Rape:

Nonforcible sexual intercourse with a person who is under the statutory age of consent. Applicable North Dakota age-difference and offense provisions will be evaluated under N.D.C.C. ch. 12.1-20 and will not be summarized as a categorical age of consent of 18.

4. Dating Violence:

Violence, on the basis of sex, committed by the Respondent, who is in 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 the Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition-
 - Dating Violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
 - Dating Violence does not include acts covered under the definition of Domestic Violence

5. Domestic Violence:

A felony or misdemeanor crime of violence, on the basis of sex, committed by a current or former spouse or intimate partner of the Complainant; by a person with whom the Complainant shares a child; by a person who is or was cohabitating with the Complainant as a spouse or intimate partner; by a person similarly situated to a spouse under applicable domestic or family violence law; or by any other person against an adult or youth Complainant who is protected from that person's acts under applicable domestic or family violence law.

6. Stalking:

A Respondent engaging in a course of conduct, on the basis of sex, directed at the Complainant, that, would cause a reasonable person to fear the person's safety, or the safety of others; or suffer substantial emotional distress.

For the purposes of this definition-

- Course of conduct means two or more acts, including, but not limited to acts in which the Respondent directly, indirectly, or through third parties, by

any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.

- o Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

Note: In addition to the forms of sexual harassment described above, MSU addresses a wider range of behaviors that are not classified as Sexual Harassment under Title IX.

C. Sexual Misconduct

1) Sexual Exploitation:

- i. Any person taking non-consensual or abusive sexual advantage of another, that does not constitute Sexual Harassment as defined above,
- ii. for their own benefit or for the benefit of anyone other than the person being exploited.

Examples of Sexual Exploitation include, but are not limited to:

- a. Sexual voyeurism (such as observing or allowing others to observe a person undressing or using the bathroom or engaging in sexual acts, without the consent of the person being observed).
- b. Electronically distributing (e.g., Airdropping, Snapchatting) nude or sexual photos or videos of another person without their consent
- c. Invasion of sexual privacy.
- d. Knowingly making an unwelcome disclosure of (or threatening to disclose) an individual's sexual orientation, gender identity, or gender expression.
- e. Taking pictures, video, or audio recording of another in a sexual act, or in any other sexually-related activity when there is a reasonable expectation of privacy during the activity, without the consent of all involved in the activity; or exceeding the boundaries of consent (such as allowing another person to hide in a closet and observe sexual activity, or disseminating sexual pictures without the photographed person's consent), including the making or posting of non-consensual pornography.
- f. Prostituting another person.
- g. Engaging in sexual activity with another person while knowingly exposing another person, without that person's informed consent, to an objectively significant risk of transmission during sexual activity, as established by current, individualized medical evidence. Infection or disability status alone is not a violation.
- h. Causing or attempting to cause the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give consent to sexual activity, or for the purpose of making that person vulnerable to non-consensual sexual activity.
- i. Misappropriation of another person's identity on apps, websites, or other venues designed for dating or sexual connection (e.g., spoofing).
- j. Forcing a person to take an action against that person's will by threatening to show, post, or share information, video, audio, or an image that depicts the person's nudity or sexual activity.
- k. Knowingly soliciting a minor for sexual activity.
- l. Engaging in sex trafficking.
- m. Knowingly creating, possession, or disseminating child sexual abuse images or recordings.
- n. Creating or disseminating synthetic media, including images, videos, or audio representations of individuals doing or saying sexually related things that never happened, or placing identifiable real people in fictitious pornographic or nude situations without their consent (i.e., deepfakes-type of synthetic media created using artificial intelligence to generate or alter video or audio content in a way that makes it appear real.

D. Retaliation and Other Prohibited Conduct

Retaliation is a standalone offense and does not require proof that the challenged action was motivated by the Complainant's protected status. The University and any other person may not intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with

a right or privilege secured by Title IX or this Policy, or because the individual made a report or complaint, testified, assisted, participated, or refused to participate in any manner in an investigation, proceeding, or hearing. The University may address bad-faith false statements under an equally applied code provision, but a responsibility determination alone does not establish bad faith. Protected First Amendment activity is not retaliation.

1) Retaliation:

- a. The University or any member of the University's community,
- b. Taking or attempting to take materially adverse action,
- c. By intimidating, threatening, coercing, harassing, or discriminating against any individual,
- d. For the purpose of interfering with any right or privilege secured by law or policy, or
- e. Because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under the Policy and associated procedures.

It is not Retaliation for the University to pursue disciplinary action against those who make materially false statements in bad faith in the course of a resolution process under the Policy. However, the determination of responsibility, by itself, is not sufficient to conclude that any Party has made a materially false statement in bad faith.

12. Consent, Force, and Incapacitation

As used in the Policy, the following definitions and understandings apply:

1) Consent:

- a. knowing, and
- b. voluntary, and
- c. clear permission
- d. by word or action
- e. to engage in sexual activity.

Individuals may perceive and experience the same interaction in different ways. Therefore, it is the responsibility of each Party to determine that the other has consented before engaging in the activity. If consent is not clearly provided prior to engaging in the activity, consent may be ratified by word or action at some point during the interaction or thereafter, but clear communication from the outset is strongly encouraged.

For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual activity. Consent is evaluated from the perspective of what a Reasonable Person would conclude are mutually understandable words or actions. Reasonable reciprocation can be implied consent. For example, if someone kisses you, you can kiss them back (if you want to) without the need to explicitly obtain their consent to being kissed back.

Consent can also be withdrawn once given, as long as the withdrawal is reasonably and clearly communicated. If consent is withdrawn, that sexual activity should cease within a reasonably immediate time. Silence or the absence of resistance alone should not be interpreted as consent. Although resistance is not required or necessary, it is a clear demonstration of non-consent.

Consent to some sexual contact (such as kissing or fondling) cannot be assumed to be consent for other sexual activity (such as intercourse). A current or previous intimate relationship is not sufficient to constitute consent. If an individual expresses conditions on their willingness to consent (e.g., use of a condom) or limitations on the scope of their consent, those conditions and limitations must be respected. If a sexual partner shares the clear expectation for the use of a condom, or to avoid internal ejaculation, and those expectations are not honored, the failure to use a condom, removing a condom, or internal ejaculation can be considered acts of Sexual Assault.

Proof of consent or non-consent is not a burden placed on any party involved in a Formal Complaint. Instead, the burden remains on the University to determine whether its Policy has been violated. The existence of consent is based on the totality of the circumstances evaluated from the perspective of a

Reasonable Person in the same or similar circumstances, including the context in which the alleged misconduct occurred and any similar and previous patterns that may be evidenced.

Going beyond the boundaries of consent is prohibited. Thus, unless a sexual partner has consented to slapping, hitting, hair pulling, strangulation, or other physical roughness during otherwise consensual sexual activity, those acts may constitute Dating Violence or Sexual Assault.

2) Force:

Force is the use of physical violence and/or physical imposition to gain sexual access. Sexual activity that is forced is, by definition, non-consensual; however, non-consensual sexual activity is not necessarily forced.

Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent (e.g., "Have sex with me or I'll hit you," which elicits the response, "Okay, don't hit me. I'll do what you want.").

Coercion is unreasonable pressure for sexual activity. Coercive conduct, if sufficiently severe, can render a person's consent ineffective, because it is not voluntary. When someone makes clear that they do not want to engage in sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive. Coercion is evaluated based on the frequency, intensity, isolation, and duration of the pressure involved.

3) Incapacitation:

Incapacitation is a state where a person is incapable of giving consent. An incapacitated person cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the "who, what, when, where, why, and how" of their sexual interaction).

A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious for any reason, including because of alcohol or other drug consumption.

This Policy also covers a person whose incapacity results from temporary or permanent physical or mental health conditions, involuntary physical restraint, and/or the consumption of incapacitating substances. Incapacitation is determined through consideration of all relevant indicators of a person's state and is not synonymous with intoxication, impairment, blackout, and/or being drunk. The Respondent violates this Policy if they knew or should have known the Complainant to be physically or mentally incapacitated. "Should have known" is an objective, Reasonable Person standard that assumes that a Reasonable Person is both sober and exercising sound judgment.

13. Standard of Evidence

The University uses the preponderance of the evidence standard when determining whether a policy violation occurred. This means that the University will decide whether it is more likely than not, based upon the available information at the time of the decision, that the Respondent violated the policy.

14. Notice/Complaints of Sexual Harassment, Retaliation, and/or Other Prohibited Conduct

A report provides the University Notice of an allegation or concern about Sexual Harassment, Retaliation, and/or Other Prohibited Conduct and provides an opportunity for the Title IX Coordinator (or designee) to provide information, resources, and supportive measures. A Formal Complaint informs the University that the Complainant would like to initiate an investigation or other appropriate resolution procedure. A Complainant or individual may initially make a report and may decide at a later time to make a Formal Complaint. Reports or Formal Complaints of Sexual Harassment, Retaliation, and/or Other Prohibited Conduct may be made using any of the following options:

- 1) File a report or Formal Complaint with, or give verbal Notice to, the Title IX Coordinator (or designee) or to any member of the Nondiscrimination Team. Such a report or Formal Complaint may be made at any time (including during non-business hours) by using the telephone number or email address, or by mail, to the office of the Title IX Coordinator (or designee) or any other Nondiscrimination Team member listed in the Policy.

- 2) Report online at <https://www.minotstateu.edu/title9/incident-reporting.shtml>. Anonymous reports are accepted but the report may give rise to a need to try to determine the Parties' identities. Anonymous reports typically limit the University's ability to investigate, respond, and provide remedies, depending upon what information is shared. Measures intended to protect the community or redress or mitigate harm may be enacted. It also may not be possible to provide supportive measures to Complainants who are the subject of anonymous reports.

As used in the Policy, the term "Formal Complaint" means a document or electronic submission (such as by electronic mail or through an online portal provided by University for this purpose) that contains the Complainant's physical or digital signature or otherwise indicates that the Complainant is the person filing the complaint, and requests that the University investigate the allegations. If Notice is submitted in a format that does not meet this standard, the Title IX Coordinator (or designee) will contact the Complainant to determine whether the Complainant is requesting that the University initiate an investigation or other appropriate resolution procedures.

Reporting carries no obligation to file a Formal Complaint, and in most situations, the University is able to respect a Complainant's request to not initiate an investigation or other appropriate resolution procedures. However, there may be circumstances, such as pattern behavior, allegations of severe misconduct, or a compelling threat to health and/or safety, where the University may need to initiate an investigation or other appropriate resolution procedures. If a Complainant does not wish to file a Formal Complaint, the University will maintain the privacy of information to the extent possible. The Complainant should not fear a loss of privacy by submitting a report that allows the University to discuss and/or provide supportive measures, in most circumstances.

15. Limits on Reporting

There is no time limitation on providing Notice/Formal Complaints to the Title IX Coordinator (or designee). However, if the Respondent is no longer subject to the University's jurisdiction and/or significant time has passed, the ability to investigate, respond, and/or provide remedies may be limited or impossible.

Acting on Notice/Formal Complaints significantly impacted by the passage of time (including, but not limited to, the rescission or revision of Policy) is at the Title IX Coordinator (or designee)'s discretion. They may document allegations for future reference, offer supportive measures and/or remedies, and/or engage in informal or formal action, as appropriate.

16. False Allegations and Evidence

Deliberately false and/or malicious accusations under the Policy are a serious offense and will be subject to appropriate disciplinary action. This does not include allegations that are made in good faith but are ultimately shown to be erroneous or do not result in a Policy violation determination. False allegations may be a form of Harassment or Retaliation or may fall within other University policies.

Witnesses and Parties who knowingly provide false evidence, tamper with or destroy evidence, or deliberately mislead an official conducting an investigation, hearing, or Informal Resolution can be subject to discipline under appropriate University policies.

17. Confidentiality/Privacy

The University makes every effort to preserve the Parties' privacy. The University will not share the identity of any individual who has made a report of Discrimination, Harassment, Retaliation, or Other Prohibited Conduct; any Complainant; any individual who has been reported to be the perpetrator of Discrimination, Harassment, Retaliation, or Other Prohibited Conduct; any Respondent; or any witness, except as permitted by, or to fulfill the purposes, of applicable laws and regulations (e.g., Title IX), the Family Educational Rights and Privacy Act (FERPA) and its implementing regulations, or as required by law; including any investigation or resolution proceeding arising under these policies and procedures.

Nothing in this Policy restricts either party from discussing the allegations under investigation or gathering and presenting relevant evidence, including consulting family members, confidential resources, or Advisors and otherwise preparing for or participating in the process. A restriction on the use or disclosure of records furnished solely through the process must be lawful, narrowly tailored, equally applied, and consistent with FERPA and North Dakota open-records law. A record related to a Title IX complaint or investigation that

contains personally identifiable information about a party is exempt, not categorically confidential, under N.D.C.C. § 44-04-18.28.

18. Federal Timely Warning Obligations

The University must issue timely warnings for reported incidents that pose a serious or continuing threat of bodily harm or danger to members of the campus community.

The University will ensure that a Complainant's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger.

19. Amnesty

The University community encourages the reporting of misconduct and crimes by Complainants and witnesses. Sometimes, Complainants or witnesses may be hesitant to report misconduct to University officials or participate in resolution processes because they fear that they themselves may be in violation of certain policies, such as underage drinking or use of illicit drugs at the time of the incident. Respondents may hesitate to be forthcoming during the process for the same reasons.

It is in the best interests of the University's community that Complainants choose to report misconduct to University officials, that witnesses come forward to share what they know, and that all parties be forthcoming during the process.

To encourage reporting and participation in the process, the University offers Parties and witnesses amnesty from minor policy violations — such as underage consumption of alcohol or the use of illicit drugs — related to the incident. Granting amnesty is a discretionary decision made by the University, and amnesty does not apply to more serious allegations, such as physical abuse of another or illicit drug distribution.

20. Preservation of Evidence

Preservation of evidence is critical to potential criminal prosecution and to obtaining restraining/protective orders and is particularly time sensitive. The University will inform the Complainant of the importance of preserving evidence by taking actions such as the following:

Sexual Assault

- Seek forensic medical assistance, ideally within 120 hours of the incident (sooner is better).
- Avoid urinating, showering, bathing, washing hands or face, or douching, if possible, but evidence may still be collected even if you do.
- If oral sexual contact took place, refrain from smoking, eating, drinking, or brushing teeth.
- If clothes are changed, place soiled clothes in a paper bag (plastic destroys evidence).
- Seeking medical treatment can be essential even if it is not for the purposes of collecting forensic evidence.

Stalking/Dating Violence/Domestic Violence/Sexual Harassment

- Evidence in the form of text and voice messages will be lost in most cases if a party or witnesses change their phone number.
 - Make a secondary recording of any voice messages and/or save the audio files to a cloud server.
 - Take screenshots and/or a video recording of any text messages or other electronic messages (e.g., Instagram, Snapchat, Facebook).
- Save copies of e-mail and social media correspondence, including notifications related to account access alerts.
- Take time-stamped photographs of any physical evidence including notes, gifts, etc. in place when possible.
- Save copies of any messages, to include those showing any request for no further contact.
- Obtain copies of call logs showing the specific phone number being used rather than a saved contact name if possible.
- If changing devices, make sure to transfer any files needed to the new device.

During the initial meeting between the Complainant and the Title IX Coordinator (or designee), the importance of taking these actions will be discussed, if timely.

21. Expectations Regarding Unethical Relationships

There are inherent risks in any romantic or sexual relationship between individuals with power differentials (such as faculty member and student or supervisor and employee). These relationships may not be consensual due to the differential in power. Similarly, the relationship also may be viewed in different ways by each of the parties, particularly in retrospect. Circumstances may change, and conduct that was once welcome may, at some point in the relationship, become unwelcome. Even when both parties have initially consented to romantic or sexual involvement, the possibility of a later allegation of a relevant Policy violation still exists. Minot State University does not wish to interfere with private choices regarding personal relationships when these relationships do not interfere with the goals and policies of the University. However, for the personal protection of members of this community, relationships in which power differentials are inherent (e.g., faculty-student, staff-student) are discouraged. They may also violate standards of professionalism and/or professional ethics.

An Employee must promptly disclose a romantic or sexual relationship with a Student whenever the Employee is responsible for, or could influence, the Student's academic standing, grades, scholarship or grant awards, employment, supervision, or evaluation. Upon disclosure, MSU will promptly eliminate the actual or potential conflict by removing or reassigning the Employee's authority or by another effective measure. The Employee may not exercise that authority until the conflict is eliminated. Although consensual relationships are not categorically prohibited solely because of the parties' University status, Sexual Harassment is prohibited, and failure to disclose or comply with a conflict-management directive may result in discipline under applicable policy.

22. Prevention & Education

The University is committed to the prevention of sexual harassment, sexual assault, dating/domestic violence, and stalking through educational and awareness programs. Prevention and education programs include an overview of the University's Policy and procedures; relevant definitions, campus resources, reporting mechanisms, and general strategies for prevention and response.

- a. Students. University students are required to complete this training each academic year. All Incoming first- year students will receive primary prevention and awareness programming as part of their orientation and or complete online training. Failure to complete the required training will result in a hold that prevents all registration activity being placed on the student account until the training is complete.
- b. Employees. University employees are required to complete this training each academic year. All new employees will receive primary prevention and awareness programming as part of their orientation and or complete online training in the first 30 days of employment. University employees who fail to complete the required training may be subject to appropriate disciplinary action (i.e. a letter of reprimand placed in their personnel file).

MSU will disseminate this Policy to Students, employees, applicants for admission and employment, and other required recipients. Each new Employee will acknowledge in writing receipt of the applicable procedures, and MSU will document annually that each benefited Employee received a copy.

This training, by its nature, addresses issues of sexual harassment, misconduct, and violence. The University understands that the training may trigger an emotional response, especially if you have experienced or been impacted by these issues or behaviors. If you have concerns, questions, or would like additional information regarding the training, please contact the Title IX office.

23. Independence and Conflict of Interest

The Title IX Coordinator (or designee) manages the Title IX Team and acts with independence and authority, free from bias and conflicts of interest. The Title IX Coordinator (or designee) oversees all Resolutions under the Policy and associated procedures. The members of the Resolution Process Pool are vetted and trained to ensure they are not biased for or against any party in a specific Formal Complaint, or for or against Complainants and/or Respondents, generally.

To raise any concern involving bias, conflict of interest, misconduct, or Discrimination by the Title IX Coordinator (or designee), contact the University president. Concerns of bias, misconduct, or a potential conflict of interest by any other Title IX Team member should be raised with the Title IX Coordinator (or designee).

24. Policy Revision

The Policy and associated procedures supersede all previous policies addressing Sexual Harassment and/or Retaliation, for incidents occurring on or after August 14, 2020. The Title IX Coordinator (or designee) regularly reviews and updates the Policy and procedures. Incidents occurring before August 14, 2020, will be addressed using the policy that was in place at the time of the incident, but the procedures used will be those in place at the time of the Formal Complaint. The University reserves the right to make changes to this document as necessary, and those changes are effective once they are posted online.

If laws or regulations change or court decisions alter policy or procedural requirements in a way that impacts this document, this document will be construed to comply with the most recent laws, regulations, or court holdings.

A change required by a court or government order could occur during an active investigation or resolution process. If that happens, the University reserves the right to adjust the Policy and Procedures accordingly and notify the Parties of any necessary mid-process changes. This could include entirely replacing the Policy or associated procedures, which could necessitate restarting an investigation or resolution process. The University will make every effort to minimize the impact on the Parties as much as possible if changes are unavoidable.

The Policy is effective August 1, 2026.

RESOLUTION PROCESS FOR ALLEGED VIOLATIONS OF THE POLICY

1. Notice/Complaint

Upon receipt of Notice or a Formal Complaint of an alleged Policy violation, the Title IX Coordinator (or designee) will initiate a prompt initial assessment to determine the University's next steps. The Title IX Coordinator (or designee) will contact the Complainant to offer supportive measures, provide information regarding resolution options, and determine how they wish to proceed.

2. Initial Assessment

The Title IX Coordinator (or designee) conducts an initial assessment, typically within five (5) business days of receiving Notice or a Formal Complaint. The initial assessment typically includes:

- 1) Assessing whether the reported conduct may reasonably constitute a Policy violation
- 2) Determining whether the University has jurisdiction over the reported conduct
- 3) Offering and coordinating supportive measures for the Complainant, if known
- 4) Notifying the Complainant, or the person who reported the allegation(s), of the available resolution options, if available and appropriate
- 5) Inform the Complainant, if known, that supportive measures are available with or without the initiation of grievance procedures;
- 6) Determining whether the Complainant wishes to file a Formal Complaint
- 7) Notifying the Respondent of the available resolution options if a Formal Complaint is made
- 8) If initiating a complaint, the Title IX Coordinator (or designee) will notify the Complainant prior to doing so and appropriately address reasonable concerns about the Complainant's safety or the safety of others, including by providing supportive measures.
- 9) If grievance procedures have been initiated, offer and coordinate supportive measures, as appropriate, for the respondent;

The Title IX Coordinator (or designee) will attempt to contact the Complainant to discuss supportive measures, but may be limited in its ability to respond further when:

- 1) The respondent is unknown or their name is not disclosed;
- 2) The respondent is not affiliated with the University; or
- 3) The report is made anonymously.

The University may also be limited in its ability to respond when the Complainant is not identified.

Helping a Complainant Understand Resolution Options

If the Complainant indicates they wish to file a Formal Complaint, the Title IX Coordinator (or designee) will work with the Complainant to determine which resolution option they prefer. The Title IX Coordinator (or designee) will seek to abide by the Complaint's wishes but may have to take another approach depending upon their assessment of the situation.

If the Formal Grievance Process is pursued, the Title IX Coordinator (or designee) will initiate an investigation.

If any party indicates that they want to pursue an Informal Resolution option, the Title IX Coordinator (or designee) will refer the matter to the appropriate individuals(s) if the Title IX Coordinator (or designee) determines Informal Resolution is available and the other Parties consent to participate. Informal Resolution cannot be used to resolve a Formal Complaint of Title IX Sexual Harassment involving an Employee Respondent and a Student Complainant.

If the Complainant does not want any action taken, the Title IX Coordinator (or designee) will consider that request. Typically, allegations of Student-on-Student and Employee-on-Employee misconduct will not prompt the Formal Grievance Process unless deemed necessary by the Title IX Coordinator (or designee), though the Complainant can elect to pursue the formal process in the future. The Title IX Coordinator (or designee) may need to refer allegations of Employee-on-Student misconduct to the Formal Grievance Process regardless of the Complainant's wishes, depending on the nature of the allegations.

The Title IX Coordinator (or designee) may consider elements such as patterns of behavior, predation, threats, violence, use of weapons, or involvement of minors in determining whether to sign a Formal Complaint.

Title IX Coordinator (or designee) Authority to Initiate a Complaint

A Complainant who is participating in or attempting to participate in the University's Education Program or Activity may file a Formal Complaint. When the Complainant does not file, the Title IX Coordinator may decide whether to sign and initiate a Formal Complaint on behalf of the University after considering the circumstances and the Complainant's wishes.

If a Complainant is not participating or attempting to participate in the University's Education Program or Activity at the time of making a Formal Complaint, they can request that the Title IX Coordinator (or designee) sign a Formal Complaint. When the Title IX Coordinator (or designee) signs a Formal Complaint, they do not become the Complainant. The Complainant is the person who experienced the alleged misconduct. If the Title IX Coordinator (or designee) declines to sign a Formal Complaint, alternative processes may be available and can be explored with the Title IX Coordinator (or designee).

3. Dismissal (Mandatory and Discretionary)

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

For Title IX purposes, the University must dismiss allegations that, even if proved, would not constitute Sexual Harassment under 34 C.F.R. § 106.30; did not occur in the University's Education Program or Activity; or did not occur against a person in the United States. A Title IX dismissal does not preclude action under another lawful University code or policy.

The University may dismiss a Formal Complaint or any allegations therein, at any time during the investigation or hearing:

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

A Complainant who decides to withdraw a complaint may later request to reinstate it or refile it. Upon any dismissal, the University will promptly and simultaneously send the Parties written notice of the dismissal and the rationale for doing so. This dismissal decision is appealable by any party.

Once a Formal Complaint is filed or signed, the University will investigate unless a mandatory or permissive dismissal ground in 34 C.F.R. § 106.45(b)(3) applies. Every dismissal will include prompt, simultaneously written reasons and the appeal required by this Policy.

4. Appeal of Dismissal

The Parties may appeal a decision to dismiss their Formal Complaint. All dismissal appeals request must be filed within five (5) business days of the notification of the dismissal decision.

The separate faculty, staff, and student sanction-appeal timelines do not apply to an appeal from dismissal of a Title IX Formal Complaint and are addressed, if applicable, in the governing merits or employment appeal provision (SBHE Policy 605.4)

A dismissal may be appealed on the following grounds:

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

The appeal should specify at least one of the grounds above and provide any reasons or supporting evidence for why the ground is met. Upon receipt of a written dismissal appeal request from one or more Parties, the Title IX Coordinator (or designee) will share the request and supporting documentation with all other Parties and provide five (5) business days for other Parties and the Title IX Coordinator (or designee) to respond to the request. At the conclusion of the response period, the Title IX Coordinator (or designee) will forward the request, as well as any response provided by the other Parties and/or the Title IX Coordinator (or designee) to the Dismissal Appeal Decision-maker for consideration.

If the appeal request does not provide information that meets the grounds in the Policy, the Dismissal Appeal Decision-maker will deny the request, and the Parties, their Advisors, and the Title IX Coordinator (or designee) will be notified in writing of the denial and the rationale.

If any of the asserted grounds in the appeal satisfy the grounds described in the Policy, then the Dismissal Appeal Decision-maker will notify all Parties and their Advisors, and the Title IX Coordinator (or designee) of their decision and rationale in writing. The effect will be to reinstate the Complaint.

In most circumstances, appeals are confined to a review of the written documentation or record of the original determination and pertinent documentation regarding the specific appeal grounds. The Dismissal Appeal Decision-maker has seven (7) business days to review and decide on the appeal, though extensions can be granted at the Title IX Coordinator (or designee)'s discretion, and the Parties will be notified of any extension.

Appeal decisions are deferential to the original determination, making changes only if there is a compelling justification to do so.

The Dismissal Appeal Decision-maker may consult with the Title IX Coordinator (or designee) and/or legal counsel on questions of procedure or rationale for clarification, if needed. The Title IX Coordinator (or designee) will maintain documentation of all such consultation.

5. Emergency Removal/Interim Actions/Leaves Suspension of a Student

The University can act to remove a Student Respondent accused of Title IX Sexual Harassment from its Education Program or Activities, partially or entirely, on an emergency basis when an individualized safety and risk analysis has determined that an immediate threat to the physical health or safety of any Student or other individual justifies removal. This risk analysis is performed by the Title IX Coordinator (or designee) and may be done in conjunction with the Behavioral Intervention Team using its standard objective violence risk assessment procedures. Students accused of other prohibited conduct (not sex-based) are subject to interim suspension, which can be imposed for safety reasons.

A Formal Complaint is not required for emergency removal. The University may remove a Student Respondent on an emergency basis only after an individualized safety and risk analysis determines that an immediate threat to the physical health or safety of a student or other individual arising from the allegations justifies removal. The University will provide notice and an opportunity to challenge the decision immediately following removal. One prompt challenge procedure will apply; failure to meet an inconsistent five-day or two-day deadline will not waive the immediate challenge right. Rights under the ADA and Section 504 remain unchanged.

The Respondent may provide information, including expert reports, witness statements, communications, or other documentation for consideration prior to or during the meeting. When applicable, a Complainant may provide information to the Title IX Coordinator (or designee) for review.

An emergency removal or interim suspension may be affirmed, modified, or lifted as a result of a requested review or as new information becomes available. The Title IX Coordinator (or designee) will communicate the final decision in writing, typically within five (5) business days of the review meeting.

Placing Employees on Leave

When the Respondent is an Employee, or a Student-Employee accused of misconduct in the course of their employment, existing provisions for interim action apply instead of the above emergency removal process.

6. Counter-Complaints

The University is obligated to ensure that the grievance process is not abused for retaliatory purposes. Although the University permits the filing of counter-complaints, the Title IX Coordinator (or designee) will use an initial assessment, described above, to assess whether the allegations in the counter-complaints are made in good faith. Counter-complaints filed not in good faith will not be permitted.

Counter-complaints determined to have been reported in good faith will be processed using the Formal Grievance Process. At the Title IX Coordinator (or designee) discretion, investigation of such claims may take place after resolution of the underlying initial Formal Complaint.

7. Advisors in the Formal Grievance Process

The parties may each have an Advisor of their choice present with them for all meetings, interviews, and hearings within the Formal Grievance Process, if they choose. Choosing an Advisor who is also a witness in the process creates potential for bias and conflict of interest. A party who chooses an Advisor who is also a witness can anticipate that issues of potential bias will be explored by the Decision-maker(s).

A. Who Can Serve as an Advisor

The Parties may each have an Advisor (friend, mentor, family member, attorney, or any other individual a party chooses) to present with them for all meetings, interviews, and hearings within the resolution process, including intake. The Parties may select whomever they wish to serve as their Advisor as long as the Advisor is eligible and available. Parties have the right to choose not to have an Advisor in the initial stages of the Formal Grievance Process, prior to a hearing.

The Title IX Coordinator (or designee) will offer to assign a trained Advisor to any party. If the parties choose an Advisor from the University's Resolution Process Pool. The Advisor will have trained by the University and familiarized them with the University's Formal Grievance Process. The University cannot guarantee equal advisory rights, meaning that if one party selects an Advisor who is an attorney, but the other party does not, or cannot afford an attorney, the University is not obligated to provide an attorney to advise that party. However, all institutionally appointed Advisors will be provided with similar training.

If the parties choose an Advisor from outside the University, the Advisor may not have been trained by the University and may not be familiar with University policies and procedures.

A party may elect to change Advisors during the process and is not obligated to use the same Advisor throughout. Parties are expected to provide the Title IX Coordinator (or designee) with timely notification if they change Advisors. If a party changes Advisors, consent to share information with the previous Advisor is assumed to be terminated, and a release for the new Advisor must be submitted.

The University may permit Parties to have more than one Advisor, or an Advisor and a support person, upon special request to the Title IX Coordinator (or designee). The decision to grant this request is at the Title IX Coordinator (or designee)'s sole discretion and will be granted equitably to all Parties.

B. Advisor's Role in the Formal Grievance Process

Notwithstanding the ordinary role limitations below, when a proceeding could result in a Student's suspension or expulsion, the Student and any Student Complainant, accuser, or victim have the rights provided by N.D.C.C. § 15-10-56. Before scheduling the proceeding, MSU will inform both Student parties of those rights in writing. Their chosen attorney or non-attorney advocate may fully participate, including making opening and closing statements, examining and cross-examining witnesses through the questioning method required by applicable Title IX regulations, and providing support, guidance, and advice. Neutral rules of order and decorum will be applied equally and may not limit the choice of Advisor. Outside those cases, equally applied role restrictions in this Policy govern.

The Parties are expected to respond to questions on their own behalf throughout the Formal Grievance Process. Except when N.D.C.C. § 15-10-56 requires full participation, the Advisor generally may not speak on behalf of the advisee except for conducting cross-examination during a hearing, the

Advisor may consult with their advisee, either privately as needed, or by conferring or passing notes during any Resolution Process meeting or interview. For longer or more involved discussions, the Parties and their Advisors should ask for breaks to allow for private consultation.

The Title IX Regulations require a form of indirect questioning during the hearing, which must be conducted by the Parties' Advisors. The Parties are not permitted to directly question each other or any witnesses. If a party does not have an Advisor for a hearing, the University will appoint a trained Advisor for the limited purpose of conducting any questioning of the Parties and witnesses.

C. Records Shared with Advisor

Advisors are entitled to the same opportunity as their advisee to receive copies of the Draft and Final Investigation Reports, as well as the Directly Related Evidence file. Parties will be asked to sign releases for the University to share materials with an Advisor. Advisors are expected to maintain the confidentiality of the records the University shares with them. The University may restrict the role of any Advisor who does not respect the sensitive nature of the process or who fails to abide by the University's confidentiality expectations.

D. Advisor Expectations

The University generally expects an Advisor to adjust their schedule to allow them to attend University meetings/interviews/hearings when planned, but the University may change scheduled meetings/interviews/hearings to accommodate an Advisor's inability to attend, if doing so does not cause an unreasonable delay.

The University may also make reasonable provisions to allow an Advisor who cannot be present in person to attend a meeting/interview/hearing by telephone, video conferencing, or other similar technologies as may be convenient and available.

All Advisors are subject to the same University policies and procedures, whether they are attorneys or not, and whether they are selected by a party or appointed by the University. Advisors are expected to advise without disrupting proceedings.

E. Advisor Policy Violations

Any Advisor who oversteps their role as defined by the Policy, who shares information or evidence in a manner inconsistent with the Policy, or who refuses to comply with the University's established rules of decorum will be warned. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the meeting/interview/hearing may be ended, or other appropriate measures implemented, including pausing or ending the session after warning. MSU may restrict conduct only to address actual disruption through neutral rules and will arrange substitute participation, when necessary, without limiting a student's statutory choice of representative. Subsequently, the Title IX Coordinator (or designee) will determine how to address the Advisor's non-compliance and future role.

8. Resolution Options Overview

The Formal Grievance Process is the University's primary resolution approach unless all Parties and the University agree to an Informal Resolution. The process considers the Parties' preferences but is ultimately determined at the Title IX Coordinator (or designee)'s discretion.

Resolution proceedings are private. All people present at any time during a resolution process are expected to maintain the privacy of the proceedings in accordance with the Policy.

There is an expectation of privacy around what Investigators share with Parties during interviews and for any materials the institution shares with the Parties during the resolution process. The Parties have discretion to share their own knowledge and evidence with others if they choose, except for information the Parties agree not to disclose as part of an Informal Resolution. The University encourages Parties to discuss any sharing of information with their Advisors before doing so.

A. Informal Resolution

To initiate Informal Resolution, a Complainant or Respondent may make such a request to the Title IX Coordinator (or designee) at any time prior to a Final Determination or the Title IX Coordinator (or designee) may

offer the option to the Parties. The University will obtain voluntary, written confirmation that all Parties wish to resolve the matter through Informal Resolution before proceeding and will not pressure the Parties to participate in Informal Resolution. To engage in Informal Resolution, a Complainant must first submit a Formal Complaint. Three approaches to Informal Resolution are detailed in this section.

Supportive Measures. Supportive measures provided to one party without a Formal Complaint or the other party's voluntary written consent are not an Informal Resolution and do not dispose of allegations. If a Formal Complaint is closed through Informal Resolution, both parties' voluntary written consent and all notice requirements in this section are required.

1) Accepted Responsibility. When the Respondent accepts responsibility for violating policy, and accepts the recommended sanction(s), and the Complainant(s) and Title IX Coordinator (or designee) are agreeable to the resolution terms.

2) Alternative Resolution. When the parties agree to resolve the matter through an alternate resolution mechanism (which could include, but is not limited to, mediation, restorative practices, facilitated dialogue, etc.), as described below.

Before agreeing to a resolution, any party may withdraw from Informal Resolution and resume the Formal Grievance Process. Before participation, the University will provide written notice of the allegations; process requirements; circumstances in which a completed agreement precludes resuming a Formal Complaint arising from the same allegations; the pre-agreement withdrawal right; and consequences, including records maintained or shared. The University will obtain the parties' voluntary written consent and will not offer Informal Resolution for an Employee Respondent and Student Complainant.

The Parties may agree, as a condition of engaging in Informal Resolution, on what statements made or evidence shared during the Informal Resolution process will not be considered in the Formal Grievance Process should Informal Resolution not be successful.

If an investigation is already underway, the Title IX Coordinator (or designee) has discretion to determine if the investigation will be paused, if it will be limited, or if it will continue during the Informal Resolution process.

Prior to engaging in Informal Resolution, the University will provide the Parties with written notice of the reported misconduct and any sanctions (only in the case of Accepted Responsibility) or measures that may result from participating in such a process, including information regarding any records that the University will maintain and under which circumstances they may be released.

B. Informal Resolution Approaches

1) Accepted Responsibility

The Respondent may accept responsibility for any or all of the alleged Policy violations at any point during the Formal Grievance Process. If the Respondent indicates an intent to accept responsibility for all alleged Policy violations, the ongoing process will be paused, and the Title IX Coordinator (or designee) will determine whether Informal Resolution is an option.

If Informal Resolution is available, the Title IX Coordinator (or designee) will determine whether all Parties and the University are able to agree on responsibility, restrictions, sanctions, restorative measures, and/or remedies. If so, the Title IX Coordinator (or designee) implements the accepted Finding that the Respondent is in violation of University Policy, implements agreed-upon restrictions and remedies, and determines any other appropriate responses in coordination with other appropriate Title IX Coordinator (or designee), as necessary.

This resolution is not subject to appeal once all Parties indicate their written agreement to all resolution terms. When the Parties cannot agree on all terms of resolution, the Formal Grievance Process will either begin or resume.

When a resolution is reached, the appropriate sanction(s) or responsive actions are promptly implemented to effectively stop the Discrimination or Harassment, prevent its recurrence, and remedy the effects of the discriminatory conduct, both on the Complainant and the community.

2) Alternative Resolution

The institution offers a variety of alternative resolution mechanisms to best meet the specific needs of the Parties and the nature of the allegations. Alternative resolution may involve agreement to pursue individual or community remedies, including targeted or broad-based educational programming or training; supported direct conversation or interaction between the Parties; indirect action by the Title IX Coordinator (or designee) or other appropriate University officials; and other forms of resolution that can be tailored to the needs of the Parties. Some alternative resolution mechanisms will result in an agreed-upon outcome, while others are resolved through dialogue. All Parties must consent to the use of an alternative resolution approach, and the Parties may, but are not required to, have direct or indirect contact during an alternative resolution process.

The Title IX Coordinator (or designee) has the authority to determine whether alternative resolution is available or successful, to facilitate a resolution that is acceptable to all Parties, and/or to accept the Parties' proposed resolution, usually through their Advisors, which may include lawful terms of confidentiality, release, or non-disparagement. Any such term is subject to federal and North Dakota law. MSU does not promise to withhold a record when disclosure is required by law, and no term limits a party's rights beyond what applicable law permits.

Parties do not have the authority to stipulate restrictions or obligations for individuals or groups that are not involved in the alternative resolution process. The Title IX Coordinator (or designee) will determine whether additional individual or community remedies are necessary to meet the institution's compliance obligations in addition to the alternative resolution.

The Title IX Coordinator (or designee) maintains records of any resolution that is reached and will provide notification to the Parties of what information is maintained. Failure to abide by the resolution agreement may result in appropriate responsive/disciplinary actions (e.g., dissolution of the agreement and resumption of the Formal Grievance Process, referral to the conduct process for failure to comply, application of the enforcement terms of the agreement). Where the failure to abide by the Informal Resolution agreement terms results in a failure to remedy a Policy violation, the Title IX Coordinator (or designee) must consider whether to dissolve the agreement and reinstate the Formal Grievance Process to remedy the impact as required by law. The results of Formal Complaints resolved by alternative resolution are not appealable.

If an Informal Resolution option is not available or selected, the University will initiate or continue an investigation and subsequent Formal Grievance Process to determine whether the Policy has been violated.

9. Resolution Process Pool

The University relies on trained individuals to carry out resolution functions. Title IX Coordinators, Investigators, Decision-makers, and Informal Resolution Facilitators will receive the role-specific training required by 34 C.F.R. § 106.45(b)(1)(iii). Officials who conduct proceedings involving Dating Violence, Domestic Violence, Sexual Assault, or Stalking will also receive the annual training required by 34 C.F.R. § 668.46(k)(2)(ii). Training will reflect the operative 2020 framework.

The materials used to train all members of the Pool are publicly posted here <https://www.minotstateu.edu/title9/about-title-ix.shtml>

10. Notice of Investigation and Allegations (NOIA)

The Title IX Coordinator (or designee) will provide written Notice of the Investigation and Allegations (the "NOIA") upon commencement of the Formal Grievance Process, with sufficient details known at the time and sufficient time for each party to prepare a response before any initial interview. Amendments and updates to the NOIA may be made as the investigation progresses and more information becomes available. For climate/culture investigations that do not have an identifiable Respondent, the NOIA will be sent to the department/office/program head for the area/program being investigated.

The NOIA will include:

- A meaningful summary of all of allegations,
- The identity of the parties involved (if known),
- The precise misconduct being alleged,
- The date and location of the alleged incident(s) (if known),
- The specific policies/offenses implicated,
- A description of, link to, or copy of the applicable procedures,
- A statement that the University presumes the Respondent is not responsible for the reported misconduct unless and until the evidence supports a different determination,
- The name(s) of the Investigator(s), along with a process to notify the Title IX Coordinator (or designee) of any conflict of interest that the Investigator(s) may have in advance of the interview process,
- A statement that determinations of responsibility are made at the conclusion of the process and that the parties will be given an opportunity during the review and comment period to inspect and review all relevant and directly related evidence obtained,
- A statement of the potential sanctions/responsive actions that could result,
- A statement about the University's policy on retaliation,
- Information about the process confidentiality,
- Information on the need for each party to have an Advisor of their choice and suggestions for ways to identify an Advisor,
- A statement informing the parties that the University's Policy prohibits knowingly making false statements, including knowingly submitting false information during the Formal Grievance Process,
- Information about how a party may request disability accommodation or other support assistance during the Formal Grievance Process
- An instruction to preserve any evidence that is directly related to the allegations.

Notification will be made in writing and may be delivered by one or more of the following methods: in person or emailed to the parties' University-issued email or other approved accounts. Once emailed, and/or received in-person, notice is presumptively delivered.

11. Resolution Timeline

The University will make a good faith effort to complete the Formal Grievance Process within 60 to 90 business days, including any appeals. The Title IX Coordinator may extend the process for good cause. MSU will provide both parties written notice of every extension or delay, the reasons, and an estimate of the additional time needed.

Investigations are completed expeditiously, normally within sixty (60) business days, though some investigations may take longer, depending on the nature, extent, and complexity of the allegations, witness availability, law enforcement involvement, and other factors.

The University may undertake a short delay in its investigation (several days to a few weeks) if circumstances require. Such circumstances include, but are not limited to, a request from law enforcement to temporarily delay the investigation, the need for language assistance, the absence of Parties and/or witnesses, and/or health conditions. The University will promptly resume its Formal Grievance Process as soon as feasible. During such a delay, the University will implement and maintain supportive measures for the Parties as deemed appropriate.

University action(s) or processes are not typically altered or precluded on the grounds that civil or criminal charges involving the underlying incident(s) have been filed or that criminal charges have been dismissed or reduced.

The University will make a good faith effort to complete the Formal Grievance Process as promptly as circumstances permit and will regularly communicate with the Parties to update them on the progress and timing of the process.

12. Ensuring Impartiality

No individual materially involved in the administration of the Formal Grievance Process, including the Title IX Coordinator (or designee), Investigator(s), and Decision-maker(s), may have or demonstrate a conflict of interest or bias for Complainants or Respondents generally, or for a specific Party.

The Title IX Coordinator (or designee) will vet the assigned Investigator(s), Decision-maker(s), and Appeal Decision-maker(s) for impartiality by ensuring there are no actual or apparent conflicts of interest or disqualifying biases. The parties may raise a concern regarding bias or conflict of interest at any time during the Formal Grievance Process, and the Title IX Coordinator (or designee) will determine whether the concern is reasonable and supportable. If so, another Pool member, or other trained individual, will be assigned, and the impact of the bias or conflict, if any, will be remedied. If the source of the conflict of interest or bias is the Title IX Coordinator (or designee), concerns should be raised with the University's president.

The Formal Grievance Process involves an objective evaluation of all relevant evidence obtained, including evidence that supports that the Respondent violated the Policy and evidence that supports that the Respondent did not violate the policy. Credibility determinations may not be based on an individual's status as a Complainant, Respondent, or witness. All parties have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence, and to receive a written Investigation Report that accurately summarizes this evidence.

13. Witnesses Role and Participation in the Investigation

Witnesses who are University Employees are strongly encouraged to cooperate with and participate in the University's investigation and Formal Grievance Process. Student witnesses and witnesses from outside the University community are encouraged to cooperate with University investigations and to share what they know about a Formal Complaint.

Interviews may be conducted in person, via online video platforms (e.g., Zoom, Microsoft Teams, FaceTime, WebEx), or, in limited circumstances, by telephone. The University will take appropriate steps to ensure the security/privacy of remote interviews.

Parties and witnesses may also provide written statements in lieu of interviews or choose to respond to written questions, if deemed appropriate by the Investigator(s), though this is not preferred.

14. Interview Recording

It is standard practice for Investigators to create a record of all interviews pertaining to the Formal Grievance Process, by recording, transcript, or written summary. The Parties may review copies of their own interviews upon request. No unauthorized audio or video recording of any kind is permitted during investigation meetings.

All interviews are recorded, and all involved persons should be made aware of the audio and/or video recording. The recording and/or transcript of those meetings will be provided to the Parties for their review, after which the Parties may suggest additional questions to be asked of another party or witness or additional witnesses. Those subsequent meetings or interviews are also recorded and/or transcribed.

15. Evidentiary Considerations

The Investigator will gather and disclose evidence directly related to the allegations and will fairly summarize relevant evidence. The Decision-maker will consider only relevant evidence. The process will not access, consider, disclose, or otherwise use treatment records made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional, or by a person assisting in that capacity, without the party's voluntary written consent. It also will not require, allow, rely on, or seek disclosure of information protected by a legally recognized privilege unless the holder waives the privilege.

Neither the investigation nor the hearing will consider:

- 1) Questions or evidence about the Complainant's sexual predisposition
- 2) Questions or evidence about the Complainant's prior sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the alleged conduct, or if the questions or evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent

- 3) Questions or evidence about a party or witness's records that are made or maintained by a physician, psychologist, or psychiatrist unless the party or witness provides voluntary, written consent for the records to be considered

Within the boundaries stated above, the investigation and the hearing can consider character evidence, if offered, but that evidence is unlikely to be relevant unless it is fact evidence or relates to a pattern of conduct.

Previous disciplinary action of any kind involving the Respondent may not be considered unless there is an allegation of a pattern of misconduct. Such information may also be considered in determining an appropriate sanction upon a determination of responsibility. Barring a pattern allegation, this information is only considered at the sanction stage of the process and is not shared until then.

16. Investigation

All investigations are thorough, reliable, impartial, prompt, and fair. They involve interviewing all available, relevant Parties and witnesses, obtaining Relevant Evidence, and identifying sources of expert information, as necessary.

The burden of proof and the burden of gathering evidence sufficient to reach a determination rest on the University, not on either party.

After an interview, Parties and witnesses will be asked to verify the accuracy of the recording, transcript, or summary of their interview. They may submit changes, edits, or clarifications. If the Parties or witnesses do not respond within the time period designated for verification, objections to the accuracy of the recording, transcript, or summary will be deemed to have been waived, and no changes will be permitted.

The University may consolidate Formal Complaints against more than one Respondent, or by more than one Complainant against one or more Respondents, when the allegations arise out of the same facts or circumstances. A claimed pattern, collusion, or similarity supports consolidation only when that standard is met.

Investigations involve the following:

- Determining the names of and contacting all involved Parties and potential witnesses to participate in an investigation interview
- Identifying issues and developing a strategic investigation plan, including a witness list, evidence list, intended investigation timeframe, and order of interviews for the Parties and witnesses
- Providing written notification of the date, time, and location of all investigation meetings, including the expected participants and purpose
- Conducting any necessary follow-up interviews with Parties or witnesses
- Providing the Parties and witnesses an opportunity to verify the accuracy of either a summary or transcript of their interview(s)
- Soliciting the names of suggested witnesses and questions each party wishes to have asked of another party or witness
- Writing a Draft Investigation Report that gathers, assesses, and synthesizes the evidence, accurately summarizes the investigation and party and witness interviews, and provides all Relevant Evidence
- Compiling a Directly Related Evidence File
- Providing the Parties and their respective Advisors an electronic or hard copy of the Draft Investigation Report as well as an opportunity to inspect and review all of the evidence obtained as part of the investigation that is directly related to the reported misconduct, including evidence upon which the Recipient does not intend to rely in reaching a determination, for a ten (10)-business-day review and comment period so that each party may meaningfully respond to the evidence. These ten-day minimum evidence and report review periods may not be waived or shortened.
- Incorporating any new, Relevant Evidence and information obtained through the Parties' review of the Draft Investigation Report and any follow-up meetings into the Final Investigation Report
- Responding in writing (typically within the Final Investigation Report) to the relevant elements of the Parties' responses to the Draft Investigation Report
- Sharing the Final Investigation Report with the Title IX Coordinator (or designee) and/or legal counsel for their review and feedback.

- Providing the Title IX Coordinator (or designee) with the Final Investigation Report and Directly Related Evidence File and sending the Final Investigation Report to each party and Advisor at least ten (10) days before the hearing for review and written response.

17. Referral for Hearing

Provided that the complaint is not resolved through Informal Resolution, once the final investigation report is shared with the parties, the Title IX Coordinator (or designee) will refer the matter for a hearing.

The hearing will not occur less than ten (10) business days after the Final Investigation Report is sent to the parties and their Advisors. This minimum period may not be waived or shortened by agreement.

The Title IX Coordinator (or designee) will select appropriate Decision-maker(s) from the Pool and provide a copy of the final investigation report and the file of directly related evidence.

18. Hearing Decision-maker

The Decision-maker(s) will not have had any previous involvement with the formal complaint. The Title IX Coordinator (or designee) may elect to have an alternate from the pool sit in throughout the hearing process if a substitute is needed for any reason.

Those who have served as Investigators will be witnesses in the hearing and therefore may not serve as Decision-makers. Those who are serving as Advisors for any party may not serve as Decision-makers in that matter.

The Title IX Coordinator (or designee) may not serve as a Decision-maker in the matter but may serve as an administrative facilitator of the hearing if their previous role(s) in the matter do not create a conflict of interest. Otherwise, a designee may fulfill the facilitator role. The hearing will convene at a time and venue determined by the Title IX Coordinator (or designee).

19. Live Hearing Requirements

The following provisions apply to a live hearing:

- **Hearing Venue Options and Recordings.** At the request of either party, the University will conduct the live hearing with the parties in separate rooms using technology enabling the Decision-maker and parties simultaneously to see and hear the party or witness answering questions. Other modality choices remain within the University's lawful discretion..
 - The Parties may make a request to the Title IX Coordinator (or designee) that the hearing be held in person or via video technology, but they must do so at least three (3) business days prior to the hearing. The Title IX Coordinator (or designee) retains discretion to determine whether the hearing will occur in person or via video technology.
 - All hearings will be recorded, and Parties may request a copy of the recording from the Title IX Coordinator (or designee) following the live hearing.
 - No unauthorized recordings are permitted.
- **Scheduling.** Hearings for possible violations that occur near or after the end of an academic term (assuming the Respondent is still subject to the Policy) and are unable to be resolved prior to the end of term will typically be held immediately after the end of the term, including during the summer, as needed, to meet the University's resolution timeline and ensure a prompt resolution. Employees, including Parties and witnesses, who do not have 12-month contracts are still expected to participate in Formal Grievance Processes that occur during months between contracts.
- **Hearing Participants.** Persons who may be present for a hearing include the Decision-maker, hearing facilitator, Investigator(s), the Parties and their Advisors, anyone providing authorized accommodations, interpretation, and/or assistive services, and anyone else deemed necessary by the Decision-maker. Witnesses are present only during their portion of the testimony.
- **Advisors.** The Parties may have the assistance of an Advisor of their choice at the hearing or can request that the University appoint a trained Advisor for them. Appointed Advisors are not attorneys. If a party wishes to have an attorney as their Advisor, they must locate and pay for that attorney themselves.
 - During the pre-hearing meeting and live hearing, Parties may only be accompanied by their Advisor. No other persons (e.g., additional support persons, advisors, friends, family) may accompany, attend, or listen in on the hearing unless explicitly authorized by the Title IX Coordinator (or designee), with each party being provided the same opportunity.

- Parties and Advisors are permitted to have their phones and a laptop or tablet, but these should only be used during the hearing in a manner consistent with the Policy.
- During the hearing, all questions that a party wishes to ask must be posed by the Advisor, not the Parties.
- If the party does not have an Advisor, the Title IX Coordinator (or designee) will provide the party with an Advisor for the purpose of Advisor-conducted questioning.
- **Impact Statements.** Each party may submit an impact and/or mitigation statement to the Title IX Coordinator (or designee) that the Decision-maker will review during any sanction determination.
 - Upon receipt of an impact and/or mitigation statement, the Title IX Coordinator (or designee) will review the impact/mitigation statement to determine whether any immediate needs exist.
 - The Title IX Coordinator (or designee) will only provide the impact statements to the Decision-maker if the Decision-maker determines that the Policy has been violated. When the Title IX Coordinator (or designee) shares the impact statements with the Decision-maker, they will also be shared with the Parties.
- **Disability Accommodations and Other Assistance.** Parties should contact the Title IX Coordinator (or designee) at least three (3) business days prior to the hearing to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing, if possible.
- **Conflicts of Interest or Bias.** The Decision-maker must not have a bias for or against Complainants or Respondents generally or the individual Complainant or Respondent involved in the Formal Complaint.
 - The Decision-maker must recuse themselves if such bias or conflict of interest exists.
 - If the Decision-maker believes there is possible conflict of interest or bias, they will consult with the Title IX Coordinator (or designee) about possible recusal or removal.
 - The Parties may raise challenges that the Decision-maker is biased or has a conflict of interest. The Parties must raise challenges with the Title IX Coordinator (or designee) within two (2) business days of receiving the hearing notice.
 - The Title IX Coordinator (or designee) will only remove and replace a Decision-maker in situations of demonstrated bias or conflicts of interest. Perceptions of bias or conflict are not sufficient to cause removal.
 - If a Decision-maker recuses themselves as the result of a conflict of interest or bias, or is removed, the Title IX Coordinator (or designee) will promptly appoint a new Decision-maker who does not have a conflict of interest or bias and notify the Parties accordingly.
- **Evidence Provided to Decision-maker and Parties.**
 - The Decision-maker will be provided electronic copies of the Final Investigation Report and all relevant but not impermissible evidence, including the names of all Parties, witnesses, and Advisors, at least ten (10) business days in advance of the hearing.
 - The Parties will be provided with electronic copies of all the materials provided to the Decision-maker as part of the hearing notice, unless those materials have already been provided.

20. Hearing Notice

The Title IX Coordinator (or designee) will send notice of the hearing no less than ten (10) business days prior to the hearing. Once emailed, and/or delivered in-person, notice will be presumptively delivered.

The notice includes:

- A description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable hearing procedures, and a statement of the potential sanctions/responsive actions that could result
- The time, date, and location of the hearing
- A description of any technology that will be used to facilitate the hearing
- Relevant information regarding hearing logistics, pre-hearing meetings, the Final Investigation Report, the Parties and witnesses participating in the hearing, the identity of the Decision-maker, details related to questioning, the role of Advisors, impact/mitigation statements, and how to request disability accommodations or other assistance

21. Witness Participation

Witnesses are encouraged to participate in, and make themselves reasonably available for, the hearing. They may participate in-person or via video technology that allows the Decision-maker and the Parties to see and hear the witness while that person is speaking. Witnesses are not permitted to be accompanied by an Advisor without the Title IX Coordinator's (or designee) express permission.

The Title IX Coordinator (or designee) will notify all witnesses of their requested participation in the hearing at least five (5) business days prior to the hearing. Witnesses will be present for the hearing only during their testimony.

If any party or witness does not appear at the scheduled hearing, the hearing may be held in their absence. For compelling reasons, the Title IX Coordinator (or designee) may reschedule the hearing.

Any witness scheduled to participate in the hearing must have been first interviewed by the Investigator(s), unless:

- The Decision-maker finds the new witness's testimony relevant after giving both parties equal notice and a reasonable opportunity to review and respond, after complying with applicable evidence-disclosure and review requirements, and after determining that admission without remand will not prejudice either party,
- The Decision-maker deems the evidence presented by the new witness to be relevant and not information already established in the record, and
- The witness's late involvement was not the result of bad faith by the witness, the Parties, or others.

If the above criteria are not met, but the witness's evidence is deemed relevant and not duplicative, the Decision-maker may, at their discretion, engage in any of the following actions:

- Delay the hearing
- Provide the Parties with the applicable minimum review period to review the relevant portions of the new witness's statements, if such statements are submitted
- Remand the Formal Complaint back to the Investigator for further investigation or verification
- Allow the Parties to review and comment on the testimony of the new witness

If the evidence is deemed not relevant, the Decision-maker may proceed with the hearing absent the new witness's participation.

22. Pre-Hearing Meetings

The Decision-maker will offer to convene pre-hearing meeting(s) with the Parties and their Advisors to familiarize them with the hearing process and invite them to submit the questions or topics they wish to ask or discuss at the hearing. This allows the Decision-maker to consider their relevance ahead of time to avoid any improper evidentiary introduction in the hearing or to provide recommendations for more appropriate phrasing.

However, this advance review opportunity does not preclude the Advisors from asking a question for the first time at the hearing or from asking for a reconsideration on a Decision-maker's pre-hearing decision based on any new information or testimony offered at the hearing. The Decision-maker will consider arguments that evidence identified as relevant in the Final Investigation Report is, in fact, not relevant. Similarly, evidence identified by the Investigator(s) as directly related but not relevant may be argued to be relevant. The Decision-maker will document and share their rationale for any evidence or question exclusion or inclusion, if any, at a pre-hearing meeting with each party.

The Decision-maker will work with the Parties to finalize a witness list for the hearing, and the Title IX Coordinator (or designee) will notify any witnesses of the hearing's logistics. The Decision-maker, only with the agreement of all Parties, may decide in advance of the hearing that certain witnesses do not need to be present if their testimony can be adequately summarized by the Investigator(s) in the Final Investigation Report or during the hearing, and their presence is not essential to assess their credibility.

Pre-hearing meeting(s) will not be recorded. The pre-hearing meetings will typically be conducted as separate meetings with each party/Advisor, and can be done remotely, or as a written communication exchange. The Decision-maker will work with the Parties to establish the format and timing of the meetings and will circulate a summary of any rulings made to ensure all Parties and Advisors are aware.

23. Hearing Procedures

A. Evidentiary Considerations

The Parties should provide evidence to the Investigator before completion of the Final Investigation Report. Evidence first offered later will be evaluated under neutral relevance, availability, and good-faith

standards. If admitted, the University will provide equal notice and response opportunities and comply with applicable evidence-disclosure and review requirements.

The new Relevant Evidence will be admitted to the record if:

- The Decision-maker finds the evidence relevant after giving both parties equal notice and a reasonable opportunity to review and respond, after complying with applicable evidence-disclosure and review requirements, and after determining that admission without remand will not prejudice either party,
- The evidence is not duplicative of evidence already in the record, and
- The new evidence was either not reasonably available prior to the conclusion of the Final Investigation Report, or the failure to provide it in a timely manner was not the result of bad faith by the Parties, witnesses, or others.

If the above criteria are not met, but the evidence is deemed materially relevant and not duplicative, the Decision-maker may, at their discretion, engage in any of the following actions:

- Delay the hearing
- Provide the Parties with the applicable minimum review period to review the Relevant Evidence
- Remand the Formal Complaint back to the Investigator for further investigation or analysis
- Allow the Parties time to review and comment on the new evidence

If the evidence is deemed not relevant, the Decision-maker may proceed with the hearing without allowing the new evidence.

B. Collateral Misconduct

The Decision-maker may determine only allegations included in the NOIA or a timely amended NOIA. Before MSU adjudicates additional collateral misconduct, MSU will identify the policy provision, provide written notice of the additional allegation and sufficient time to prepare, and use the applicable procedure. Conduct outside this Policy may be referred to another lawful process.

C. Joint Hearings

In Complaints involving more than one Respondent and/or involving more than one Complainant accusing the same person of substantially similar conduct, the default procedure will be to hear the allegations jointly.

However, the Title IX Coordinator (or designee) may permit the investigation and/or hearings pertinent to each Respondent or Formal Complaint to be conducted separately if there is a compelling reason to do so. In joint hearings, separate determinations of responsibility will be made for each Respondent and/or for each Formal Complaint with respect to each alleged policy violation.

D. Introductions and Hearing Procedure Explanation

The Decision-maker will:

- Explain the hearing procedures
- Introduce the participants
- Answer any procedural questions prior to and as they arise throughout the hearing

E. Investigator Presentation of Final Investigation Report

The Investigator(s) will present a summary of the Final Investigation Report, including a review of the facts that are contested and those that are not. The Investigator may be questioned first by the Decision-maker and then by the Parties through their Advisors. The Investigator may attend the duration of the hearing or be excused after their testimony at the Decision-maker's discretion.

F. Testimony and Questioning

The Parties and witnesses may provide relevant information in turn, beginning with the Complainant's opening statement, then the Respondent's, and then questioning in the order determined by the

Decision-maker. The Decision-maker will facilitate questioning of the Parties and witnesses first by the Decision-maker and then by the Parties through their Advisors.

All questions are subject to the Decision-maker's relevance determination. The party's Advisor will ask relevant questions and follow-up questions directly, orally, and in real time, and never by the party personally, subject to lawful disability accommodations that preserve the required format. The proceeding will pause to allow the Decision-maker to consider the question (and state it if it has not already been stated aloud), and the Decision-maker will determine whether the question will be permitted, disallowed, or rephrased. The Decision-maker will explain any decision to exclude a question as not relevant, or to reframe it for relevance.

The Decision-maker will limit or disallow questions they deem not appropriate on the basis that they are irrelevant, unduly repetitious (and thus irrelevant), seek or pertain to impermissible evidence, or are abusive and has the final say on all questions and relevance determinations. The Decision-maker may consult with legal counsel on any admissibility questions.

If the Parties raise an issue of bias or conflict of interest of an Investigator or Decision-maker at the hearing, the Decision-maker may elect to address those issues, consult with legal counsel, refer them to the Title IX Coordinator (or designee), and/or preserve them for appeal. If bias is not an issue at the hearing, the Decision-maker should not permit irrelevant questions that probe for Investigator bias.

G. Refusal to Submit to Questioning and Inferences

Any party or witness may choose not to offer evidence and/or answer questions at the hearing, either because they do not attend the hearing, or because they attend but refuse to participate in some or all questioning. The Decision-maker can only rely on the available Relevant Evidence in making a Final Determination. The Decision-maker may not draw any inference solely from a party's or witness' absence from the hearing or refusal to answer any or all questions. Typically, after brief opening statements, the order of questioning will be questions from the Decision-maker, questions from the party's own Advisor, then questions from the other Parties' Advisors. The same order will be used for questioning witnesses, who do not typically make opening statements. The Parties then make brief closing statements, and then the hearing transitions into closed session for deliberation.

An Advisor may not be called as a witness at a hearing to testify to what their advisee has told them during their role as an Advisor unless the party being advised consents to that information being shared.

H. Hearing Recordings

The University records hearings (but not deliberations) for purposes of review in the event of an appeal. No unauthorized audio or video recording of any kind is permitted during the hearing.

The Decision-maker, the Parties, their Advisors, Appeal Decision-makers, and other appropriate University officials will be permitted to review the recording or review a transcript of the recording upon request to the Title IX Coordinator (or designee). No unauthorized disclosure, including sharing, copying, or distribution of the recording or transcript, is permitted.

24. Deliberation and Determination

If a Decision-maker panel is a governing body or task force or working group subject to N.D.C.C. ch. 44-04, MSU will comply with applicable notice, open-meeting, executive-session, recording, minutes, and final-action requirements. A reference to a private or closed session does not supersede those requirements.

After closing statements from the Parties, the Decision-maker will deliberate in closed session to determine whether the Respondent is responsible for the alleged Policy violation(s) based on the standard of evidence. If a panel is used, a simple majority vote is required to determine the Finding. Deliberations are not recorded.

When there is a Finding of responsibility on one or more of the allegations, the Decision-maker may then consider the previously submitted party impact and/or mitigation statement(s) in determining appropriate

sanction(s). The Title IX Coordinator (or designee) will ensure that each of the Parties has an opportunity to review any submitted impact and/or mitigation statement(s) once they are submitted.

The Decision-maker will also review any pertinent conduct history provided by the Title IX Office and will determine the appropriate sanction(s) in consultation with other appropriate administrators, if required.

The Decision-maker will issue a written determination that identifies the allegations potentially constituting Sexual Harassment; describes the procedural steps from receipt of the Formal Complaint through determination; states findings of fact; states conclusions applying the code to the facts; and provides the result and rationale for each allegation, including responsibility, any disciplinary sanction imposed, and whether remedies designed to restore or preserve equal access will be provided to the Complainant. It will also state the parties' appeal procedures and permissible bases. The University will provide the determination to the parties simultaneously, and the Title IX Coordinator is responsible for effective implementation of remedies.

This statement must be submitted to the Title IX Coordinator (or designee) within (7) business days of the end of deliberations unless the Title IX Coordinator (or designee) grants an extension. If an extension is granted, the Title IX Coordinator (or designee) will notify the Parties.

25. Notice of Outcome

The Title IX Coordinator (or designee) will transmit the Decision-makers complete written determination to the Parties simultaneously. The determination will include the result and rationale for each allegation, any disciplinary sanction imposed on the Respondent, and whether remedies designed to restore or preserve equal access will be provided to the Complainant, as required by the governing Title IX and Clery rules.

The notification will also detail the Parties' equal rights to appeal, the grounds for appeal, the steps to request an appeal, and when the determination is considered final if no party appeals.

The Title IX Coordinator (or designee) will provide the Parties with the outcome notification simultaneously, or without significant time delay between notifications. The written outcome notification may be delivered by one or more of the following methods: in person or emailed to the Parties' University-issued or other approved email account. Once emailed, and/or received in person, the outcome notification is presumptively delivered.

26. Sanctions

Factors the Decision-maker may consider when determining a sanctions and responsive action may include, but are not limited to:

- The nature, severity of, and circumstances surrounding the violation(s)
- The Respondent's disciplinary history
- The need for sanctions/responsive actions to bring an end to the harassment, and/or retaliation
- The need for sanctions/responsive actions to prevent the future recurrence of harassment, and/or retaliation
- The need to remedy the effects of harassment, retaliation, and/or other prohibited conduct on the Complainant and the community
- The impact on the parties
- The Respondent's acknowledgement of responsibility or contrition
- Any other information deemed relevant by the Decision-maker(s)

The sanctions will be implemented as soon as is feasible, either upon the outcome of any appeal or the expiration of the window to appeal, without an appeal being requested. The sanctions described in this Policy are not exclusive of, and may be in addition to, other actions taken or sanctions imposed by external authorities.

A. Student Sanctions

The following are sanctions that may be imposed upon students singly or in combination:

- 1) Reprimand:** A formal statement that the conduct was unacceptable and a warning that further violation of any University policy, procedure, or directive will result in more severe sanctions/responsive actions.

- 2) **Required Counseling:** A mandate to meet with and engage in either University-sponsored or external counseling to better comprehend the misconduct and its effects.
- 3) **Restrictions:** A Student may be restricted in their activities, including, but not limited to, being restricted from locations, programs, participation in certain activities or extracurriculars, study abroad, or holding leadership roles in student organizations
- 4) **Probation:** A written reprimand for violation of University policy, providing for more severe disciplinary sanctions if the student is found in violation of any University policy, procedure, or directive within a specified period of time. Terms of the probation will be articulated and may include denial of specified social privileges, exclusion from co-curricular activities, exclusion from designated areas of campus, no-contact orders, and/or other measures deemed appropriate.
- 5) **Suspension:** Separation from the University, or one or more of its facilities, for a defined period of time, typically not to exceed two years, after which the student is eligible to return. Students who return from suspension are automatically placed on probation through the remainder of their tenure as a student at University. Eligibility may be contingent upon satisfaction of specific conditions noted at the time of suspension, on successfully applying for readmission, or upon a general condition that the Student is eligible to return if the University determines it is appropriate to re-enroll/readmit the Student. The Student is typically required to vacate University property within 24 hours of notification of the action, though this deadline may be extended at the discretion of the Title IX Coordinator (or designee) or other appropriate official. During a University-wide suspension, the Student is banned from University property, functions, events, and activities unless they receive prior written approval from an appropriate University official. This sanction may be enforced with trespass action, as necessary.
- 6) **Expulsion:** Permanent separation from the University. The Student is banned from University property, and the student's presence at any University-sponsored activity or event is prohibited. This action may be enforced with a trespass action, as necessary.
- 7) **Withholding Diploma:** The University may withhold a student's diploma for a specified period of time and/or deny a student participation in commencement activities as a sanction if the student is found responsible for violating policy.
- 8) **Revocation of Degree:** The University reserves the right to revoke a degree previously awarded by the University for fraud, misrepresentation, and/or other violation of University policies, procedures, or directives in obtaining the degree, or for other serious violations committed by a student prior to graduation.
- 9) **Other Actions:** In addition to, or in place of, the above sanctions, the University may assign any other sanctions as deemed appropriate.

B. Employee Sanctions/Responsive/Corrective Actions

Responsive actions for an employee who has engaged in harassment, retaliation, and/or other prohibited conduct include:

- 1) Verbal or Written Warning
- 2) Performance Improvement Plan
- 3) Enhanced Supervision, Observation, or Review
- 4) Required Counseling
- 5) Required Training or Education
- 6) Probation
- 7) Denial of Pay Increase/Pay Grade
- 8) Loss of Oversight or Supervisory Responsibility
- 9) Demotion
- 10) Shift or schedule adjustments
- 11) Reassignment
- 12) Delay of (or referral for delay of) Tenure Track Progress
- 13) Assignment to a New Supervisor
- 14) Restriction of Stipends, Research, and/or Professional Development Resources
- 15) Suspension/Administrative Leave with Pay
- 16) Suspension/Administrative Leave without Pay
- 17) Termination
- 18) **Other Actions:** In addition to, or in place of, the above sanctions/responsive actions, the University may assign any other responsive actions as deemed appropriate.

27. Withdrawal or Resignation Before Complaint Resolution

A. Students

Should a Respondent decide not to participate in the Formal Grievance Process, the process proceeds absent their participation to a reasonable resolution. If a student Respondent withdraws from the University, the Formal Grievance Process typically ends with a dismissal, as the University has lost primary disciplinary jurisdiction over the withdrawn student. However, the University may continue the Formal Grievance Process when, at the discretion of the Title IX Coordinator (or designee), doing so may be necessary to address safety and/or remedy any ongoing effects of the alleged harassment, retaliation, and/or other prohibited conduct.

Regardless of whether the formal complaint is dismissed or pursued to completion of the Formal Grievance Process, the University will continue to address and remedy any systemic issues or concerns that may have contributed to the alleged violation(s), and any ongoing effects of the alleged harassment, retaliation, and/or other prohibited conduct.

If the student Respondent takes a leave for a specified period of time (e.g., one semester or term), the Formal Grievance Process may continue remotely. If found in violation, that student is not permitted to return to the University unless and until all sanctions, if any, have been satisfied.

B. Employees

Should an Employee Respondent decide not to participate in the Formal Grievance Process, the process proceeds absent their participation to a reasonable resolution. If an Employee Respondent leaves their employment with the University with unresolved allegations pending, the Formal Grievance Process typically ends with dismissal, as the University has lost primary disciplinary jurisdiction over the former Employee. However, the University may continue the Formal Grievance Process when, at the discretion of the Title IX Coordinator (designee) doing so may be necessary to address safety and/or remedy any ongoing effects of the alleged harassment, Retaliation, and/or Other Prohibited Conduct.

Regardless of whether the Formal Complaint is dismissed or pursued to completion of the Formal Grievance Process, the University will continue to address and remedy any systemic issues or concerns that may have contributed to the alleged violation(s), and any ongoing effects of the alleged harassment, retaliation and/or other prohibited conduct.

When an Employee resigns before a responsibility determination, the University may accurately record that the Employee resigned with allegations unresolved. Under a neutral, generally applicable policy, future rehire or readmission may be conditioned on resumption and completion of the applicable process. A dismissal without adjudication is not a responsibility determination and will not itself create a permanent allegation-based bar.

28. Appeal of the Final Determination

The Title IX Coordinator (or designee) will designate an Appeal Decision-maker from the Resolution Process Pool, or other trained internal or external individuals, to hear the appeal. No Appeal Decision-maker will have been previously involved in the Formal Grievance Process for the Formal Complaint. If a panel is used, the Title IX Coordinator (or designee) will designate a voting chair.

A. Appeal Grounds

Appeals are limited to the following grounds:

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

B. Appeal Request

Any party may submit the ordinary written appeal within five business days. That deadline does not shorten the one-year appeal period required by N.D.C.C. § 15-10-56(3) for a student actually suspended

or expelled and the student accuser or victim. The appellate body will satisfy the statutory independence and representative-participation requirements. Issues may include new evidence, contradictory evidence, and denial of due process.

The appeal request will be forwarded to the Appeal Decision-maker for consideration to determine if the request meets the appeal grounds (a Review for Standing). This is not a review of the merits of the appeal, but solely a determination as to whether the request could reasonably be construed to meet the grounds and is timely filed.

If the appeal request does not provide information that meets the grounds in the Procedures, the request will be denied by the Appeal Decision-maker, and the Parties and their Advisors will be simultaneously notified in writing of the denial and the rationale.

If any of the information in the appeal request meets the grounds in the Procedures, then the Appeal Decision-maker will notify all Parties and their Advisors, the Title IX Coordinator (or designee), and, when appropriate, the Investigator(s) and/or the original Decision-maker.

All other Parties and their Advisors, the Title IX Coordinator (or designee), and, when appropriate, the Investigator(s) and/or the Decision-maker will be provided a copy of the appeal request with the approved grounds and then be given five (5) business days to submit a response to the portion of the appeal that was approved and involves them. The Appeal Decision-maker will forward all responses, if any, to all Parties for review and comment.

The non-appealing party (if any) may also choose to appeal at this time. If so, that appeal request will be reviewed by the Appeal Decision-maker to determine if it meets the grounds in the Procedures and will either be approved or denied. If approved, it will be forwarded to the party who initially requested an appeal, the Title IX Coordinator (or designee), and the Investigator(s) and/or original Decision-maker, as necessary, who will submit their responses, if any, within five (5) business days. Any such responses will be circulated for review and comment by all Parties. If denied, the Parties and their Advisors will be notified in writing.

Except for the one-year statutory appeal period described above, no party may submit a new appeal request after the applicable time period. The Appeal Decision-maker will collect any additional information needed and all documentation regarding the approved appeal grounds, share the subsequent responses as required, and promptly render a decision.

C. Appeal Determination Process

In most circumstances, appeals are confined to a review of the written documentation or record of the original determination and pertinent documentation regarding the specific appeal grounds. The Appeal Decision-maker will deliberate as soon as is practicable and discuss the merits of the appeal.

Appeal decisions are to be deferential to the original determination, making changes to the Finding/Final Determination only when there is clear error and to the sanction(s)/responsive action(s) only if there is a compelling justification to do so. All decisions are made by majority vote and apply the preponderance of the evidence.

An appeal is not an opportunity for the Appeal Decision-maker to substitute their judgment for that of the original Decision-maker merely because they disagree with the Finding and/or sanction(s).

The Appeal Decision-maker may consult with the Title IX Coordinator (or designee) and/or legal counsel on questions of procedure or rationale, for clarification, if needed. The Title IX Coordinator (or designee) will maintain documentation of all such consultation.

D. Appeal Outcome

An appeal may be granted or denied. Appeals that are granted should normally be remanded (or partially remanded) to the original Investigator(s) and/or Decision-maker with corrective instructions for reconsideration. In rare circumstances where an error cannot be cured by the original Investigator(s) and/or Decision-maker or the Title IX Coordinator (or designee) (as in cases of bias), the

Appeal Decision-maker may order a new investigation and/or a new hearing with new pool member(s) serving in the Investigator and Decision-maker roles.

A notice of appeal outcome letter will be sent to all Parties simultaneously, or without significant time delay between notifications. The appeal outcome letter will specify the Finding on each appeal ground, any specific instructions for remand or reconsideration, all sanction(s) that may result which the University is permitted to share according to federal or state law, and the rationale supporting the essential Findings to the extent the University is permitted to share under federal or state law.

Written notification may be delivered by one or more of the following methods: in person or emailed to the Parties' University-issued email or other approved account. Once emailed, and/or received in person, the appeal outcome letter will be presumptively delivered.

Once an appeal is decided, the outcome is final and constitutes the Final Determination; further appeals are not permitted, even if a decision or sanction is changed on remand (except in the case of a new determination). When appeals result in no change to the finding or sanction, that decision is final. When an appeal results in a new Finding or sanction, that Finding or sanction can be appealed one final time on the grounds listed above and in accordance with the Procedures.

If a remand results in a new Finding or sanction that is different from the original Finding or sanction, that new Finding or sanction can be appealed, once, on any of the available appeal grounds.

E. Sanctions Status During the Appeal

Any sanctions imposed as a result of the Final Determination are stayed (i.e.: not implemented) during the appeal process, and supportive measures may be maintained or reinstated until the appeal determination is made.

If any of the sanctions are to be implemented immediately post-determination, but pre-appeal, then the emergency removal procedures and interim suspension procedures (detailed above) for a show cause meeting on the justification for doing so must be permitted within two (2) business days of implementation.

29. Long-Term Remedies/Other Actions

Following the conclusion of the Formal Grievance Process, and in addition to any sanctions implemented or Informal Resolution terms, the Title IX Coordinator (or designee) may implement additional long-term remedies or actions with respect to the parties and/or the University community that are intended to stop the harassment, retaliation, and/or other prohibited conduct, remedy the effects, and prevent reoccurrence.

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

- Referral to counseling and health services
- Referral to the Employee Assistance Program
- Course and registration adjustments, such as retroactive withdrawals
- Education to the individual and/or the community
- Permanent alteration of housing assignments
- Permanent alteration of work arrangements for employees
- Policy modification and/or training
- Provision of campus safety escorts
- Climate surveys
- Policy modification and/or training
- Implementation of long-term contact limitations between the parties
- Implementation of adjustments to academic deadlines, course schedules, etc.

At the discretion of the Title IX Coordinator (or designee), the parties may be provided certain long-term support or measures even if no policy violation is found.

When no policy violation is found, the Title IX Coordinator (or designee) will address any remedies the University owes the Respondent to ensure no effective denial of educational access.

The University will maintain the confidentiality of any long-term remedies/actions/measures, provided confidentiality does not impair the University's ability to provide these services.

30. Failure to Comply with Sanctions and/or Responsive Actions

All Respondents are expected to comply with the assigned sanctions, responsive actions, corrective actions, and/or Informal Resolution terms within the timeframe specified by the final Decision-maker(s), including the Appeal Decision-maker(s) or the Informal Resolution agreement.

Failure to abide by the sanction(s)/action(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanction(s)/action(s), including suspension, expulsion, and/or termination from the University. Supervisors are expected to enforce completion of sanctions/responsive actions for their employees.

A suspension imposed for non-compliance with sanctions will only be lifted when compliance is achieved to the Title IX Coordinator's (or designee) satisfaction.

31. Recordkeeping

MSU will maintain a record of every report and complaint received, including matters dismissed or resolved without the Formal Grievance Process, and the University's response and disposition, together with the records listed below. Records will be retained for at least seven years and longer when required by the applicable State or institutional retention schedule, litigation hold, or other law.

- 1) Each Harassment, Retaliation, and Other Prohibited Conduct Formal Grievance Process, including any Final Determination regarding responsibility or appeal, and any audio or audiovisual recording or transcript required under federal regulation
- 2) Any disciplinary sanctions imposed on the Respondent
- 3) Any supportive measures provided to the Parties and any remedies provided to the Complainant or the community designed to restore or preserve equal access to the University's Education Program or Activity
- 4) Any appeal and the result therefrom
- 5) Any Informal Resolution and the result therefrom
- 6) All materials used to train the Title IX Coordinator (or designee), Title IX Coordinator and designees, Investigators, Decision-makers, Appeal Decision-makers, Informal Resolution Facilitators, and any person who is responsible for implementing the University's resolution processes. The University will post on its website accessible copies of all slide decks, handouts, workbooks, and other materials actually used to train covered personnel, maintain them for seven years, repair expired links, and ensure current personnel receive documented training on the operative 2020-rule framework.
- 7) Any other actions taken in response to a report or Formal Complaint including:
 - a. The basis for all conclusions that the response was not deliberately indifferent
 - b. Any measures designed to restore or preserve equal access to the University's Education Program or Activity

The University will also maintain any and all records in accordance with state and federal laws.

If supportive measures are not provided to a Complainant, the University will document the reasons why its response was not clearly unreasonable in light of the known circumstances.

32. Disabilities Accommodations

The University is committed to providing reasonable accommodations and support to qualified students, employees, or others with disabilities to ensure equal access to the University's Resolution Process.

Anyone needing such accommodations or support should contact the Director of Access Services, who will work with disability support as appropriate to review the request and, in consultation with the person requesting the accommodation, determine which accommodations are appropriate and necessary for full process participation.

33. Other Support

University will address other reasonable requests for support for the Parties and witnesses, including:

- Language services/Interpreters
- Access and training regarding use of technology throughout a resolution process
- Other support as deemed reasonable and necessary to facilitate participation in a resolution process

34. Revision of this Policy and Procedures

The Title IX Coordinator will review this Policy at least annually and may recommend amendments. Substantive amendments become effective only after approval through MSU's applicable policy-adoption process, including presidential approval when required. An interim amendment concerning a matter for which legislative authority is delegated to an institutional legislative body must follow SBHE Policy 305.1(4)(h)(ii), identify an effective date, and provide appropriate notice. An active matter will be governed by controlling law and the policy applicable to the conduct and proceeding, subject to any legally required, equally applied, nonprejudicial procedural adjustment disclosed to the parties.

During the Resolution Process, the Title IX Coordinator (or designee) may make minor modifications to procedures that do not materially jeopardize the fairness owed to any party, such as to accommodate summer schedules. The Title IX Coordinator (or designee) may also vary procedures materially with notice (on the institutional website, with the appropriate effective date identified) upon determining that changes to law or regulation require Policy or procedural alterations not reflected in this Policy and procedures.

This Policy and procedures are effective August 1, 2026.

Appendix A: STATEMENT OF THE PARTIES' RIGHTS

Under the Policy and Procedures, the Parties have the right to:

1. An equitable investigation and Resolution of all credible allegations of prohibited Sexual Discrimination, Harassment, Retaliation, and Other Prohibited Conduct, when reported in good faith to University officials
2. Timely written notice of all alleged violations, including the identity of the Parties involved (if known), the precise misconduct being alleged, the date and location of the alleged misconduct (if known), the implicated policies and procedures, and possible sanctions
3. Timely written notice of any material adjustments to the allegations (e.g., additional incidents or allegations, additional reports or Formal Complainants) by updating the Notice of Investigation and Allegation(s) (NOIA) as needed to clarify potentially implicated Policy violations
4. Be informed in advance of any University public release of information regarding the allegation(s) or underlying incident(s), whenever possible
5. Have all personally identifiable information protected from the University's release to the public without consent, except to the extent permitted by law
6. Be treated with respect by University officials
7. Have University Policy and Procedures followed without material deviation
8. Voluntarily agree to resolve allegations under the Policy through Informal Resolution without University pressure, Informal Resolution is approved by the Title IX Coordinator (or designee)
9. Not being discouraged by University officials from reporting Sexual Discrimination, Harassment, Retaliation, and Other Prohibited Conduct to both on-campus and off-campus authorities
10. Be informed of options to notify proper law enforcement authorities, including on-campus and local police, and the option(s) for the University to assist in notifying such authorities, if the party chooses. This also includes the right not to be pressured to report.
11. Have University Security and/or other University officials respond promptly to alleged Policy violations
12. Be informed of available supportive measures, such as counseling, advocacy, health care, student financial aid, and/or other services, both on campus and in the community
13. A University-implemented no-contact order or a no-trespass order against a non-affiliated third party when a person has engaged in or threatens to engage in stalking, threatening, harassing, or other improper conduct
14. Be informed of available assistance in changing academic, living, and/or employment situations after an alleged incident of Sexual Discrimination, Harassment, Retaliation, and/or Other Prohibited Conduct if such changes are reasonably available. No report or Formal Complaint, or investigation, either institutional or criminal, needs to occur before this option is available. Such actions may include, but are not limited to:
 - Relocating a residential Student's housing to a different on-campus location
 - Assistance from University staff in completing the relocation
 - Changing an Employee's work environment (e.g., reporting structure, office/workspace relocation)

- Transportation assistance
 - Visa/immigration assistance, if available
 - Arranging to dissolve a housing contract and provide a pro-rated refund
 - Rescheduling or adjusting an exam, paper, and/or assignment
 - Receiving an incomplete in, or a withdrawal from, a class (may be retroactive)
 - Transferring class sections
 - Temporary withdrawal/leave of absence (may be retroactive)
 - Campus safety escorts
 - Alternative course completion options
15. Have the University maintain supportive measures for as long as necessary, ensuring they remain confidential, provided confidentiality does not impair the University's ability to provide the supportive measures or comply with the law
 16. Receive sufficiently advanced written notice of any University meetings or interviews involving another party, when possible
 17. Identify and have the Investigator(s), Advisors, and/or Decision-maker question relevant available witnesses
 18. Provide the Investigator(s)/Decision-maker with a list of questions that, if deemed relevant by the Investigator(s)/Decision-maker, may be asked of any party or witness
 19. Have Complainant's inadmissible sexual predisposition/prior sexual behavior or any party's irrelevant character evidence excluded by the Decision-maker
 20. Review the Relevant and Directly Related Evidence (if applicable) obtained and respond to that evidence
 21. A fair opportunity to provide the Investigator(s) with their account of the alleged misconduct and have that account be on the record
 22. Receive a copy of all Relevant and Directly Related Evidence (if applicable) obtained during the investigation, subject to privacy limitations imposed by federal and state law, and a ten (10)-business-day period to review and comment on the evidence
 23. Receive a copy of the Final Investigation Report, including all factual, Policy, and/or credibility analyses performed, and to have at least ten (10) business days to review and comment on the report prior to a hearing
 24. Be informed of the names of all witnesses whose information will be used to make a Finding, in advance of that Finding, when relevant
 25. Regular status updates on the investigation and/or resolution process
 26. Have reports of alleged Policy violations addressed by Title IX members, or others, who have received relevant annual training as required
 27. An impartial Decision-maker or panel selected without disqualifying bias or conflict of interest

28. Preservation of confidentiality/privacy, to the extent possible and permitted by law
29. Meetings, interviews, and/or hearings that are closed to the public
30. Petition that any University representative in the process be recused on the basis of disqualifying bias and/or a conflict of interest
31. Be able to select an Advisor of their choice to accompany and assist the party in all meetings and/or interviews associated with the resolution process
32. Apply the appropriate standard of evidence, preponderance of the evidence to make a Finding and Final Determination after an objective evaluation of all Relevant Evidence
33. Be present, including presence via remote technology, during all testimony given and evidence presented during any hearing
34. Have an impact and/or mitigation statement considered by the Decision-maker following a Final Determination of responsibility for any allegation, but prior to sanctioning
35. Be promptly informed of the resolution process Finding(s) and sanction(s) (if any) and be given a detailed rationale for the decision (including an explanation of how credibility was assessed) in a written outcome letter delivered to the Parties simultaneously (without undue delay)
36. Be informed in writing of when a University decision is considered final and any changes to the Final Determination or sanction(s) that occur post outcome letter delivery
37. Be informed of the opportunity to appeal the Finding(s) and sanction(s) and the procedures for doing so in accordance with the University's appeal grounds
38. A fundamentally fair resolution as defined in the Procedures

APPENDIX B: DEFINITIONS

The following definitions apply to the Title IX Sexual Misconduct Policy

- **Actual Knowledge.** Notice of sexual harassment or allegations of sexual harassment to an institution's Title IX Coordinator or any institution official with authority to institute corrective measures on the institution's behalf.
- **Advisor** means a person chosen by a party or appointed by the institution to accompany the party to meetings related to the Resolution Process, to advise the party on that process, and to conduct cross-examination for the party at the hearing, if any.
- **Complainant** means an individual who is alleged to be the victim of conduct which could, after investigation, constitute sexual harassment.
- **Complaint** (formal) means a document filed/signed by a Complainant or signed by the Title IX Coordinator (or designee) alleging sexual harassment based on a protected class or retaliation for engaging in a protected activity against a Respondent and requesting that the University investigate the allegation. At the time of filing a formal complaint, a Complainant must be participating in or attempting to participate in the University's education program or activity.
- **Confidential Resource** means an employee who is not a Mandated Reporter of notice of sexual harassment and/or retaliation (irrespective of Clery Act Campus Security Authority status).
- **Deliberate Indifference.** When an institution's response to sexual harassment is clearly unreasonable in light of the information known to the institution at the time.
- **Education program or activity** means locations, events, or circumstances where University exercises substantial control over both the Respondent and the context in which the sexual harassment occurs and also includes any building owned or controlled by a student organization that is officially recognized by University.
- **Final Determination:** A conclusion, by the preponderance of the evidence, whether the alleged conduct occurred and if so, whether it did or did not violate policy.
- **Finding:** A conclusion by the preponderance of the evidence that the conduct did or did not occur as alleged.
- **Formal Grievance Process** means a method of formal resolution to address conduct that falls within the policies included above, and which complies with the requirements of 34 CFR Part 106.45 and State Board of Higher Education Policy 603.1.
- **Hearing Decision-maker or Panel** refers to those who have decision-making and sanctioning authority within the University's Formal Grievance process.
- **Investigator** means the person or persons charged by the University with gathering facts about an alleged violation of this policy, assessing relevance, synthesizing the evidence, and compiling this information into an investigation report and file of directly related evidence.
- **Mandated Reporter** means an employee of University who is obligated by policy to share knowledge, notice, and/or reports of harassment and/or retaliation with the Title IX Coordinator (or designee).
- **Notice** means that an employee, student, or third-party informs the Title IX Coordinator or other Official with Authority of the alleged occurrence of harassing, discriminatory, and/or retaliatory conduct.
- **Official with Authority (OWA)** means an employee of University explicitly vested with the responsibility to implement corrective measures for harassment and/or retaliation on behalf of University.
- **Respondent** means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment
- **Resolution** means the result of an informal or Formal Grievance Process.
- **Sanction** means a consequence imposed on a Respondent who is found to have violated this policy.
- **Sexual Harassment** is the umbrella category including the offenses of sexual harassment, sexual assault, stalking, dating violence, and domestic violence.
- **Supportive Measures.** Non-disciplinary, non-punitive individualized services offered as appropriate (as reasonably available) and without fee or charge to the Complainant or respondent.
- **Title IX Coordinator** is the official designated by University to ensure compliance with Title IX and the University's Title IX program. References to the Coordinator throughout this policy may also encompass a designee of the Coordinator for specific tasks.



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