

The *POLICY* PROHIBITING SEX DISCRIMINATION AND PROCEDURES FOR SUPPORT

Case Western Reserve University

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SECTION 1: INTRODUCTION

1.1 Policy statement

Case Western Reserve University (CWRU) prohibits sex discrimination in its education programs and activities, as well as retaliation as defined below, in accordance with federal law, including *Title IX of the Education Amendments of 1972* (20 U.S.C. § 1681, et seq.) (Title IX). Sex discrimination under Title IX is discrimination based on sex as a biological classification as either male or female, as well as pregnancy. This policy also prohibits sex discrimination in the form of discrimination based on sex, pregnancy, parental status, gender identity or expression, transgender identity, and sexual orientation. Sex- or gender-based discrimination also includes sexual harassment, sexual assault, sex-based stalking, sexual exploitation, dating violence and domestic violence.

1.2. Statement of the rights of persons impacted by sex discrimination and sexual harassment

Students, faculty, staff, postdoctoral fellows and scholars, and others in the CWRU community who are impacted by sexual harassment, because they have either experienced sex discrimination (“complainant”) or are accused of engaging in sex discrimination (“respondent”) (collectively, “parties”), are granted equal rights by this Policy. Those rights are described below.

Specifically, both parties have the right to:

- a) Immediately upon making a report of sex discrimination, or receipt of notice that a person is accused of engaging in sex discrimination, receive offers of:
 - i. support, including information, resources, and connections to counseling, advocacy, housing, transportation and health care, as well as academic support, as appropriate based on the situation
 - ii. a CWRU-implemented no contact order or no-trespass (*persona non grata*) order, if appropriate
 - iii. available assistance in changing academic, living, and/or working situations designed to enable a person to feel safe and able to focus on their academic or professional success
- b) Have CWRU maintain that support for as long as necessary, and that the offer of support is repeated in subsequent interactions as the person’s situation changes.
- c) Have CWRU offer and maintain that support for as long as necessary without regard to whether the person has provided information in an investigation and/or chooses to participate in an investigation, and, possibly, a hearing.
- d) Participate or choose not to participate in any process, meeting or investigation occurring pursuant to this Policy.
- e) A fair and equitable investigation, in which both parties are treated fairly and with respect and sensitivity, at all times.
- f) Be informed of an investigation in writing (such as email) including the identity of the people involved (if known), the alleged conduct being investigated, the date and location of the alleged conduct (if known), the policies and procedures which may be relevant to the decision to investigate, and possible sanctions which could result after a hearing.
- g) Be timely informed in writing if the alleged conduct being investigated changes or expands, if certain allegations are no longer part of the investigation, or if new or different sections of this Policy become relevant to the investigation, its outcome, and possible sanctions.
- h) Have CWRU follow this Policy and its procedures in good faith.

- i) Freely choose whether to resolve a matter through alternative resolution (if all appropriate persons also agree) or investigation, and, possibly, a hearing.
- j) Have all allegations of sexual harassment, and defenses to those allegations, treated seriously by the Office for Equity.
- k) Present defenses to allegations of sexual harassment, and have those defenses investigated by the Office for Equity.
- l) Be informed of options to notify law enforcement authorities, including on-campus and local police, as appropriate, freely choose whether to report or not report to law enforcement, and be assisted and supported by CWRU regardless of whatever choice is made.
- m) Ask questions of the staff in the Office for Equity and have those questions timely answered.
- n) Provide evidence, including one's own account of what occurred, the names of witnesses and documents, to the investigator, and to have all relevant evidence considered in the investigation.
- o) Receive a draft of the investigation report and then be able to review and respond to it, and to have that response become part of the final investigation report.
- p) Request and receive regular updates on the status of the investigation.
- q) Have the investigation conducted and decision about whether this Policy was violated made by persons who are properly trained.
- r) Have an advisor present at all meetings and/or interviews associated with obtaining support, the investigation and/or any hearing.
- s) Have CWRU compel the participation of faculty, staff, postdoctoral fellows and scholars, and student witnesses in the investigation, and/or any hearing. This does not apply to parties, including a person who may have experienced sexual harassment and who chooses not to participate in an investigation.
- t) Be promptly informed of developments and decisions simultaneously as the other party(ies).
- u) A hearing panel that is not comprised of individuals who are all male or all female, on request by a party.

1.3 Applicability

This Policy contains the procedures which CWRU will use to support students, faculty, staff, and postdoctoral fellows and scholars who experience or have previously experienced sex discrimination or retaliation, or who are or were accused of violating this Policy.

Section 4 (Process A) applies only to alleged conduct that would constitute Title IX Sexual Harassment as defined in Section 2.1.

Section 5 (Process B) applies to other alleged sex-based conduct that would not constitute Title IX Sexual Harassment as defined in Section 2.1, and which negatively impacts CWRU's campus and/or community, educational and/or employment programs, and activities.

The Title IX Coordinator is available to help members of the CWRU community understand which process applies to their situation.

1.4 Supportive measures

1.4.1 Prompt offer of supportive measures

Once notified of alleged sex discrimination or retaliation, CWRU, through the Office of Equity, promptly offers and implements appropriate and reasonable supportive measures for persons who may have experienced that conduct and those accused of engaging in that conduct.

1.4.2 Non-punitive, non-disciplinary and free of charge

Supportive measures are non-disciplinary, non-punitive individualized services and supports offered as appropriate, as reasonably available, and without fee or charge to restore or preserve access CWRU's education program or activity, including measures designed to protect the safety of a member or members of the CWRU community and/or deter sex discrimination (including sexual harassment) and/or retaliation.

1.4.3 Available throughout and after an investigation, or when no investigation is conducted

The Title IX Coordinator works with each party to provide effective, appropriate supportive measures to address each party's needs. Throughout an investigation, or if no investigation is conducted, the Title IX Coordinator will remind a party that supportive measures are available and that existing supportive measures may be modified, if needed. When a party advises of a struggle or concern, the Title IX Coordinator will again offer or suggest modifying supportive measures, highlighting those most likely to address the concern.

A party who has previously declined supportive measures may subsequently, on request, receive them from the Office of Equity.

So long as a person is impacted by sex discrimination or retaliation that person may request and receive appropriate supportive measures from the Title IX Coordinator.

1.4.4 Types of supportive measures

Supportive measures may include, but are not limited to:

- a) No Contact Directives (prohibiting contact and communications between two or more persons)
- b) Academic support, extensions of deadlines, or other course/program-related adjustments
- c) *Persona non grata* (PNG) (mutual prohibitions issued to parties to bar them from being in a campus location, such as a particular building or residence hall, or on a particular campus, in which they have no educational reason to be, or prohibition issued to a person not affiliated with CWRU barring them from campus)
- d) Class or work schedule modifications, withdrawals, or leaves of absence
- e) Increased security and monitoring of certain areas of the campus
- f) Referral to counseling, medical, and/or other healthcare services
- g) Referral to the Employee Assistance Program, Impact Solutions
- h) Referral to community-based service providers
- i) Visa and immigration assistance
- j) Student financial aid counseling
- k) Education to the community or community subgroup(s)

- l) Altering campus housing assignment(s)
- m) Altering work arrangements for employees, postdoctoral fellows and scholars, or student-employees
- n) Safety planning
- o) Providing campus safety escorts
- p) Providing transportation accommodations
- q) Placing a hold on the conferral of a degree pending the outcome of an investigation and hearing process held pursuant to this Policy (issued to support the process described in these procedures)
- r) Any other actions deemed appropriate by the Title IX Coordinator

No Contact Orders, PNGs, and other supportive measures which, while requested by one person, may impact another person, may be implemented without advance notice to the non-requesting person. Violations of No Contact Orders and PNGs will be investigated as retaliation pursuant to this Policy.

1.5 Jurisdiction

The procedures in this Policy apply to sex discrimination that takes the form of sexual harassment. This Policy strives to prohibit all sexual harassment by categorizing reported conduct as sexual harassment (quid pro quo sexual harassment or hostile environment sexual harassment), sexual assault, stalking, sexual exploitation, and dating violence or domestic violence, which are defined in this Policy. This Policy may apply to incidents, patterns and/or the campus climate, all of which may be addressed and investigated in accordance with this Policy.

Allegations of sex discrimination in which the alleged conduct does not constitute sexual harassment, such as sex discrimination in education or employment, or retaliation against a person who asserted rights granted in this Policy or under applicable laws and regulations may be resolved pursuant to this Policy, but are not resolved using the processes described in Section 4 or Section 5, which apply only to allegations of sexual harassment. Instead, such conduct is addressed through the [protocol for addressing discrimination, harassment, intimidation and retaliation](#) pursuant to the [Policy Against Discrimination, Harassment, Intimidation and Retaliation](#).

When the person accused of violating this Policy is a member of the CWRU community, the procedures in Section 5 of this Policy may be available regardless of whether the person reportedly experiencing the sexual harassment is a member of the CWRU community, if the reported conduct negatively impacts or has the potential to negatively impact CWRU's campus and/or community, educational and/or employment programs, and activities.

Allegations of conduct that does not constitute sex discrimination in education or employment, or retaliation for asserting the right to be free from sex discrimination, will not be resolved pursuant to this Policy, but will be referred to another appropriate university policy or process.

1.6 Title IX Coordinator and Deputy Title IX Coordinator

Title IX of Education Amendments of 1972 ("Title IX") prohibits sex discrimination in education programs that receive federal funding. The Title IX Coordinator or designee ("Title IX Coordinator") is responsible for implementing Title IX at CWRU. This includes providing support to anyone impacted by sex discrimination. The Title IX Coordinator is also responsible for making sure that the procedures in this Policy are followed and all persons are treated fairly and with respect.

Members of the CWRU community and others should direct questions about the application of Title IX to situations impacting the CWRU community, and its educational programs and activities to the Title IX Coordinator or designee, including the staff in the Office of Equity.

The Title IX Coordinator is:

Rachel E. Lutner, J.D.

Vice President for Equity

University Title IX Coordinator

Section 504 Coordinator

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The Deputy Title IX Coordinators are:

Kimberly Adams, Director – Equity, carmen.guess@case.edu

1.7 Notice to the Title IX Coordinator of possible sex discrimination

Notice means that an employee, student or third person has informed the Title IX Coordinator, the Office for Equity or other Official with Authority that a member of the CWRU community may be impacted by sex discrimination or retaliation for exercising rights under this Policy, because they may have experienced such alleged conduct or be accused of engaging in such conduct. On receipt of notice, the Title IX Coordinator or designee will conduct outreach to the person impacted by sex discrimination or retaliation to offer support, resources, and information.

1.8 Academic freedom and free speech

This Policy respects the principles and traditions of academic freedom consistent with the CWRU policies regarding academic freedom and free expression. Persons with questions about whether course material or its presentation falls within the definition of sex discrimination or retaliation should contact the Title IX Coordinator.

This Policy respects the goal of a free exchange of ideas as important to the function of the university. Persons with questions about whether the expression of certain ideas falls within the definition of sex discrimination or retaliation should contact the Title IX Coordinator.

1.9 Retaliation is prohibited

No member of the CWRU community may take or attempt to create adverse action by intimidating, threatening, coercing, harassing, or discriminating against any individual, or to punish that individual or cause that individual to hesitate in the future to exercise a right granted by this Policy, because the individual has made a report or complaint, provided information, assisted, participated or refused to

participate in an investigation, proceeding or hearing under this Policy or engaged in any other protected activity. Such alleged conduct constitutes retaliation.

Acts of alleged retaliation should be reported immediately to the Title IX Coordinator, Office of Equity, the Title IX Coordinator, a responsible employee, a confidential resource, or through an [anonymous reporting pathway](#) pursuant to any of the reporting options identified in Section 3 of this Policy. Reported retaliation will be promptly investigated. CWRU will take appropriate and available steps to protect individuals who fear that they may be subjected to retaliation.

Charges against an individual for code of conduct violations that do not involve sex discrimination but arise out of the same facts or circumstances as a report of sex discrimination, and are initiated for the purpose of interfering with any right or privilege secured by Title IX, constitute retaliation. The mere fact that code of conduct, professionalism or other processes are initiated based on conduct or circumstances underlying a report of sex discrimination is not sufficient to constitute retaliation.

Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of an investigation pursuant to this Policy does not constitute retaliation. A determination by a hearing panel regarding responsibility is not sufficient to conclude that any party has made a materially false statement in bad faith.

1.9.1 Student organization misconduct

The Office of Equity may investigate as retaliation a report that a student organization conducted an internal investigation of whether a member of the student organization engaged in sex discrimination, reached a conclusion that a member of the student organization engaged or did not engage in sex discrimination or determined that a member of the student organization experienced or did not experience sex discrimination.

1.9.2 Violations of terms of supportive or disciplinary measures

Violations of No Contact Directives and Persona Non Grata orders may be investigated as retaliation.

1.10 False statements are prohibited

This Policy prohibits intentional false and/or malicious accusations. Allegations or facts possibly evidencing such conduct may be investigated pursuant to this Policy. False allegations do not include allegations that are made in good faith, but do not result in a determination that a violation of this Policy occurred.

This Policy section also prohibits witnesses and parties from knowingly providing false evidence, tampering with or destroying evidence after being directed to preserve such evidence, or deliberately misleading an investigator. Such alleged conduct may be investigated as a violation of this or another CWRU Policy.

Allegations that this Policy section has been violated may be investigated consecutively or simultaneously, at the discretion of the Title IX Coordinator.

1.11 Amnesty

CWRU encourages students, faculty, postdoctoral scholars and fellows, and staff to report sex discrimination and retaliation. To encourage members of the CWRU community to share information, CWRU will not pursue charges for minor violations of CWRU policies and rules, such as underage drinking or use of illicit drugs, which are revealed in connection with a reported violation or investigation of alleged conduct prohibited by this Policy. This paragraph applies to persons reporting that they experienced sex discrimination and/or retaliation, and witnesses to those events. This paragraph does not apply to serious

allegations of conduct, such as physical abuse of another or illicit drug distribution, which violate CWRU policies and rules.

1.12 Requests for confidentiality

In most cases, the Office of Equity is able to honor requests for confidentiality made by a person who reports possible sex discrimination and/or retaliation impacting that person or another person.

When the Office of Equity learns that a member of the CWRU community, or someone in the community, is in physical danger, the Office of Equity may need to initiate an investigation, implement an Emergency Removal, and/or take other action to protect a community member or the community generally. Such action may result in identification of a person who made a report or who experienced the alleged conduct to others even when that person does not want that identification to occur.

Subject to the preceding paragraph, when a person who may have experienced sex discrimination and/or retaliation requests supportive measures only, the Office of Equity will not advise the person identified as engaging in the alleged conduct that a report has been made to the Office of Equity.

In most cases, the Office of Equity cannot effectively conduct an investigation when a person who reports experiencing sex discrimination and/or retaliation does not want their name or identity shared with the person accused of engaging in conduct that may violate this Policy. When a person requests that their identity is kept confidential, the Title IX Coordinator will share available options and choices, including the option of receiving support without an investigation.

1.13 When parties delay or choose not to participate

1.13.1 Support regardless of participation

The Office for Equity will support persons who report experiencing sex discrimination and/or retaliation and those accused of engaging in sex discrimination and/or retaliation when those individuals delay participation or choose not to participate in an investigation and/or hearing.

To the extent possible, the Office for Equity will respect the decision of a person who experienced sex discrimination and/or retaliation to remain anonymous, and/or delay or refrain from participating in an investigation or hearing. The Office for Equity will give significant weight to the preference of a person who experienced sex discrimination and/or retaliation that no investigation is conducted.

1.13.2 Investigation without the complainant's participation

In some cases, when deemed necessary to protect the campus, generally, or a specific person or persons in the CWRU community, the Office for Equity will conduct an investigation without the participation or against the expressed preferences of the person who is reported to have experienced the sex discrimination and/or retaliation. The Title IX Coordinator will consider the effect that non-participation by the person who experienced the sex discrimination and/or retaliation may have on the ability of CWRU to effectively investigate and/or hold a hearing.

1.13.3 Changes in participation status

As the investigation proceeds, the person who experienced the sex discrimination and/or retaliation or who is accused of engaging in that alleged conduct, and who has indicated a desire to delay or decline participation may have as much or as little involvement in the process as they wish, and that person may elect to become more or less involved as the process proceeds.

1.13.4 Investigation may continue without the respondent's participation

The decision of a person who is accused of violating this Policy to delay participation or not to participate in an investigation will not cause the investigation to stop or delay a hearing.

Neither party may appeal the outcome of a hearing on the basis of new evidence, when the reason the evidence was not previously part of the process was due to that party's delayed participation or nonparticipation.

1.13.5 Student permanent withdrawal during investigation or prior to hearing

If a student who is accused of violating this Policy permanently withdraws from CWRU, the Office of Equity will cease its investigation and/or cancel a hearing because CWRU no longer has disciplinary jurisdiction over the withdrawn student. A student has "permanently withdrawn" from CWRU when they are (1) no longer enrolled at CWRU, and (2) have communicated to CWRU that they do not intend to return to CWRU or (3) are not eligible to reenroll at CWRU.

1.13.6 Employee resignation during investigation or prior to hearing

If an employee who is accused of violating this Policy resigns prior to the completion of an investigation or hearing pursuant to this Policy, the employee will be deemed not eligible to be rehired by any CWRU department, office, program or campus. In the event that an employee who is accused of violating this policy becomes no longer employed by CWRU and ineligible for rehire, the Office of Equity will cease its investigation and/or cancel any hearing as CWRU no longer has disciplinary jurisdiction over the resigned employee. Records maintained by Human Resources will reflect that status. CWRU responses to future inquiries regarding employment references for that individual will include that the former employee resigned during a pending disciplinary matter.

1.14 Independence and conflict-of-interest

The Title IX Coordinator, employees in the Office of Equity, panel members, and designees of the Title IX Coordinator are trained to act with independence and freedom from bias and conflicts of interest.

Parties may bring concerns about bias or conflict of interest of the investigator, Deputy Title IX Coordinator, or panel member to the Title IX Coordinator, who will assess the concern(s). If appropriate, another investigator or panel member will be assigned to eliminate the bias or conflict, or perception of bias or conflict, if any.

Any person seeking to raise any concern involving bias or conflict of interest by the Title IX Coordinator should contact the Office of Provost or designee.

1.15 Modification and review of this policy

This Policy may be updated and revised at any time pursuant to the CWRU Policy for the Management of Administrative Policies ("Policy MAP") and at the discretion of the Title IX Coordinator. This Policy will be reviewed annually, and, if appropriate, updated, by the Title IX Coordinator pursuant to the CWRU Policy MAP. CWRU reserves the right to make changes as necessary, and once those changes are posted online, they are in effect.

If government laws or regulations change – or court decisions alter – the required provisions of this Policy, the Policy will be construed to comply with the most recent government regulations or case holdings.

1.16 Role of an advisor

The person who may have experienced conduct that violates this Policy, and the person accused of engaged in such conduct, may each have an advisor of their choice present with them for all meetings relating to any investigation or hearing held pursuant to this Policy. These persons may select whomever they wish to serve as their advisor.

The Title IX Coordinator may permit parties to have more than one advisor. The decision to grant this request is at the discretion of the Title IX Coordinator.

The Office of Equity webpages contain [a list of trained advisors](#) from within the CWRU community. A party may request the Office of Equity assign an advisor for the party, or a party may reach out to advisors directly.

CWRU cannot guarantee that all advisors are equally able to effectively advise the parties. If one party selects an advisor who is an attorney, but the other party does not select or cannot afford an attorney, CWRU will not provide an attorney as an advisor to the other party.

The person who reportedly experienced sex discrimination and/or retaliation, and the person accused of engaging in that conduct, respond to questions on their own during an investigation or hearing conducted pursuant to this Policy. Advisors may not make a presentation or answer questions for a party during any meeting or proceeding, and may not speak on behalf of a party, except when asking questions during a hearing held pursuant to Section 4 of this Policy.

A trained advisor will support a party as requested by the party and consistently with the role of an advisor as set out here. If a party provides no direction to their advisor, or does not contact or engage with the advisor, the advisor will remain available to support the party, but will not independently take action to support the party.

Advisors are expected to maintain the privacy and confidentiality of the records and information shared with them.

A party may elect to change advisors. A party must timely notify the Title IX Coordinator of the change.

1.17 Trained pool

The procedures contained in this Policy require a pool of trained volunteer students, post-doctoral scholars and fellows, faculty and staff to carry out different roles in this process. The list of pool members, their training, and the roles in which pool members may serve is available at <https://case.edu/equity/sexual-harassment-title-ix/file-report/grievanc563hee-process-pool>.

Members of the pool are trained to act as an advisor, a member or a chair of a panel convened to determine if a violation of this Policy occurred, and an appeal panel chair or member.

The Title IX Coordinator or designee appoints panel members and, if requested to do so by a party, an advisor for the party.

The pool members receive annual training as required by Title IX.

1.18 Standard of proof

No violation of this Policy is established unless a hearing held pursuant to this Policy concludes that a preponderance of the evidence, meaning more than 50% of the evidence, supports the conclusion that the person accused of violating this Policy more likely than not violated it.

1.19 Accommodations

CWRU provides reasonable accommodations based on disability, pregnancy, and religion in implementing this Policy. Persons needing accommodations should advise the Office for Equity.

1.20 Use of translators

The Office of Equity will provide a foreign language translator during an investigation or at a hearing when a party or witness requires it to fully participate in the process, and in response to a request for a foreign language translator from a party or witness. The Office of Equity may establish rules and protocols for the use of foreign language translators during meetings and hearings required by this Policy.

SECTION 2: DEFINITIONS

2.1 Definitions of Process A violations (Title IX sexual harassment)

Title IX prohibits sexual harassment as defined below, and when the following jurisdictional elements are satisfied:

- a) The alleged conduct occurred within an educational program or activity controlled by CWRU
- b) The person experiencing the alleged conduct was in the United States at the time the alleged conduct occurred and
- c) The person experiencing the alleged conduct was participating in or attempting to participate in an education program or activity of CWRU.

Acts of sexual harassment may be committed by any person upon any other person, regardless of the biological sex of those involved.

Sexual Harassment is conduct on the basis of sex that is sexual, and that results in a *quid pro quo* or a hostile environment.

Title IX defines sex discrimination as including *quid pro quo* sexual harassment, hostile environment sexual harassment, sexual assault, dating violence, domestic violence, and stalking. These forms of sexual harassment that are prohibited by this Policy.

2.1.1 *Quid pro quo* sexual harassment

Quid pro quo sexual harassment occurs when:

- a) an employee (including postdoctoral scholar or fellow) of CWRU
- b) explicitly or implicitly conditions the provision of an aid, benefit, or service of CWRU
- c) on an individual's participation in unwelcome sexual conduct.

An example of *quid pro quo* sexual harassment is when a university employee tells a student, "I'll give you an A in the class if you kiss me," or "You will fail this class if you don't let me kiss you."

2.1.2 Hostile environment sexual harassment

Hostile environment sexual harassment occurs when the conduct is:

- a) unwelcome sex-based conduct
- b) determined by a reasonable person
- c) to be so severe, and
- d) pervasive, and
- e) objectively offensive,
- f) that it effectively denies a person equal access to the CWRU's education program or activity.

Unwelcomeness is subjective and determined from the perspective of the person experiencing the alleged conduct, except when that person is below the age of consent. Severity, pervasiveness, and objective offensiveness are evaluated based on the totality of the circumstances from the perspective of a reasonable person in the same or similar circumstances as is the person experiencing the alleged conduct, including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

Hostile environment sexual harassment can be physical, verbal or nonverbal, and include:

- a) Physical: grabbing someone's hand, groin, hip, breasts or buttocks; rubbing up against or leaning on a person in a manner that prevents them from avoiding the contact.
- b) Verbal: making sexual comments; using sexual innuendo; turning discussions to sexual topics; telling sexual jokes or stories; asking about sexual fantasies, preferences, or history, or sharing one's own sexual fantasies, preferences, or history; repeatedly asking out a person who is not interested; or discussing a person's body.
- c) Non-Verbal: repeatedly looking a person's body up and down or staring; blocking a person's path or placing one's body in another's personal space on multiple occasions; repeatedly following a person; and making sexual gestures with hands or through body movements.

2.1.3 Sexual assault

Sexual assault includes forcible and nonforcible offenses.

Forcible sex offenses are defined as:

- a) Any sexual act directed against another person,
- b) without that person's consent,
- c) including instances in which that person is incapable of giving consent.

Sexual acts that may comprise forcible sex offenses are:

- a) Forcible rape, comprising 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 that person's consent.
- b) Forcible sodomy, comprising oral or anal sexual intercourse with another person, forcibly, and/or against that person's will (non-consensually), or not forcibly or against the person's will in instances in which that person is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
- c) Sexual assault with an object, which occurs when an object or instrument is used to penetrate, however slightly, the genital or anal opening of the body of another person, forcibly, and/or against that person's will (non-consensually), or not forcibly or against the person's will in instances in which that person is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
- d) Forcible fondling, comprising the touching of the private body parts of another person (buttocks, groin, breasts), for the purpose of sexual gratification, forcibly, and/or against that person's will (non-consensually), or not forcibly or against the person's will in instances in which that person is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

Examples of forcible sexual assault include non-consensual sexual activity that is forcefully imposed on another person (i.e., rape or any type of sexual act without consent), unwanted rough or violent sexual activity, and physical contact that is non-consensual (i.e., forcible hugging and kissing, squeezing a person's breasts or testicles, or forced oral sex).

Sexual acts that may comprise non-forcible offenses are:

- a) Incest, which is non-forcible sexual intercourse, between persons who are related to each other, within the degrees wherein marriage is prohibited by Ohio State law
- b) Statutory rape, which is non-forcible sexual intercourse, with a person who is under the statutory age of consent of 16 years of age

2.1.4 Dating violence

Dating violence is defined as:

- a) Conduct that is based on sex,
- b) committed by a person,
- c) who is in or has been in a social relationship of a romantic or intimate nature with the person experiencing the alleged conduct. The existence of such a relationship shall be determined based on that person'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.

Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse (hitting, punching, pinching, kicking, pushing, and shoving). Dating violence also includes conduct that does not involve physical violence, such as physical, sexual, emotional, economic, or psychological actions or threats of actions that influence another person. This includes any behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure, or wound someone. Threats may be made against a person, their possessions (car, computer, phone), pets, children or others about whom they care. Dating violence includes undermining an individual's sense of self-worth and/or self-esteem through constant criticism, diminishing one's abilities, name-calling, or damaging one's relationship with peers; making or attempting to make an individual financially dependent by maintaining total control over financial resources, withholding one's access to money, or forbidding one's attendance at school or employment; causing fear by intimidation; threatening physical harm to self, partner, children, or partner's family or friends; destruction of pets and property; and forcing isolation from family, friends, or school and/or work.

Dating violence does not include acts covered under the definition of domestic violence.

2.1.5 Domestic violence

Domestic violence is defined as:

- a) conduct that is based on sex
- b) committed by a current or former spouse or intimate partner of the person experiencing the violence
- c) by a person with whom the person experiencing the violence shares a child in common, or is cohabitating, or has cohabitated with
- d) as a spouse or intimate partner, or by a person similarly situated to a spouse under the domestic or family violence laws of the State of Ohio, or
- e) by any other person against an adult or youth who is protected from that person's acts under the domestic or family violence laws of the State of Ohio.

For examples of domestic violence, see the examples of dating violence, above.

2.1.6. Stalking

Stalking is defined as:

- a) engaging in a course of conduct
- b) on the basis of sex
 - i) directed at a specific person
 - ii) that would cause a reasonable person to fear for the person's safety or the safety of others, or to suffer substantial emotional distress.

Examples of stalking include repeated, unwanted phone calls, texts, messages, etc. that may or may not be threatening; creating fake profiles to continue contacting a person after they have been blocked on their personal account; observing, following or “coincidentally” showing up wherever the person goes; waiting outside of the person’s class, home, job, car, etc.; leaving notes, gifts or other items for the person; spreading rumors online and in person; posting messages or images of the person on social media or in discussion groups; vandalism or destruction of property, including sabotaging schoolwork; breaking into the person’s home or car; hacking into the person’s social media, email or other accounts; collecting information about the person through friends, family members, coworkers or acquaintances; and contacting other people in order to gain information about how to access them.

2.2. Definitions of Process B violations (prohibited sexual conduct not falling within section 2.1)

Case Western Reserve University has adopted the following definitions of sexual harassment to address the unique environment of an academic community.

Acts of sexual harassment may be committed by any person upon any other person, regardless of the sex, sex, pregnancy, parental status, gender identity or expression, transgender identity, and sexual orientation of those involved. All definitions encompass actual and/or attempted offenses.

Sexual harassment in this section 2.2 is conduct on the basis of sex or gender or that is sexual, and that results in *quid pro quo* or a hostile environment that does not fall within section 2.1 as defined in that section or does not meet any one the jurisdictional requirements for section 2.1a) (conduct occurred in a CWRU educational program), b)(conduct occurred in the US) and/or c)(the person experiencing the conduct was participating or attempting to participate in a CWRU educational program).

Sexual harassment that creates a hostile environment includes conduct that does not meet the definition of hostile environment sexual harassment in section 2.1. In this section 2.2, conduct falling within the definition of hostile environment sexual harassment must be severe, or pervasive, or objectively offensive. In section 2.1, conduct falling within the definition of hostile environment in section 2.1 must be severe, and pervasive, and objectively offensive.

To create an academic learning and working environment where students, post-doctoral scholars and fellows, faculty, staff and others can thrive, CWRU prohibits sexual harassment as described in this section as including conduct which falls into the categories of *quid pro quo* sexual harassment, hostile environment sexual harassment, sexual assault, dating violence, domestic violence, stalking, and sexual exploitation, when that conduct negatively impacts or has the potential to negatively impact CWRU’s campus and/or community, educational and/or employment programs, and activities.

2.2.1 Quid pro quo sexual harassment

Quid pro quo sexual harassment occurs when:

- a) an employee (including postdoctoral scholar or fellow) of CWRU
- b) explicitly or implicitly conditions the provision of an aid, benefit, or service of CWRU
- c) on an individual’s participation in unwelcome sexual conduct.

An example of *quid pro quo* sexual harassment is when a university employee tells a student, “I’ll give you an A in the class if you kiss me,” or “You will fail this class if you don’t let me kiss you.”

2.2.2 Hostile environment sexual harassment

Hostile environment sexual harassment occurs when the conduct is:

- a) unwelcome sex-based conduct

- b) determined by a reasonable person
- c) to be so severe, or
- d) pervasive, or
- e) objectively offensive,
- f) that it effectively denies a person equal access to the CWRU's education program or activity.

Unwelcomeness is subjective and determined from the perspective of the person experiencing the alleged conduct, except when that person is below the age of consent. Severity, pervasiveness, and objective offensiveness are evaluated based on the totality of the circumstances from the perspective of a reasonable person in the same or similar circumstances as is the person experiencing the alleged conduct, including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

Hostile environment sexual harassment can be physical, verbal or nonverbal, and include:

- a) Physical: pulling someone's bra strap or underwear; grabbing someone's hand, groin, hip or buttocks; giving a massage or hug; rubbing up against or leaning on a person, touching the person's clothing, hair or body; and standing in a person's personal space.
- b) Verbal: referring to an adult in sexual terms; making sexual comments; using sexual innuendo; turning discussions to sexual topics; telling sexual jokes or stories; asking about sexual fantasies, preferences, or history, or sharing one's own sexual fantasies, preferences or history; repeatedly asking out a person who is not interested; or discussing a person's body.
- c) Non-Verbal: staring; blocking a person's path; following a person; giving unwanted gifts; making facial expressions (winking, throwing kisses, or licking lips); and making sexual gestures with hands or through body movements.

2.2.3 Sexual assault

Sexual assault includes forcible and nonforcible offenses.

Forcible sex offenses are defined as:

- a) Any sexual act directed against another person,
- b) without that person's consent,
- c) including instances in which that person is incapable of giving consent.

Sexual acts that may comprise forcible sex offenses are:

- a) Forcible rape, comprising 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 that person's consent.
- b) Forcible sodomy, comprising oral or anal sexual intercourse with another person, forcibly, and/or against that person's will (non-consensually), or not forcibly or against the person's will in instances in which that person is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
- c) Sexual assault with an object, which occurs when an object or instrument is used to penetrate, however slightly, the genital or anal opening of the body of another person, forcibly, and/or against that person's will (non-consensually), or not forcibly or against the person's will in instances in which that person is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

- d) Forcible fondling, comprising the touching of the private body parts of another person (buttocks, groin, breasts), for the purpose of sexual gratification, forcibly, and/or against that person's will (non-consensually), or not forcibly or against the person's will in instances in which that person is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

Examples of forcible sexual assault include non-consensual sexual activity that is forcefully imposed on another person (i.e., rape or any type of sexual act without consent), unwanted rough or violent sexual activity, and physical contact that is non-consensual (i.e. touching, grabbing, kissing, oral sex, etc.).

Sexual acts that may comprise non-forcible offenses are:

- a) Incest, which is non-forcible sexual intercourse, between persons who are related to each other, within the degrees wherein marriage is prohibited by Ohio State law
- b) Statutory rape, which is non-forcible sexual intercourse, with a person who is under the statutory age of consent of 16 years of age

2.2.4 Dating violence

Dating violence is defined as:

- a) Conduct that is based on sex,
- b) committed by a person,
- c) who is in or has been in a social relationship of a romantic or intimate nature with the person experiencing the alleged conduct. The existence of such a relationship shall be determined based on that person's statement and factors such as the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse (hitting, punching, pinching, kicking, pushing, and shoving). Dating violence also includes conduct that does not involve physical violence, such as physical, sexual, emotional, economic, or psychological actions or threats of actions that influence another person. This includes any behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure, or wound someone. Threats may be made against a person, their possessions (car, computer, phone), pets, children or others about whom they care. Dating violence includes undermining an individual's sense of self-worth and/or self-esteem through constant criticism, diminishing one's abilities, name-calling, or damaging one's relationship with peers; making or attempting to make an individual financially dependent by maintaining total control over financial resources, withholding one's access to money, or forbidding one's attendance at school or employment; causing fear by intimidation; threatening physical harm to self, partner, children, or partner's family or friends; destruction of pets and property; and forcing isolation from family, friends, or school and/or work.

Dating violence does not include acts covered under the definition of domestic violence.

2.2.5 Domestic violence

Domestic violence is defined as:

- a) conduct that is based on sex
- b) committed by a current or former spouse or intimate partner of the person experiencing the violence

- c) by a person with whom the person experiencing the violence shares a child in common, or is cohabitating, or has cohabitated with
- d) as a spouse or intimate partner, or by a person similarly situated to a spouse under the domestic or family violence laws of the State of Ohio or
- f) by any other person against an adult or youth who is protected from that person's acts under the domestic or family violence laws of the State of Ohio.

For examples of domestic violence, see the examples of dating violence, above.

2.2.6. Stalking

Stalking is defined as:

- a) engaging in a course of conduct
- b) on the basis of sex
- c) directed at a specific person, which would cause a reasonable person to
 - i) fear for the person's safety, or the safety of others or
 - ii) suffer substantial emotional distress.

Examples of stalking include repeated, unwanted phone calls, texts, messages, etc. that may or may not be threatening; creating fake profiles to continue contacting a person after they have been blocked on their personal account; observing, following or "coincidentally" showing up wherever the person goes; waiting outside of the person's class, home, job, car, etc.; leaving notes, gifts or other items for the person; spreading rumors online and in person; posting messages or images of the person on social media or in discussion groups; vandalism or destruction of property, including sabotaging schoolwork; breaking into the person's home or car; hacking into the person's social media, email or other accounts; collecting information about the person through friends, family members, coworkers or acquaintances; and contacting other people in order to gain information about how to access them.

2.2.7 Sexual Exploitation

Sexual exploitation occurs when a person:

- a) Takes non-consensual or abusive sexual advantage of another
- b) for their own benefit or
- c) for the benefit of anyone other than the person being exploited and
- d) that conduct does not otherwise constitute sexual harassment under this Policy.

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) Invasion of sexual privacy
- c) 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 revenge pornography
- d) Prostituting another person
- e) Engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or a sexually transmitted disease (STD) or infection (STI), without informing the other person of the infection

- f) 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 nonconsensual sexual activity
- g) Misappropriation of another person's identity on apps, websites, or other venues designed for dating or sexual connections
- h) 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
- i) Knowingly soliciting a minor for sexual activity
- j) Engaging in sex trafficking
- k) Creation, possession, or dissemination of child pornography
- l) Extortion, sextortion, and/or blackmail relating to the threatened disclosure of pictures or videos of sexual activity, or information or other action related to sex or sexual activity.

2.3 Other defined terms

2.3.1 Actual knowledge

Actual Knowledge means that an employee, student or third person has informed the Title IX Coordinator, the Office for Equity or other Official with Authority that a member of the CWRU community may be experiencing sex discrimination or retaliation for exercising rights under this Policy, or engaging in sex discrimination or retaliation.

2.3.2 Adverse action

An adverse action is a change to a person's academic or employment situation sufficient to cause a reasonable student or employee to be dissuaded from exercising rights granted to that person by this Policy. Examples of "adverse actions" include a bad grade or bad evaluation, not being invited to a social or professional or academic engagement that all similar students or employees are invited to, threats relating to employment or the academic program ("I will have you dismissed from this program"), transferring a person to a new position or new research project that nominally decreases the employee's or student's opportunities or career prospects, talking about the student or employee to others who are not an appropriate audience, and sharing private information about the student or employee to persons who do not need to know that information.

2.3.3 Advisor

An advisor is someone chosen by the person who experienced sexual harassment or is accused of violating this Policy or appointed by CWRU to accompany a person to meetings related to the processes described in this Policy, advise that person on that process, and question the other party at a Process A hearing, if any. An advisor supports a party as requested by the party and consistent with the role of an advisor.

2.3.4 Based on sex or gender

In section 2.1, "based on sex or gender" refers to when alleged conduct occurs because of a person's biological status as male or female. In section 2.2, "based on sex or gender" refers to conduct that occurs because of a person's status as male or female, or that person's gender identity or expression.

2.3.5 Business day

A business day is a day on which CWRU is open for business, whether or not classes are held that day.

2.3.6 Coercion

Coercion is unreasonable pressure for sexual activity.

Badgering a person to engage in sexual activity can, in some circumstances, become coercive. Once someone makes clear that they do not want to engage in sexual activity, that they want to stop engaging in sexual activity, or that they do not want to go past a certain point of sexual activity, continued pressure beyond that point can be coercive.

Power relationships, where a person has authority or power over another, may become coercive. Because of the asymmetry of these relationships, “consent” may be difficult to assess, may be deemed not possible, and may be construed as coercive. Such relationships have the potential to result in claims of sexual harassment. For more information, see the [Relationship Management Policy](http://www.case.edu/equity) at <http://www.case.edu/equity>.

2.3.7 Consent

Consent is knowing, voluntary, and clear permission by word or action to engage in sexual activity. Since individuals may experience the same interaction in different ways, it is the responsibility of every person to continually determine that the other has consented prior to engaging in sexual activity.

If consent is not clearly provided prior to engaging in sexual activity, consent may be ratified by word or action during the interaction or after it, but clear communication from the outset is strongly encouraged.

Consent requires a clear expression by words or actions that a person has consented to specific sexual conduct with another person. Reasonable reciprocation can be implied. For example, if one person kisses another, that person may kiss the first person back, if desired, without the need to explicitly obtain consent to being kissed back.

Consent may be withdrawn at any time after consent is given by clearly communicating that withdrawal in a manner which a reasonable person would understand as a withdrawal of consent. Sexual activity should cease immediately following the withdrawal of consent.

Consent to some sexual contact (such as kissing or fondling) is not consent for other sexual activity (such as intercourse). The existence of a current or previous sexual relationship does not constitute consent for sexual activity.

When a person reports that another violated this Policy by engaging in sexual activity without consent, no Policy violation is established unless and until a decisionmaker finds by a preponderance of the evidence that the sexual activity occurred without consent or the respondent accepts responsibility. 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 relationship between the persons involved and the context in which the alleged incident occurred.

Consent is absent if a person’s ability to resist or give consent is incapacitated because of mental illness, physical condition, the influence of drugs or alcohol, and/or a significant age or perceived power or authority differential between the people involved in the sexual interaction.

2.3.8 Course of conduct

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.

2.3.9 Complainant

The complainant is a person who may have experienced sexual discrimination or retaliation that violates this Policy.

2.3.10 Confidential resource

A Confidential Resource is a CWRU employee who is not a Responsible Employee. Confidential Resources are not required to share information with the Office for Equity when they learn that a member of the CWRU community may have experienced sex discrimination or retaliation prohibited by this Policy. A list of Confidential Resources is under section 3.1.4 of this Policy.

2.3.11 CWRU community

The CWRU community includes, but is not limited to, students, student organizations, post-doctoral fellows and scholars, faculty, administrators, staff, and third parties such as guests, visitors, volunteers, invitees, and campers.

2.3.12 Decision maker

The investigator or other person who determines if sex discrimination in education or employment, or retaliation, occurred and if so, the remedies, including sanctions.

2.3.13 Education program or activity

An education program or activity means locations, events or circumstances where CWRU exercises substantial control over the person accused of violating this Policy and the context in which the reported sexual harassment occurs, and includes any building owned or controlled by a student organization that is officially recognized by CWRU.

2.3.14 Evidence

- a) *Directly related evidence* is evidence directly related to the allegations in the formal complaint, including inculpatory and exculpatory evidence obtained during the investigation, whether obtained from a party or other source. This includes evidence that the hearing panel will not rely upon when reaching a determination regarding responsibility.
- b) Relevant evidence is all evidence that is related to the incident(s) described in the formal complaint and which tends to prove or disprove the allegations in the formal complaint. Relevant evidence includes both exculpatory (evidence that proves that the person accused of violating this Policy is not responsible for doing so) and inculpatory (evidence that proves that the person accused of violating this Policy may have done so).
- c) Irrelevant evidence is not relied upon in reaching a determination of responsibility and includes (i) a party's medical, psychiatric, or psychological treatment records without the party's prior written consent; (ii) information protected by a legal privilege unless specifically waived by the party to whom it attaches; and (iii) evidence of a complainant's sexual predisposition or prior sexual behavior, unless the evidence is offered to prove that someone other than respondent committed the conduct alleged by complainant, or the evidence concerns specific incidents of the complainant's prior sexual behavior with the respondent and are offered to prove consent.

2.3.15 Formal complaint

A formal complaint is a description of allegations that will be investigated pursuant to this Policy that the person experiencing the alleged conduct has approved in writing as accurately reflecting their experience. The Title IX Coordinator can also issue a formal complaint and initiate an investigation in the absence of a complainant.

2.3.16 Impacted by sex discrimination or retaliation

A person who is impacted by sex discrimination or retaliation has either experienced or is experiencing this alleged conduct, or is or was accused of engaging in that conduct, and that person's experience has the potential to negatively impact the person's academic or professional success.

2.3.17 Incapacitation

Incapacitation occurs when a person cannot make rational, reasonable decisions to consent to sexual activity. A person is incapacitated when they are not able to understand the "who, what, when, where, why or how" of the sexual interaction. Whether a person is incapacitated is based on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances, including the relationship between the parties and the context in which the alleged incident occurred. Incapacity may result from a temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the consumption of incapacitating drugs, alcohol, and other substances.

It is a defense to an alleged Policy violation that the person accused neither knew nor had reason to know that the person reporting the sexual harassment was physically or mentally incapacitated, and unable to consent. It is not an excuse that the person accused of the alleged conduct was intoxicated and, therefore, did not realize that the person reporting the sexual harassment was incapacitated, and unable to consent. The question of whether the respondent should have known of the incapacity of the complainant is an objective question about what a reasonable person, exercising sober, good judgment, would have known in the same or similar circumstances.

2.3.18 Outcome

The outcome is a conclusion by the preponderance of the evidence that the alleged conduct occurred or did not occur, and did or did not violate this Policy.

2.3.19 Protected activity

Protected activity means that a person has made a report or complaint, provided information, assisted, or participated or refused to participate in any manner in an investigation, proceeding or hearing under this Policy.

"Protected activity" under this Policy includes reporting an incident that may implicate this Policy, participating in a Process described in this Policy, supporting a person who has reportedly experienced sexual harassment or who is accused of engaging in that conduct, assisting in providing information relevant to an investigation, and/or acting in good faith to oppose conduct that constitutes or may constitute a violation of this Policy. Other examples of protected activity include sharing information, including anonymously, with the Office of Equity about sex discrimination, stating that a person will report to the Office of Equity, telling someone that they are discriminating against a person based on sex, requesting an accommodation, disagreeing with someone about the implementation of an accommodation, encouraging another person to share information with the Office of Equity, and refusing to do something because it is harassing or discriminatory.

2.3.20 Reasonable person

Reasonable person means a reasonable person under similar circumstances and with similar identities to the person experiencing the alleged conduct.

2.3.21 Remedies

Remedies are implemented after there is a determination that a member of the CWRU community is responsible for violating this Policy to address safety concerns, stop the conduct, prevent it from happening again, and restore access to CWRU's educational program, if needed.

2.3.22 Respondent

The respondent is a person who is reported to have violated this Policy by engaging in sex discrimination or retaliation, and who is a student, faculty member, staff member or post doctoral scholar or fellow.

2.3.23 Responsible employee

A responsible employee is an employee of CWRU who is required to share with the Office for Equity information that a member of the CWRU community may be experiencing sex discrimination or retaliation.

2.3.24 Retaliation

Retaliation occurs when a person takes an adverse action against a person who engaged in protected activity because of that person's protected activity.

2.3.25 Sanction

A sanction means a consequence imposed by CWRU on a person who is found to have violated this Policy. Sanctions that may be imposed upon students, employees, or organizations, include but are not limited to those listed below.

- a) Student and Student Organization Sanctions
 - i. Disciplinary Warning
 - ii. Disciplinary Probation
 - iii. Separation from the University
 - iv. Expulsion from the University
 - v. Required Education and Training
 - vi. Organizational Sanctions, such as loss of recognition or the right to host events
 - vii. Community Service
 - viii. Restitution
 - ix. Rehabilitation
 - x. Restriction (temporary or permanent loss of use of CWRU facilities or services or access to extracurricular activities or other opportunities)
 - xi. Withholding Diploma and/or delaying degree conferral
 - xii. Revocation of Degree
 - xiii. Other actions: In addition to or in place of the above sanctions, CWRU may assign any other sanctions as deemed appropriate.
- b) Employee and Postdoctoral Fellow and Scholar Sanctions:
 - i. Warning: Written or Verbal
 - ii. Performance Improvement Plan
 - iii. Demotion
 - iv. Required Counseling
 - v. Probation
 - vi. Loss of oversight or Supervisory Responsibility

- vii. Required Education and Training
- viii. Loss of Annual Pay Increase
- ix. Suspension with pay
- x. Suspension without pay
- xi. Termination
- xii. Other Actions: In addition to or in place of the above sanctions, CWRU may assign any other sanctions as deemed appropriate.

The sanctions described in this Policy section do not preclude and may be in addition to other actions taken or sanctions imposed by other offices at CWRU and/or authorities external to CWRU. Sanctions may impact the visa status of the person found responsible for a Policy violation.

2.3.26 Supportive measures

Supportive measures are offered to support a person who may have experienced sex discrimination or retaliation, or who is accused of violating this Policy. Supportive measures are non-disciplinary, non-punitive individualized services, and supports offered as appropriate and reasonably available, and without fee or charge to restore or preserve access CWRU's education program or activity, including measures designed to protect the safety of a member or members of the CWRU community, and/or deter sex discrimination and/or retaliation.

2.3.27 Substantial emotional distress

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

2.3.28 Trained pool

The trained pool consists of students, post-doctoral fellows and scholars, faculty and staff who have been trained on this Policy to serve as a hearing or appeal panel member or chair, or as an advisor.

2.3.29 Witness

A witness is a person who may have information about an incident of sex discrimination or retaliation involving others. Witnesses may be required to provide information and participate in an investigation or hearing held pursuant to this Policy. This requirement does not apply to parties, including a person who may have experienced conduct prohibited by this policy, but who chooses not to participate in the process.

2.3.30 Written notice

Written notice means by email or other appropriate method of communication. This Policy assumes that communications reach their intended recipient. All persons contacted in writing pursuant to this Policy are required to regularly check their CWRU email.

SECTION 3: REPORTING

3.1 Reporting to CWRU

CWRU provides multiple pathways through which persons who may have experienced sex discrimination or retaliation or may be alleged to have engaged in that conduct, are able to share information about their experience, and obtain support. Specifically, persons impacted by sex discrimination or retaliation, or who

want to share information about another person's experience, may contact the Office of Equity, the Title IX Coordinator, a responsible employee, a confidential resource, or report through an [anonymous reporting pathway](#).

3.1.1 Reporting to the Title IX Coordinator

Title IX of Education Amendments of 1972 ("Title IX") prohibits discrimination based on sex, including sexual harassment, in education programs that receive federal funding. The Title IX Coordinator is responsible for implementing Title IX at CWRU. This includes providing support to anyone impacted by sex discrimination or retaliation. The Title IX Coordinator is also responsible for implementing the procedures in this Policy so that all persons are treated fairly and with respect.

Members of the CWRU community and others should direct questions about the implementation of Title IX to situations impacting the CWRU community and its educational programs and activities to the Title IX Coordinator.

The Title IX Coordinator is:

Rachel E. Lutner, J.D.

Senior Associate Vice President for Equity

University Title IX Coordinator

Section 504 Coordinator

Dental Research Building, Suite 0G60

2124 Cornell Road

Cleveland, OH 44106

216-368-3066

rachel.lutner@case.edu

cell (text or call) 312-504-1786

<http://www.case.edu/equity/>

3.1.2 Reporting to the Office of Equity

Persons who are impacted by sex discrimination or retaliation, or who know of others impacted by sex discrimination or retaliation, and who are seeking support for themselves or others, may share information with the Office of Equity by telephone, email, or text, in-person with or without an appointment during regular business hours, or through an online form. The contact information for the Office of Equity is:

Main Office Phone: 216.368.3066

216.327.4160 (text or call the Title IX Coordinator) or rachel.lutner@case.edu

Email: titleix@case.edu

[Online form to request support](#)

[Online form to request support as a CWRU guest](#)

[Webpages for more information](#)

Campus Location: Dental Research Building, Suite G60

2124 Cornell Road, Cleveland, OH 44106

Mailing Address: 10900 Euclid Ave., Cleveland, OH 44106-7108

3.1.3 Reporting to a responsible employee

Most CWRU employees¹ (faculty, staff, administrators, resident assistants, teaching assistants, graduate assistants, postdoctoral scholars and fellows, and orientation leaders) are required to promptly share, within one business day, information with the Office for Equity when they learn that a member of the CWRU community may be experiencing sex discrimination or retaliation, or has been accused of inflicting sex discrimination or retaliation on another person.

If a person who has experienced sex discrimination, including sexual harassment, wants CWRU to take action, or wants to be contacted about available options and support, that person should share information about their experience with a Responsible Employee (or with the Title IX Coordinator or Office of Equity as described above). The Responsible Employee will share information about a person's experience with the Office for Equity, which will contact that person to offer support, information, and resources.

When requested to do so, the Office of Equity will make an effort to honor requests from a Responsible Employee not to share with the person(s) impacted by sex discrimination or retaliation the name of the Responsible Employee making a report.

Generally, Responsible Employees are not required to share with the Title IX Coordinator disclosures that are made in climate surveys, classroom fiction writing assignments or discussions, human subjects research, or at events such as "Take Back the Night" marches or speak-outs. The Office for Equity is available to offer supportive measures in response to such disclosures.

The failure of a Responsible Employee to share information about sexual harassment or gender discrimination is a violation of CWRU Policy, a failure to properly execute job responsibilities, and/or meet performance expectations which may result in disciplinary action by CWRU.

3.1.4 Reporting to a confidential resource

Confidential resources offer options and resources without any obligation to share information with the Office for Equity. When speaking to a campus resource, students, faculty, staff, postdoctoral fellows and scholars, and others may ask the resource to identify if the resource is a Responsible Employee or a confidential resource.

CWRU provides the following confidential [resources](#):

- a) Licensed professionals in University Health & Counseling Services
- b) Advocate in the Mather Center for Women
- c) Interreligious Council on-campus members of the clergy/chaplains working within the scope of their license or ordination

Employees (including faculty, postdoctoral fellows and scholars, and staff) may access as a confidential resource the Employee Assistance and Work Life Program (IMPACT Solutions). Employees can find information about IMPACT Solutions on the CWRU Human Resources [webpages](#).

¹ This does not include part-time and seasonal employees.

Confidential resources employed by CWRU must inform a person impacted by sex discrimination and/or retaliation that the information provided to the confidential resource will not result in notice to the Office of Equity and/or the Title IX Coordinator, and, as a result, the Office of Equity will not reach out to offer support, information and resources. Confidential resources must also give the person disclosing their experience information about how to contact the Office of Equity and/or the Title IX Coordinator.

Confidential resources employed by CWRU must, where appropriate, provide CWRU with non-confidential, non-identifying, aggregated information indicating patterns of sexual harassment, such as multiple reports of sexual assault in the same location.

3.1.5. Reporting to CWRU law enforcement

CWRU encourages the timely reporting of all crimes and violations of this Policy so that people who need support receive it. Persons impacted by sex discrimination or retaliation are not required to report to law enforcement, the Office of Equity, or any other campus office. CWRU respects the rights of impacted persons to decide whether or not to report, and if so, where to report. Impacted parties may report criminal conduct to law enforcement. If the incident happened on CWRU property, a report may be made to the CWRU [Police Department](#). Contact information for the CWRU Police Department includes:

Emergency: 216.368.3333

Non-emergency: 216.368.3300

Tip Line: 216.368.3331

Email: publicsafety@case.ed

If the incident happened off campus, a report may be made to the corresponding local law enforcement agency or the CWRU Police Department, which will receive the report and assist the person making the report connect with the appropriate law enforcement agency.

The CWRU Police Department can assist victims by arranging for a sexual assault nurse examination designed to obtain admissible evidence if/when the impacted party desires prosecution through the criminal justice system.

The CWRU Police Department shares information about reports of conduct that might violate this Policy with the Title IX Coordinator within one business day of receiving such reports so that the Title IX Coordinator can reach out to offer support and options to persons impacted by sex or gender-based discrimination or harassment. Persons impacted by sex or gender-based discrimination or harassment may request support from the Office of Equity whether or not a report has been made to law enforcement.

Reports to the CWRU Police can initiate the criminal justice process by which a person who engaged in conduct that violates criminal law may be held responsible for their behavior. A report to the Office of Equity pursuant to this Policy initiates an administrative process in which a person whose conduct violated this Policy may ultimately be issued a sanction that impacts their ability to continue to be an employee, a postdoctoral fellow or scholar, or a student at CWRU, and under what conditions. Proceedings under this Policy will not be dismissed or delayed for reasons relating to a pending criminal prosecution arising from the same facts as those on which an administrative process pursuant to this Policy is based.

3.1.6 Reporting to CWRU anonymously

Persons with information that a member of the CWRU community is impacted by sex discrimination or retaliation may report what they know to the Office of Equity anonymously at this link: [Online form for CWRU community members to report anonymously](#)

3.2 Reporting to civil rights agencies

Reports may also be directed to the Office of Civil Rights, United States Department of Education, <http://www.ed.gov/about/offices/list/ocr/index.html>. Individuals experiencing harassment or discrimination also always have the right to file a formal grievance with the government authorities:

Office of Civil Rights (OCR)
400 Maryland Avenue, SW
Washington, DC 20202-1100
Customer Service Hotline#: 1-800-421-3481
TDD: (877) 521-2172
Fax: (202) 453-6012
Email: OCR@ed.gov

Office for Civil Rights
U.S. Department of Health and Human Services
233 N. Michigan Ave., Suite 240
Chicago, IL 60601
Customer Response Center: (800) 368-1019
Fax: (202) 619-3818
TDD: (800) 537-7697
Email: ocrmail@hhs.gov

3.3 Off campus supportive resources

There are supportive resources in the Cleveland area and nationally that are available to members of the CWRU community. Some of those resources are listed below.

- [Cleveland Rape Crisis Center](#): 24-Hour hotline for support and information at [216.619.6192](tel:216.619.6192), [chat online](#), or call the main office at [216.619.6194](tel:216.619.6194).
- [Journey Center \(formerly Domestic Violence and Child Advocacy Center\)](#)
- [Cleveland Planned Parenthood](#)
- [Preterm](#)
- [Ohio Alliance to End Sexual Violence](#): 1.844.6446.4357
- [Frontline Services](#): 24-hour hotline 216.623.6888
- [NAMI of Greater Cleveland](#): 216.875.7776
- [Ohio Crime Victims Rights Toolkit](#)
- [Ohio Domestic Violence Network](#)
- [Safe at Home Ohio](#) - Address confidentiality program

National Resources

- [Circle of 6 Phone App](#)
- [National Sexual Assault Hotline](#): 24-hour hotline 1.800.656.4673
- [National Domestic Violence Hotline](#): 24-hour hotline 1.800.799.7233
- [Stalking Prevention Awareness and Resource Center](#)
- [NSVRC](#)

- [Trevor Project](#)
- [ItsOnUs.Org](#)

3.4 Time and other limits on reporting

There is no time limitation on providing notice pursuant to this Policy that sex discrimination or retaliation has or may have occurred or is occurring. Allegations about a person who is no longer enrolled at or employed by CWRU may be impossible to effectively investigate, or beyond the jurisdiction of this Policy. Any person sharing an experience of sex discrimination or retaliation is eligible for appropriate support, even when the person accused of violating this Policy is no longer enrolled at or employed by CWRU.

3.5 Federal statistical reporting and timely warning obligations

Pursuant to the Clery Act, CWRU 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. In compliance with the Clery Act (Campus Crime Statistics Act), Designated Reporting representatives, and/or Campus Security Authorities report to CWRU Police incidents of sex discrimination that constitute a crime.

3.6 Preservation of evidence

Persons experiencing sex discrimination may choose to undergo a medical exam to collect and preserve evidence. It is advisable to undergo a medical exam as soon after the incident as possible. The Office of Equity, CWRU Police Department and the Advocate in the Mather Center for Women are available to assist members of the CWRU community with accessing a medical examination to preserve evidence.

SECTION 4: PROCESS A (TITLE IX SEXUAL HARASSMENT)

4.1 Application

This Section 4 (Process A) applies only to alleged conduct that constitutes Title IX Sexual Harassment as defined in Section 2.1. Before, during and after the completion of the investigation report, the Title IX Coordinator will determine whether the alleged conduct constitutes Title IX Sexual Harassment in order to determine if this Section 4 applies.

4.2 Initial response to reported sex harassment

4.2.1 How to initiate an investigation

A person who may have experienced sexual harassment, and who reports their experience, may file a formal complaint to initiate the Process A investigation procedures.

4.2.2 Preliminary response to report

The Title IX Coordinator will determine the appropriate preliminary response to each report based on the information available at the time of the report and, whenever possible, with the input of the person who may have experienced sexual harassment. When the Title IX Coordinator receives a report about possible sexual harassment in violation of this Policy, the Office of Equity will assess next steps, which may include:

- a) Contacting the person reportedly experiencing conduct that violates this Policy, and/or the person who may have engaged in that alleged conduct, to share information about their rights and options under this Policy, including how to file a formal complaint, the steps in an investigation, and what a hearing might look like

- b) Determining if the person reportedly experiencing the alleged conduct that violates this Policy wants to file a formal complaint against the person who reportedly engaged in that alleged conduct
- c) Offering and implementing appropriate supportive measures requested by either party
- d) Conducting a preliminary evaluation as appropriate, to determine if the reported conduct falls under this Policy, and if so, whether it falls under Process A described in this Section 4
- e) Advising the person reportedly experiencing the alleged conduct of their right to make a report to the appropriate law enforcement agency
- f) Assessing whether Emergency Removal or other actions are necessary to ensure the safety of the CWRU community or specific persons in that community
- g) Separately advising the person who reported experiencing the sexual harassment and the person accused of it, of the right to an advisor, and offering to provide an advisor to each party

4.3 Filing a formal complaint

4.3.1 Formal complaint by person experiencing sexual harassment

A person who may have experienced alleged conduct that violates this Policy may file with the Title IX Coordinator a formal complaint alleging sexual harassment in person, by electronic mail or telephone, or through an [online form](#).

4.3.2 Formal complaint by Title IX Coordinator

In the alternative, the Title IX Coordinator may initiate a formal complaint to protect the CWRU community or one or more specific members of that community. If the Title IX Coordinator initiates a formal complaint, the Title IX Coordinator is not a complainant or a party, and the person reporting alleged sex discrimination may be treated as a witness within these grievance procedures.

The decision of the Title IX Coordinator to file a formal complaint is based on various factors including, but not limited to, the type of actions alleged in the report, prior reports received about the same alleged conduct or the person alleged to have engaged in the alleged conduct, the potential for repeated behavior, the impact of the alleged conduct on the CWRU community, and/or the potential on-going risk to person who reportedly experienced the alleged conduct that may violate this Policy.

4.3.3 When the complaint doesn't allege sexual harassment

If the Title IX Coordinator determines that the formal complaint does not allege conduct that constitutes sexual harassment as defined in this Policy, the Office of Equity will refer the person making the formal complaint to other office or university policies that may be better positioned to support that person, and take no further action on the formal complaint.

4.3.4 Withdrawal of formal complaint

Once a formal complaint is filed, the person reportedly experiencing the sexual harassment may withdraw it, but the investigation may still proceed at the discretion of the Title IX Coordinator.

4.3.5 Consolidation of two or more formal complaints

The Office of Equity may, but is not required to, consolidate two or more formal complaints into a single investigation and/or hearing, if they identify the same person as the one engaging in alleged conduct that may violate this Policy, or where the allegations arise out of the same facts or circumstances.

4.4 Mandatory and permissive dismissal of formal complaint from Process A

4.4.1 Mandatory dismissal

The Title IX Coordinator must dismiss from this Process A any formal complaint or any allegations in it if, at any time during the investigation or hearing, it is determined that:

- a) The alleged conduct does not constitute Title IX sexual harassment as defined in Section 2.1, above, even if proven, and/or
- b) The alleged conduct did not occur in an educational program or activity controlled by the CWRU (including buildings or property controlled by recognized student organizations), and/or CWRU does not have control of the person accused of the conduct, and/or
- c) The alleged conduct did not occur against a person in the United States, and/or
- d) At the time of filing the formal complaint, the person reporting the sexual harassment is not participating in or attempting to participate in the education program or activity of CWRU.

4.4.2 Permissive dismissal of a formal complaint

CWRU may dismiss from this Process A any formal complaint or allegations in it if, at any time during the investigation or hearing:

- a) The person reporting the Title IX sexual harassment notifies the Title IX Coordinator in writing that they withdraw, in whole or in part, the formal complaint or allegations in it
- b) The person accused of violating this Policy is no longer enrolled in an academic program at or employed by CWRU
or
- c) Specific circumstances prevent CWRU from gathering evidence sufficient to reach a determination as to whether a violation of this Policy occurred.

The Title IX Coordinator will promptly advise the parties of any dismissal. This dismissal decision is appealable by any party under the procedures in the appeal section of this Policy.

4.4.3 When a complaint may be refiled

Dismissing a formal complaint from Process A does not prevent the Title IX Coordinator from refiling it pursuant to an alternative appropriate, available process, such as Process B (see Section 5 of this Policy).

4.5 Investigation

4.5.1 Notice of the investigation and allegations

The Office for Equity will advise any person who is accused of violating this Policy that a preliminary evaluation of a formal complaint will be conducted before the investigation begins. The Title IX Coordinator will provide a written Notice of the Investigation and Allegations (NOIA) to the person accused of violating this Policy, and the person who reportedly experienced the sexual harassment.

The NOIA will include:

- a) A meaningful summary of the allegations
- b) The identity of the person(s) accused of violating this Policy and the person(s) who reportedly experienced the sexual harassment
- c) The precise violations of this Policy to be investigated
- d) The date and location of the alleged incident(s) (if known)

- e) A description of the applicable procedures
- f) A statement identifying the potential sanctions/responsive actions that could result if the allegations in the formal complaint are substantiated
- g) Information that the persons receiving the NOIA are permitted to obtain an advisor, information about how to obtain an advisor, and that a party may be required to obtain an advisor for a future hearing
- h) A statement that CWRU presumes that the person accused of violating this Policy is considered “not responsible” for doing so
- i) A statement that determinations of responsibility are made at the conclusion of a live hearing at which the hearing panel members will use the preponderance of the evidence (more likely than not) standard
- j) Notice that the parties will each be given an equal opportunity to share information with the investigator, including providing evidence to be considered in the investigation, and the names of witnesses that should be contacted by the investigator
- k) Notice that the Parties will be given an opportunity to inspect and review the evidence obtained during the investigation before the final Investigation report is issued
- l) A statement that retaliation is prohibited
- m) A statement that this Policy prohibits knowingly making false statements or submitting false information during the investigation
- n) Information that any person needing accommodations based on disability or other reasons may request them, and reasonable accommodations will be provided
- o) A link to this Policy
- p) The name(s) of the investigator(s) and a description of the process for asserting that the investigator has a known bias or conflict of interest

The Title IX Coordinator may amend and/or update the NOIA as the investigation progresses and more information becomes available.

4.5.2 Assignment of investigator(s)

On receipt of a formal complaint, the Title IX Coordinator will assign one or more investigator(s), known as Equity Specialists and Investigators, to investigate it.

For good reason, including concerns about bias or a conflict of interest, complexity or size of the investigation (e.g. number of persons impacted by sex discrimination), workload in the Office of Equity, or to ensure an effective investigation, the Title IX Coordinator may assign an investigator from outside of the Office of Equity or CWRU to investigate a formal complaint and will inform the parties that the Title IX Coordinator has done so.

4.5.3 Response to a formal complaint

Following receipt of the NOIA, the person reported to have violated this Policy may meet with the investigator to respond to the allegations in the formal complaint or respond in writing to the formal complaint. The investigation will continue even if the person accused of violating this Policy elects not to

respond to the allegations in the formal complaint, provide evidence or answer questions related to the investigation.

4.5.4 Cross claims

A person's status as a respondent does not prohibit them from filing a complaint in good faith against anyone who has subjected them to sex discrimination. Cross claims reported in good faith will be investigated at the same time as the allegations in the NOIA or after the preliminary evaluation is complete, and/or as part of the same investigation or a separate investigation. The NOIA will be updated and shared with both parties if the investigation expands to include additional allegations.

4.5.5 Investigation process

The investigation of the formal complaint will begin when the NOIA is sent to the parties.

- a) The investigator(s) will attempt to gather evidence and interview each party and any witnesses they identify, including conducting follow up interviews.
- b) Interviews of parties and witnesses will be conducted in person or by phone or video conference, at the discretion of the investigator.
- c) The investigator may audio or video record interviews with parties and/or witnesses. All persons in the meeting where the recording is occurring will be informed in advance of the audio and/or video recording. No unauthorized audio or video recording is permitted.
- d) Both parties will be provided equal opportunity to present witnesses and other evidence.
- e) Both parties will be provided equal opportunity to inspect and review the evidence obtained during the investigation, whether the evidence was obtained from a party or other source.

4.5.6 Witnesses must participate

Witnesses who are employees or postdoctoral fellows or scholars of the university are required to cooperate with and participate in the investigation. Failure to do so may constitute a violation of performance expectations or CWRU Policy, including this Policy.

Students who are witnesses may not refuse to participate in an investigation or hearing or decline to provide information about reported sex discrimination or retaliation when asked to do so. Failure to do so may constitute a violation of a CWRU directive, which is a violation of the Student Code of Conduct, or a violation of this Policy. This requirement does not apply to a person who may have experienced conduct prohibited by this Policy, or a person who is accused of violating this Policy, and who chooses not to participate, or participate in only a limited way, in the investigation and/or hearing procedures.

4.5.7 Evidence

The following types of evidence are not relevant and will not be used to assess whether a violation of this Policy has occurred: (i) information protected by a legally recognized privilege, unless waived, (ii) evidence about the prior sexual history (subject to the exceptions below) of a person who may have experienced alleged conduct that constitutes sexual harassment, (iii) and any party's medical, psychological and similar records, unless the party has given voluntary, written consent to use that information in a process pursuant to this *Policy*. With respect to (ii) above, questions and evidence about a person's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence are offered to prove that someone other than the person accused of violating this Policy committed the alleged conduct, or address the parties' prior sexual behavior with one another and are offered to prove consent.

The investigator(s) will not meet with witnesses who lack personal knowledge of the factual event(s) from which the allegations stem and, instead, have information about the character or qualities of one or more parties.

Information provided by expert witnesses will be included in the investigation report, but the investigator may but is not required to meet with the expert witness.

4.5.7.1 Evidence of other policy violations by the respondent

The fact of additional reports of sex discrimination by the respondent occurring within a given program or activity does not by itself demonstrate or imply that the respondent engaged in sex discrimination of the complainant. The fact of reports of violations of No Contact Directives or reports of retaliation by the respondent does not by itself demonstrate or imply that the respondent engaged in sex discrimination of the complainant. Additional reports of sex discrimination, reports of violations of No Contact Directives or allegations of retaliation learned during a pending investigation will be investigated at the same time as the allegations in the NOIA, after the preliminary evaluation is complete, and/or as part of the same investigation or a separate investigation as determined by the Title IX Coordinator.

4.5.8 Inspection of evidence and Investigation report

- a) Following completion of the investigation, the investigator will prepare a draft investigation report which will summarize all relevant and directly related interviews and evidence.
- b) Prior to finalizing the investigation report, the investigator(s) will share, through a secure electronic sharing method, with each party and their advisor, if any, a draft of the investigation report and all relevant and directly related evidence obtained as part of the investigation.
- c) The parties will be given ten (10) business days to review the draft report and evidence, and the opportunity to provide a written response before the investigator finalizes the investigation report.
- d) The investigator(s) will consider the responses from the parties, and incorporate the responses into the final investigation report.

4.5.9 Investigation timeline

CWRU seeks to resolve all investigations as promptly as reasonably possible, while also providing time for parties to prepare, obtain an advisor, manage academic, work or other obligations, process related events, and manage the stress and concerns relating to the matter under investigation.

An investigation pursuant to this Policy may include the following stages: preliminary evaluation, investigation, report writing and review. The time frames for those stages provided below are estimates, and time frames may be extended for good cause as necessary to ensure the integrity and completeness of the process. Good cause reasons for extending the time frames estimated below include, but are not limited to, compliance with a request from law enforcement; the availability of the parties, their advisors, or witnesses; and/or the complexities of the investigation, including number of witnesses and the volume of information provided by the parties, whether there is a cross-complaint or allegations of retaliation, and the extent of the alleged conduct.

- a) The preliminary evaluation described in 4.2.2 may take up to ten (10) business days.
- b) The investigation described in 4.5.5 may take up to 20 business days.
- c) Preparing the draft of the investigation report described in 4.5.8 may take up to 10 business days.
- d) The parties have at least 10 business days to review the draft investigation report and evidence, and respond to these materials in writing by submitting the response to the investigator.

- e) The parties have at least 10 business days to review the final investigation report and evidence before participating in a hearing to determine responsibility.

Parties frequently provide additional information to the investigator in a nonlinear manner, including after the investigation is complete. When either party identifies additional witnesses or provides additional documents, the investigator will interview those witnesses, subject to the provisions in this Policy, or review those documents. Such follow-up may take five (5) business days each time new information is provided, and it may extend the investigation timeline. No party may provide information in a nonlinear manner as a means of slowing the progress of an investigation.

The Title IX Coordinator will communicate with the parties at each stage of the process and will provide concurrent notification to the parties when estimated timelines above cannot be met, along with an estimate of the time required to complete that stage. The Title IX Coordinator will grant requests for extensions of time with the goal of achieving a fair and equitable process for the persons involved.

4.6 Hearing

4.6.1 Referral for hearing

After the final investigation report is shared with the parties, the Title IX Coordinator will refer allegations to a hearing, unless the investigation report indicates dismissal is required pursuant to section 4.4.1.

4.6.2 Selection of hearing panel members

The Title IX Coordinator will select a three-member hearing panel from the trained pool. The Title IX Coordinator will designate one member of the hearing panel as the chair of the hearing panel.

4.6.3 Composition of the hearing panel

No panel member will have participated in the investigation.

The parties will be given the names of the panel members ten (10) business days in advance of the hearing so that they can raise with the Title IX Coordinator objections to any member of the hearing panel. Objections must be made within three (3) business days of receipt of the names of the hearing panel members. Panel members will only be removed if the Title IX Coordinator concludes that bias or conflict of interest precludes an impartial hearing.

The Title IX Coordinator may not serve on the hearing panel but may serve as the hearing facilitator, and may attend the hearing and observe to ensure the procedures in this Policy are followed.

4.6.4 Remote or in-person hearing

The Title IX Coordinator will determine if the hearing will occur in person or remotely. Hearings conducted remotely will use technology that enables the hearing panel and the parties to see and hear a party or witness who is answering questions.

4.6.5 Timing of the hearing

The hearing will occur at least ten (10) business days after the final investigation report is transmitted to the parties. The only exception is if the hearing panel and the parties agree to an expedited timeline.

4.6.6 Notice of Hearing under Process A

No less than ten (10) business days prior to the hearing, the Title IX Coordinator will inform the parties of the date and time of the hearing. The notice of the hearing will contain:

- a) A description of the alleged violation(s), the provisions of the Policy reportedly violated, a description of the applicable procedures, and a statement identifying the potential sanctions and other actions that could be included in the hearing panel's decision
- b) The time, date, and location of the hearing, and whether it will be held in person or remotely
- c) A reminder that attendance is mandatory for witnesses and takes priority over all other campus activities
- d) Identification of the technology that will be used to facilitate the hearing, whether the hearing will be recorded, and a description of the parties' right to access to the recording after the hearing
- e) A list of everyone invited to attend the hearing, along with an invitation to object to any panel member on the basis of bias or conflict of interest
- f) A statement that, if any party or witness does not appear at the scheduled hearing, the hearing may continue in their absence
- g) A copy of all the materials provided to the hearing panel about the matter, unless previously provided to the parties
- h) An invitation to each party to submit to the chair of the panel an impact statement that the panel will review during any sanction determination
- i) An invitation to contact the Title IX Coordinator to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing, and that this request must occur at least seven (7) business days prior to the hearing
- j) A listing of other rules for the hearing.

Hearings may be held during academic calendar vacations and/or breaks, during the summer semester, and in a semester in which a party is not enrolled.

If the person accused of violating this Policy is a graduating student, a hold may be placed on that person's degree conferral until the matter is fully resolved (including any appeal) on the grounds that a student facing charges under this Policy may not be considered in good standing to graduate.

4.6.7 Single hearing for more than one complainant or respondent

A hearing may involve more than one person alleged to have experienced conduct prohibited by this Policy and/or more than one person who is accused of violating this Policy. If a hearing involves more than one person who is accused of violating this Policy, the Panel will make separate determinations of responsibility for each person with respect to each alleged Policy violation.

4.6.8 Pre-hearing meetings

The panel chair may convene a pre-hearing meeting or meetings, or otherwise communicate with the parties and the advisors, through which:

- a) A party may submit the questions they wish to ask at the hearing, so that the panel chair can determine if the questions are relevant.
- b) The panel chair and the parties may agree that certain witnesses do not need to attend the hearing.
- c) The panel chair may provide information that assists the parties and advisors with their preparation for the hearing.

Pre-hearing meeting(s) are not recorded.

4.6.9 The role of the parties' advisors at the hearing

All parties must be accompanied at the hearing by an advisor, who will question the other party, investigator(s), and witnesses. If a party attends the hearing without an advisor, the Title IX Coordinator will appoint an advisor for that party for the duration of the hearing.

4.6.10 Order of the hearing

The chair of the hearing panel will determine the order in which information is presented at the hearing. The chair of the hearing panel may permit the parties to present opening and/or closing statements. The investigator, parties, and witnesses will first answer questions from the panel members and then from each party, through each person's advisor. At the end of the hearing, the panel may ask the investigator and/or one or more parties' final questions.

4.6.11 Relevancy determinations

All questions asked by a person's advisor will first be assessed for relevancy by the chair of the hearing panel. The chair of the panel will explain any decision to exclude a question as not relevant, or require the question to be reworded to ensure relevancy.

The chair of the panel may disallow questions on the basis that they are irrelevant, unduly repetitious (and thus irrelevant) or abusive.

4.6.12 Hearing procedures

- a) The panel chair conducts the hearing and determines the order in which information is presented.
- b) The panel chair will introduce the participants at the beginning of the hearing.
- c) Any person asked questions during the hearing must respond to questions on their own behalf.
- d) Witnesses only attend the portion of the hearing during which they are asked to respond to questions from the panel and the parties, and then the witnesses are excused.
- e) The panel chair and/or the Title IX Coordinator will determine the impact of a refusal by a party or witness to answer a question, or to be unavailable to answer a question, on the use by the panel of information that party or witness might have provided.
- f) The panel is solely responsible for determining the credibility of the parties and the witnesses.
- g) Hearings (but not deliberations) are recorded by CWRU for purposes of review in the event of an appeal. No other recordings of the hearing are permitted. The panel, parties, advisors, and others deemed appropriate by the Title IX Coordinator may be permitted to review the recording and hearing transcript.

4.6.13 Deliberation, decision-making, and standard of proof

After the parties, investigator and witnesses have answered questions from the panel and the parties, they will be excused. Then the panel will deliberate privately to determine if the person accused of violating this Policy is responsible or not responsible for violating the Policy. A simple majority vote of the three-member hearing panel is required for the panel to conclude that the person accused of sexual harassment violated this Policy.

The panel will apply the preponderance of the evidence standard of proof, meaning that no violation of this Policy may be found unless more than 50% of the evidence supports the conclusion that the person accused of sexual harassment more likely than not violated this Policy. During deliberations, the panel chair may consult the Title IX Coordinator if questions arise about the application of this Policy or process.

4.6.14 Outcome of the hearing – communication and timing

The panel chair will document the panel's findings for the Title IX Coordinator in a written statement detailing the panel's determination of whether this Policy was violated, rationale, evidence relied on by the panel to reach this determination, the evidence not relied upon, credibility assessments and sanctions. This determination must be submitted to the Title IX Coordinator within five (5) business days of the end of deliberations unless the Title IX Coordinator grants an extension. If an extension is granted, the Title IX Coordinator will notify the parties. Within five (5) business days of receiving the panel's statement documenting the deliberations, the Title IX Coordinator will simultaneously share with all parties the panel's determination in a letter stating the outcome of the hearing.

The outcome letter will:

- a) Identify each reported violation of this Policy considered by the panel
- b) State the procedural steps taken by CWRU in this matter
- c) Describe the investigation
- d) List the finding of the hearing panel as to each reported Policy violation considered by the panel and the facts that support each finding
- e) State the rationale for the determination as to each reported Policy violation;
- f) If appropriate, identify the sanctions issued and
- g) Include what remedies and supportive measures (if known) may need to be provided to the parties to maintain or restore access to CWRU's educational or employment opportunities or activities.

The outcome letter will state when the hearing panel's determination is final, if no appeal is filed, and the relevant procedures and bases for an appeal.

4.7 Sanctions

4.7.1 Guidelines for issuing sanctions

- a) Any person found responsible for engaging in *quid pro quo* sexual harassment may receive a sanction ranging from suspension to expulsion (student) or suspension to termination (employee).
- b) Any person found responsible for engaging in sexual harassment that creates a hostile environment may receive a sanction ranging from required education and/or training to suspension or expulsion (student), or termination (employee).
- c) Any person found responsible for engaging in forcible sexual assault may receive a sanction ranging from suspension to expulsion (student) or suspension to termination (employee).
- d) Any person found responsible for dating violence, domestic violence or stalking may receive a sanction ranging from disciplinary probation to expulsion (student) or probation, suspension or termination (employee).
- e) Any person found responsible for violating this Policy by engaging in retaliation may receive a sanction ranging from required education and/or training, to suspension, to expulsion (student), or suspension to termination (employee).

A hearing panel or other decision maker that deviates from the range of sanctions for a particular Policy violation will explain the compelling circumstances warranting that deviation.

4.7.2 Factors impacting sanctions

Sanctions issued may be impacted by:

- a) The nature, severity, and circumstances of the alleged conduct found to violate this Policy
- b) The disciplinary history, if any, of the person found to have violated this Policy

- c) Whether the person found to have violated this Policy has been the subject of other allegations of possible violations of this Policy or allegations involving similar alleged conduct
- d) The need for sanctions or remedial action to bring an end to the sex discrimination and/or retaliation
- e) The need for sanctions to prevent the future recurrence of the alleged conduct
- f) The need to remedy the effects of the alleged conduct on the person who experienced it and/or the CWRU community
- g) The impact of the alleged conduct on the parties
- h) Other information deemed relevant by the hearing panel or decision maker.

4.7.3 Implementing sanctions

Sanctions will be implemented following the expiration of the window to appeal, when no party appeals. If an appeal is filed, sanctions will be implemented following the issue of an outcome of any appeal, when the sanctions are affirmed on appeal.

4.7.4 Failure to comply with sanctions

A person who has been found responsible for violating this Policy is expected to comply with sanctions within the timeframe specified for doing so. A failure to comply with sanctions may be deemed retaliation. Failure to comply may result in additional sanctions, further investigation and/or corrective action(s).

SECTION 5: PROCESS B (OTHER PROHIBITED SEXUAL HARASSMENT)

5.1 Application

This Section 5 applies only to sexual harassment that does not constitute Title IX Sexual Harassment as defined in Section 2.1.

This Section 5 applies to alleged conduct that negatively impacts CWRU's campus and/or community, and educational and/or employment programs, and activities, notwithstanding that:

- a) The alleged conduct did not occur in an educational program or activity controlled by the CWRU
- b) The person experiencing the alleged conduct was not in the United States at the time the alleged conduct occurred and/or
- c) At the time the report is made or notice is received by the Title IX Coordinator, the person reportedly experiencing the sexual harassment is not participating in or attempting to participate in an education program or activity of CWRU.

5.2 Initial response

5.2.1 The Title IX Coordinator will determine the appropriate preliminary response to each report based on the information available at the time of the report and, whenever possible, with the input of the person who may have experienced the sexual harassment. The Office of Equity's preliminary response may include:

- a) Contacting the person alleged to have experienced conduct that may violate this Policy, and/or the person who may have engaged in that alleged conduct, to share information about their rights and options under this Policy, including how to initiate an investigation, the steps in an investigation, and what a hearing might look like

- b) Determining if the person allegedly experiencing conduct that violates this Policy wants the Office of Equity to investigate
- c) Offering and implementing appropriate supportive measures requested by either party
- d) Conducting a preliminary evaluation, as appropriate, to determine if the alleged conduct falls under this Policy
- e) Advising the person alleged to be experiencing or previously experienced the conduct of their right to make a report to the appropriate law enforcement agency
- f) Assessing whether Emergency Removal or other actions are necessary to ensure the safety of the CWRU community or specific persons in that community
- g) Separately advising the person who reported experiencing the sexual harassment and the person accused of it, of the right to an advisor, and offering to provide an advisor to each party.

5.3 Initiating an investigation

5.3.1 A person alleged to have experienced conduct that violates Section 2.2 of the Policy may request an investigation by contacting the Title IX Coordinator in person, by electronic mail, telephone or video conference, or through an [online form](#).

5.3.2 The Title IX Coordinator may initiate an investigation to protect the safety of the CWRU community or one or more specific members of that community, or to prevent reoccurrence of the alleged conduct. If the Title IX Coordinator initiates an investigation, the Title IX Coordinator is not a complainant or a party.

5.3.3 If the alleged conduct does not allege conduct that constitutes sex discrimination and/or retaliation as defined in this Policy, the Office of Equity will refer the person alleged to have experienced the conduct to other offices or university policies that may be better positioned to support that person.

5.3.4 The Office of Equity may, but is not required to, consolidate two or more reports into a single investigation, if they identify the same person as the one engaging in alleged conduct that may violate this Policy, or where the allegations of sex discrimination and/or retaliation arise out of the same facts or circumstances.

5.4 Dismissal from Process B

If at any point during an investigation pursuant to this Section 5, the Title IX Coordinator determines that the allegations, if true, do not support the conclusion that the Policy has been violated, the Title IX Coordinator will advise the parties of this conclusion and end this process.

If at any point during an investigation pursuant to this Section 5, the Title IX Coordinator determines that the allegations, if true, fall within the definition of Title IX sexual harassment as set out in Section 2.1, above, the Title IX Coordinator will advise the parties of this conclusion, close the matter under this Section 5, and reopen the matter under Section 4 of this Policy.

If at any point during an investigation pursuant to this Section 5, the Title IX Coordinator learns that the person who is reported to have violated this Policy by engaging in sex discrimination or retaliation, is not or no longer is a student, faculty member, staff member or post-doctoral scholar or fellow, and is ineligible to return to CWRU, the Title IX Coordinator will advise the parties of this fact and end this process.

The person who may have experienced alleged conduct that violates this Policy may appeal pursuant to Section 7 the closure of an investigation under this section of this Policy.

5.5 Investigation

5.5.1 Initial assessment

Upon receipt of a request for an investigation by a person alleged to have experienced conduct prohibited by this Policy or notice to the Title IX Coordinator of alleged conduct that violates Section 2.2 of this Policy, the Title IX Coordinator promptly assesses appropriate next steps, which may include one or more of the following:

- a) Offering information, resources, and support to the complainant, including information about an investigation pursuant to this Policy, if desired by that person
- b) Determining if the complainant wants to file a complaint against the person who reportedly engaged in the sexual harassment
- c) Determining that the Title IX Coordinator will file a complaint against the person who reportedly engaged in the sexual harassment to protect the campus or specific person on the campus, or to further another important CWRU interest
- d) Assisting the parties with pursuing alternative resolution pursuant to Section 6 of this Policy
- e) Assigning the matter to an investigator for investigation
- f) Initiating the Emergency Removal process, if appropriate

5.5.2 Notice of the investigation and allegations

The Office for Equity may initiate a thorough, reliable, and impartial investigation under this Section 5 as to alleged sexual harassment covered by this Policy and falling outside the scope of Title IX sexual harassment defined in Section 2.1. Once the decision is made to commence an investigation, the Title IX Coordinator will assign one or more investigators to conduct the investigation, and notify the parties that the investigation will be conducted.

The Title IX Coordinator will provide written notice to the person who may have experienced sexual harassment, and the person accused of violating this Policy that an investigation will be conducted. The Notice of the Investigation and Allegations (NOIA) will advise the parties of their right to an advisor and that the Office for Equity is available to connect a party to an advisor.

The NOIA will include a meaningful summary of the allegations, identification of the sections of this Policy applicable to those allegations, a statement of the potential sanctions/responsive actions that could result, notify the parties that they will have an opportunity to identify the names of witnesses and provide evidence that is directly related to the allegations, and the name(s) of the investigator(s). The person accused of violating this Policy may respond to the NOIA by contacting the investigator.

If the alleged conduct being investigated changes, such as expands or decreases in scope, the NOIA will be updated for both parties.

5.5.3 Investigation process

The Office for Equity will make a good faith effort to complete investigations as promptly as circumstances permit and will communicate regularly with the parties to update them on the progress and timing of the investigation.

The Investigation may include some or all of the following steps (not necessarily in this order):

- a) A determination of the identity and contact information of the person who may have experienced sexual harassment and the person alleged to have engaged in that conduct.
- b) Outreach to offer supportive measures by the Title IX Coordinator to both parties
- c) Identification of all provisions of this Policy potentially implicated by the alleged conduct

- d) Equal opportunities for the parties to identify witnesses, suggest questions which the investigator should ask them, provide evidence, and fully review and respond to all evidence gathered in the investigation
- e) Interviews and follow up interviews with both parties and all relevant witnesses with the goal of determining whether this Section 5 of the Policy was violated
- f) An opportunity for each party to review and comment on the investigator's notes of the interview(s) with that party
- g) Status updates from the investigator(s) to the parties throughout the investigation and on request
- h) Providing the parties with a draft of the investigation report and the opportunity to, within ten (10) business days, respond in writing to the draft investigation report and the relevant and related evidence, and have those responses incorporated into the final Investigation report
- i) Preparation and receipt of a comprehensive final investigation report that fully summarizes the investigation and all relevant and directly related evidence
- j) Sharing the final investigation report with the parties and the Title IX Coordinator.

5.5.4 Cross claims

A person's status as a respondent does not prohibit them from filing a complaint in good faith against anyone who has subjected them to sex discrimination. Cross claims reported in good faith will be investigated at the same time as the allegations in the preliminary evaluation or after the preliminary evaluation is complete, and/or as part of the same investigation or a separate investigation. The NOIA will be updated and shared with both parties if the investigation expands to include additional allegations.

5.5.5 Witnesses must participate

Witnesses who are employees or postdoctoral fellows or scholars of the university are required to cooperate with and participate in the investigation. Failure to do so may constitute a violation of performance expectations or CWRU Policy, as well as this Policy.

Students who are witnesses may not refuse to participate in an investigation or hearing, or decline to provide information about reported sex discrimination or retaliation when asked to do so. Failure to do so may constitute a violation of a CWRU directive, which is a violation of the Student Code of Conduct, or a violation of this Policy.

5.5.6 Evidence

The following types of evidence are not relevant and will not be used to assess whether a violation of this Policy has occurred: (i) information protected by a legally recognized privilege, unless waived, (ii) evidence about the prior sexual history (subject to the exceptions below) of a person alleged to have experienced conduct that constitutes sex discrimination, (iii) and any party's medical, psychological, and similar records, unless the party has given voluntary, written consent to use that information in a process pursuant to this Policy. With respect to (ii) above, questions and evidence about a person's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence are offered to prove that someone other than the person accused of violating this Policy committed the alleged conduct, or address the parties' prior sexual behavior with one another, and are offered to prove consent.

The investigator(s) will not meet with witnesses who lack personal knowledge of the factual event(s) from which the allegations stem and, instead, have information about the character or qualities of one or more parties.

Information provided by expert witnesses will be included in the investigation report, but the investigator will not meet with the expert witness.

5.6 Hearing

5.6.1 Referral for hearing

After the final investigation report is shared with the parties, the Title IX Coordinator will refer allegations to a hearing, unless:

- a) The final investigation report indicates dismissal is required pursuant to section 5.4 and/or
- b) The person experiencing the alleged conduct is not seeking separation from the university as a sanction and/or
- c) The Title IX Coordinator determines that no circumstances exist in which the allegations warrant the respondent's separation from the university.

5.6.2 Selection of hearing panel members

If a hearing will be scheduled, the Title IX Coordinator will select a three-member hearing panel from the trained pool. The Title IX Coordinator will designate one member of the hearing panel as the chair of the hearing panel.

5.6.3 Composition of the hearing panel

No panel member will have previously participated in the investigation.

The parties will be given the names of the hearing panel members at least ten (10) business days before the hearing so that they can raise with the Title IX Coordinator any objections to any member of the hearing panel. Objections must be made within three (3) business days of receipt by the party of the names of the hearing panel members. Panel members will only be removed if the Title IX Coordinator concludes that bias or conflict of interest precludes an impartial hearing.

The Title IX Coordinator may not serve on the hearing panel but may serve as the hearing facilitator and may attend the hearing and observe to ensure the procedures in this Policy are followed.

5.6.4 Remote or in-person hearing

The Title IX Coordinator will determine if the hearing will occur in person or remotely. Hearings conducted remotely will use technology that enables the hearing panel and parties to see and hear a party or witness who is answering questions.

5.6.5 Timing of the hearing

The hearing will occur at least ten (10) business days after the final investigation report is transmitted to the parties. The only exception is if the hearing panel and the parties agree to an expedited timeline.

5.6.6 Notice of Hearing under Process B

No less than ten (10) business days prior to the hearing, the Title IX Coordinator will inform the parties of the date and time of the hearing. The notice of the hearing will contain:

- a) A description of the alleged violation(s), the provisions of the Policy reportedly violated, a description of the applicable procedures, and a statement identifying the potential sanctions and other actions that could be included in the hearing panel's decision
- b) The time, date, and location of the hearing, and whether it will be held in person or remotely
- c) A reminder that attendance is mandatory for witnesses and takes priority over all other campus activities
- d) Identification of the technology that will be used to facilitate the hearing, whether the hearing will be recorded, and a description of the parties' right to access the recording after the hearing

- e) A list of everyone who will attend the hearing, along with an invitation to object to any panel member on the basis of bias or conflict of interest
- f) A statement that, if any party or witness does not appear at the scheduled hearing, the hearing may continue in their absence
- g) A copy of all the materials provided to the hearing panel members about the matter, unless previously provided to the parties
- h) An invitation to each party to submit to the chair of the panel an impact statement that the panel will review during any sanction determination
- i) An invitation to contact the Title IX Coordinator to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing, and that this request must occur at least seven (7) business days prior to the hearing
- j) A listing of other rules for the hearing

Hearings may be held during academic calendar vacations and/or breaks, during the summer semester, and in a semester in which a party is not enrolled.

If the person accused of violating this Policy is a graduating student, a hold may be placed on conferral of that person's degree until the matter is fully resolved (including any appeal) on the grounds that a student facing charges under this Policy may not be considered in good standing to graduate.

5.6.7 Single hearing for more than one complainant or respondent

A hearing may involve more than one person alleged to have experienced conduct prohibited by this Policy and/or more than one person who is accused of violating this Policy. If a hearing involves more than one person who is accused of violating this Policy, the panel will make separate determinations of responsibility for each person with respect to each alleged Policy violation.

5.6.8 Pre-hearing meetings

The panel chair may convene a pre-hearing meeting or meetings, or otherwise communicate with the parties and the advisors, through which:

- a) A party may submit the questions they wish to ask at the hearing, so that the panel chair can determine if the questions are relevant.
- b) The panel chair and the parties may agree that certain witnesses do not need to attend the hearing.
- c) The panel chair may provide information that assists the parties and advisors with their preparation for the hearing.

Pre-hearing meeting(s) are not recorded.

5.6.9 Order of the hearing, asking questions and relevancy determinations

The chair of the hearing panel will determine the order in which information is presented at the hearing. The chair of the hearing panel will determine if the parties may present opening and/or closing statements. The investigator, the parties and witnesses will first answer questions from the panel members and then from each party, through the panel chair..

To ask a question of another party, a party will convey to the chair of the hearing panel the proposed question, and the chair of the hearing panel will ask that question of the other party, reject that question, or rephrase that question and ask the other party the question.

The panel chair will assess each party's proposed question for relevancy. The chair of the panel will explain any decision to exclude a question as not relevant, or require that it is reframed or reworded to ensure relevancy.

The chair of the panel may disallow questions on the basis that they are irrelevant, unduly repetitious (and thus irrelevant) or abusive.

5.6.10 Hearing procedures

- a) The panel chair conducts the hearing and determines the order in which information is presented.
- b) The panel chair will introduce the participants at the beginning of the hearing.
- c) Any person asked questions during the hearing must respond to questions on their own behalf.
- d) Witnesses only attend the portion of the hearing during which they are asked to respond to questions from the panel and the parties, and then the witnesses will be excused.
- e) The panel chair and/or the Title IX Coordinator will determine the impact of a refusal by a party or witness to answer a question, or to be unavailable to answer a question, on the use by the panel of information that party or witness might have provided.
- f) The panel is solely responsible for determining credibility of the parties and the witnesses.
- g) Hearings (but not deliberations) are recorded by CWRU for purposes of review in the event of an appeal. No other recordings of the hearing are permitted. The panel, parties, advisors, and others deemed appropriate by the Title IX Coordinator may be permitted to review the recording and hearing transcript.

5.6.11 Deliberation, decision-making, and standard of proof

After the parties, investigator, and witnesses have answered questions from the panel and the parties, the panel will deliberate privately to determine if the person accused of violating this Policy is responsible or not responsible for violating the Policy. A simple majority vote of the three-member hearing panel is required for the panel to conclude that the person accused of sexual harassment violated this Policy.

The panel will apply the preponderance of the evidence standard of proof, meaning that no violation of this Policy may be found unless more than 50% of the evidence supports the conclusion that the person accused of sexual harassment more likely than not violated this Policy. During deliberations, the panel chair may consult with the Title IX Coordinator if questions arise about the application of this Policy or process.

5.6.12 Outcome of the hearing – communication and timing

The panel chair will document the panel's findings for the Title IX Coordinator in a written statement detailing the panel's determination of whether this Policy was violated, rationale, evidence relied on by the panel to reach this determination, the evidence not relied upon, credibility assessments, and sanctions. This the determination must be submitted to the Title IX Coordinator within five (5) business days of the end of deliberations unless the Title IX Coordinator grants an extension. If an extension is granted, the Title IX Coordinator will notify the Parties. Within five (5) business days of receiving the panel's statement documenting the deliberations, the Title IX Coordinator will simultaneously share with all parties the panel's determination in a letter stating the outcome of the hearing.

The outcome letter will:

- a) Identify each reported violation of this Policy considered by the panel
- b) State the procedural steps taken by CWRU in this matter
- c) Describe the investigation
- d) List the finding of the hearing panel as to each reported Policy violation considered by the panel and the facts that support each finding

- e) State the rationale for the determination as to each reported Policy violation
- f) If appropriate, identify the sanctions issued, and
- g) Include what remedies and supportive measures (if known) may need to be provided to the parties to maintain or restore access to CWRU's educational or employment opportunities or activities

The outcome letter will state when the hearing panel's determination is final, if no appeal is filed, and the relevant procedures and bases for an appeal.

5.7 Cases not referred to a hearing

For cases not referred to a hearing pursuant to 5.6.1, and within ten (10) business days of sharing the final investigation report with the parties, the investigator will issue a decision whether a preponderance of the evidence establishes that this Policy was violated and if so, what is the appropriate sanction. This decision is appealable pursuant to Section 7 of this Policy.

5.8 Sanctions

5.8.1 Guidelines for issuing sanctions

- a) Any person found responsible for engaging in *quid pro quo* sexual harassment may receive a sanction ranging from suspension to expulsion (student) or suspension to termination (employee).
- b) Any person found responsible for engaging in sexual harassment that creates a hostile environment may receive a sanction ranging from required education and/or training to suspension or expulsion (student), or termination (employee).
- c) Any person found responsible for engaging in forcible sexual assault may receive a sanction ranging from suspension to expulsion (student) or suspension to termination (employee).
- d) Any person found responsible for dating violence, domestic violence or stalking may receive a sanction ranging from disciplinary probation to expulsion (student) or probation, suspension or termination (employee).
- e) Any person found responsible for violating this Policy by engaging in retaliation may receive a sanction ranging from required education and/or training to suspension to expulsion (student) or suspension to termination (employee).

A hearing panel or other decision maker that deviates from the range of sanctions for a particular Policy violation will explain the compelling circumstances warranting that deviation.

5.8.2 Factors impacting sanctions

Sanctions issued may be impacted by:

- a) The nature, severity, and circumstances of the conduct found to violate this Policy
- b) The disciplinary history, if any, of the person found to have violated this Policy
- c) Whether the person found to have violated this Policy has been the subject of other allegations of possible violations of this Policy or allegations involving similar conduct
- d) The need for sanctions or remedial action to bring an end to the sex discrimination and/or retaliation
- e) The need for sanctions to prevent the future recurrence of the conduct
- f) The need to remedy the effects of the conduct on the person who experienced it and/or the CWRU community

- g) The impact of the conduct on the parties
- h) Other information deemed relevant by the hearing panel or decision maker.

5.8.3 Implementing sanctions

Sanctions will be implemented following the expiration of the window to appeal when no party appeals. If an appeal is filed, sanctions will be implemented following the issue of an outcome of any appeal, when the sanctions are affirmed on appeal.

5.8.4 Failure to comply with sanctions

A person who has been found responsible for violating this Policy is expected to comply with sanctions, within the timeframe specified for doing so. A failure to comply with sanctions may be deemed retaliation. Failure to comply may result in additional sanctions, further investigation, and/or corrective action(s).

Section 6: Alternative Resolution Process (Applicable to Processes A and B)

6.1 Alternative resolution

The parties may voluntarily engage in efforts to informally resolve a formal complaint or conflict before, during or after an investigation or hearing, in lieu of completing the investigation and/or holding a hearing. These efforts are referred to as alternative resolution.

6.2 Starting and ending alternative resolution discussions

Either party may initiate discussions about alternative resolution by contacting the Title IX Coordinator.

Both parties must indicate in writing that their participation in alternative resolution efforts is their voluntary choice.

When the parties cannot agree on all terms of an alternative resolution, the investigation and hearing process will continue and/or resume. Parties may change their mind and withdraw from alternative resolution discussions at any time up until the Office of Equity informs the parties that that matter is closed.

The Office of Equity may resolve through alternative resolution a matter proceeding pursuant to Section 5 (Process B Other Prohibited Sexual Harassment) without the participation of one party, if that party has declined to participate in the investigation, hearing and alternative resolution process.

6.3 Alternative resolution options

Parties may engage in alternative resolution discussions after a formal complaint has been filed for matters proceeding pursuant to Process A or at any time for matter proceeding pursuant to Process B. Alternative resolution discussions may involve:

- a) Negotiation or mediation between the parties and/or their advisors, with or without the participation of the Office for Equity, to reach an agreement to resolve the formal complaint or its allegations
- b) Resolution of the matter when the respondent accepts responsibility for violating this Policy and an appropriate sanction
- c) Resolution of the matter when the parties and the Title IX Coordinator agree that parties will receive only supportive measures as the remedy for the situation

- d) An agreement by the parties to forgo a hearing before a three (3) member panel and instead seek resolution by a single member of the trained pool according to a process determined by the parties

6.4 Process A limitations on alternative resolution

Alternative resolution is not an option for matters proceeding pursuant to Section 4 (Process A) when at least one party is a student, and another is a CWRU employee who is not primarily a student.

6.5 Prohibited terms

The Title IX Coordinator will not propose language for an alternative resolution agreement that causes one or more parties to waive potential claims against CWRU when CWRU is not a party to the agreement.

6.6 No appeal of alternative resolution outcomes

The outcome of a formal complaint resolved through alternative resolution is not appealable.

6.7 Failure to comply with the terms of an alternative resolution agreement

The failure of a party to comply with the terms of an agreement reached through alternative resolution, such as permanent no contact directives, is a violation of this Policy which may result in a formal complaint, investigation, and, if appropriate, sanctions pursuant to this Policy.

Section 7: Appeals

7.1 Appeals

Any party may request an appeal ("Request for Appeal") in writing to the Title IX Coordinator within three (3) business days of the delivery of the Notice of Outcome.

The Title IX Coordinator will designate a three-member appeal panel, chosen from the trained pool, one of whom will be designated as the chair of the appeal panel.

7.2 Grounds for appeal

Appeals must be based on one or more of the following reasons:

- a) Procedural irregularity that affected the outcome
- b) New evidence that was not reasonably available during the investigation that resulted in a determination of responsibility for violating this Policy, which, if discovered during the investigation, could have affected the outcome and
- c) The Title IX Coordinator, investigator(s), or hearing panelist(s) had a conflict of interest or bias that affected the outcome.

The Request for Appeal will be forwarded to the chair of the appeal panel, who will deny the Request for Appeal if it is not based on one or more of the three grounds for appeal. If the appeal is denied, the Title IX Coordinator will notify the parties of the denial of the appeal and the reason for the denial.

7.3. Appeal process

The Title IX Coordinator will send the Request for Appeal to the other party(ies) and, when appropriate, the investigators and/or hearing panel, and instruct them that they may each respond, within five (5) business days, to the appeal. Once received by the Title IX Coordinator, all responses to the Request for Appeal will be shared with anyone who was given the opportunity to respond to the Request for Appeal, and each person may review and comment on the responses to the appeal.

The non-appealing party (if any) may choose to Request an Appeal at this time. If so, that party's appeal will be reviewed pursuant to the process described above and shared with the party who initially requested an appeal, and others, which will be circulated for review and comment.

Once the response and comment period ends, neither party may submit new Requests for Appeal. The Title IX Coordinator will collect information and documentation required to assess the appeal, the Requests for Appeal and the responses, and share this with the appeal panel. The Chair of the appeal panel will meet to assess the appeal, and render a decision within five (5) business days, unless this period is extended for good reason by the Title IX Coordinator, who will notify the parties. The decision will address each ground for the appeal and provide a rationale for the decision as to each ground.

The Title IX Coordinator will share the Notice of Appeal Outcome in writing with all persons previously advised of the Request for Appeal.

7.4 Appeal considerations

The appeal panel will be deferential to the rationale articulated by the hearing panel. The appeal panel may reverse or revise factual findings and/or sanctions only when the appeal panel finds a clear error and a compelling justification to do so.

Decisions on appeal are based on a review of the written documentation that was available to the hearing panel, the recording and transcript of the hearing, documentation regarding the grounds for appeal, and the responses to that documentation.

The appeal panel may consult with the Title IX Coordinator if the panelists have questions about procedure, the hearing, or the rationale provided by the hearing panel.

Appeals granted on the basis of new evidence may be sent to the investigator(s) and/or the original or a new hearing panel for consideration of the new evidence. If the appeal panel sends the matter back to the original hearing panel for additional consideration, the subsequent decision of the hearing panel is not appealable. The appeal panel may decide that a new hearing with a new hearing panel is required. If that occurs, then the parties will have an opportunity to appeal the decision of the new hearing panel.

Once an appeal is decided, the outcome is final. No further appeals are permitted by this Policy.

7.5 Status of sanctions during the appeal

Any sanctions issued by the hearing panel are not implemented during the appeal process. Supportive measures continue during the appeal process.

CWRU may place holds on conferral of degree, residence selection, and course registration pending the outcome of an appeal when a sanction issued by the hearing panel included separation.

Section 8: Special Provisions for Matters in Which the Respondent is a Faculty Member

In addition to the applicable provisions in this Policy, the procedures described below will apply when the respondent is a faculty member.

8.1 Notification to President's Representative

Prior to issuing a NOIA in which a faculty member will be a respondent, pursuant to Parts II, III or IV, the Title IX Coordinator will notify the President's Representative of the allegations and advise the faculty member that this notice has occurred.

8.2 Joint investigation

When the allegations of a violation of this Policy implicate or may implicate the faculty member's Professional Responsibilities, as outlined in the Faculty Handbook, the President's Representative will investigate those possible violations in conjunction with the investigator's investigation. This contemporaneous investigation may include, but is not limited to, joint meetings with the parties and/or witnesses, requests that the investigator pursue certain lines of inquiry or evidence, and/or review of interview notes and/or evidence, among other things. The investigator will provide frequent updates to the President's Representative with the goal of efficiently investigating the possible violations of this Policy and Professional Responsibilities in a manner that eliminates duplication of effort.

8.3 Investigation report

In addition to the information to be included in the investigation report, as discussed in Parts II, III and IV, and in the same manner as evidence related to possible violations of this Policy, the investigation report will summarize information pertinent to the possible violations of the faculty member's Professional Responsibilities. Information relating to the faculty member's Professional Responsibilities will be set out in its own section of the investigation report, separate from the information that relates to the possible violations of this Policy. The investigation report will be shared, in full, with the President's Representative.

The section(s) of the investigation report relating to the faculty member's Professional Responsibilities will not be shared with the parties by the investigator.

8.4 Decision to hold a hearing on the professional responsibilities

The President's Representative will send the investigation report and written charge to the university President. The President will determine if a hearing is required on the possible violations of the faculty member's Professional Responsibilities and advise the faculty member and President's Representative if a formal hearing is required. The President and the Title IX Coordinator will strive to coordinate notice to the faculty member that a hearing is or is not required pursuant to this Policy and/or the faculty member's possible violation of the Professional Responsibilities.

8.5 No appeal of President's decision not to hold a hearing

Neither Party may appeal the decision of the President not to hold a hearing on certain allegations of a violation of the faculty member's Professional Responsibilities.

8.6 Joint hearing

If the Title IX Coordinator and the President both separately determine that a hearing is necessary, the provisions of this section will apply.

a) Joint Hearings

Hearing Panelists for Joint Hearings held pursuant to this section will be selected by the Faculty Senate Chair with input from the Title IX Coordinator. The Faculty Senate Chair, in conjunction with the Title IX Coordinator, will vet candidates pursuant to jointly agreed criteria. Panelists for Joint Hearings must complete the training on this Policy described in Section 1.17 of this Policy.

The hearing panel will be comprised of three faculty members from the Trained Pool described in Section 1.17 of this Policy who also serve on the Faculty Senate Panel for Faculty Grievance Proceedings and University Disciplinary Actions.

b) Evidentiary standard

A faculty member is not responsible for either a violation of this Policy and the Professional Responsibilities set out in the Faculty Handbook unless a preponderance of the evidence establishes that one or more violations occurred.

c) Pre-hearing meeting

The Panel Chair will invite the parties to a pre-hearing meeting to discuss how the hearing will be conducted, who may be present, the order of the hearing and presentation of evidence, and to answer questions about the hearing process.

d) Part 1 of the Joint Hearing - Sexual Harassment as defined in this Policy

Part 1 of the Joint Hearing will proceed pursuant to Section 4 and 5 of this Policy. The President's Representative will attend the hearing with an Advisor. At the conclusion of the Part 1 hearing, the following attendees, if present, will leave the hearing: the investigator, Title IX Coordinator, Title IX Facilitator, representative from the Office of the General Counsel, the complainant, and all Advisors, except those specified in the Faculty Handbook.

e) Part 2 of the Joint Hearing – Professional Responsibilities

Part 2 of the Joint Hearing concerns the possible violations by the faculty member of the Professional Responsibilities identified in the Faculty Handbook. The President's Representative will introduce the allegations that the faculty member has violated the Professional Responsibilities identified in the Faculty Handbook. The hearing will proceed pursuant to the hearing process outlined in the Faculty Handbook.

f) Deliberations

Following the completion of both Part 1 and Part 2 of the Joint Hearing, the hearing panel will deliberate in private. The hearing panel will:

1. Identify all relevant disputed facts and, for each fact, state the conclusion drawn by the Hearing Panel
2. Determine whether a preponderance of the evidence established that the faculty member is responsible for violating this Policy
3. Determine whether a preponderance of the evidence established that the faculty member is responsible for violating Professional Responsibilities in the Faculty Handbook
4. If the Hearing Panel concludes that the faculty member is responsible for violating this Policy, determine appropriate sanctions to remedy the violation(s), and prevent a reoccurrence of the violation(s)
5. If the Hearing Panel concludes that the faculty member is responsible for violating the Professional Responsibilities in the Faculty Handbook, determine recommended sanctions to remedy the violation, and prevent a reoccurrence of the violation(s).
6. Provide guidance to the President regarding appropriate sanctions for the faculty member, such as:
 - i. The sanctions identified in Section 4.7 or 5.8on, if not overturned on appeal, are appropriate to also address the violations of the Professional Responsibilities in the Faculty Handbook identified in paragraph (e).
 - ii. The sanctions identified in paragraph (d) and the recommended sanctions in paragraph (e) are intended to be cumulative.
 - iii. Other information that may assist the President in determining appropriate sanctions for the violation(s) of the Professional Responsibilities.

8.7 Report of the hearing panel and notice of outcome

Consistent with the provisions of Section 4.6.14 and 5.6.12 of this Policy, and paragraph F(6), above, the Hearing Panel Chair will prepare a written Outcome, which will be distributed to the parties.

8.8 Appeal

If either party appeals the Outcome as to the allegations of a violation of this Policy pursuant to Section 7 of this Policy, the Appeal Panel will be comprised of Joint Hearing Panelists as discussed in Section 8.6 above.

On completion of any appeal, the Joint Hearing Panelists will finalize the recommended sanctions identified in paragraph 8.6 above.

8.9 President's decision on professional responsibility allegations

The President's Representative will assemble the following documents and provide them to the President:

1. The investigation report and exhibits
2. The Hearing Panel's written Outcome
3. Documents relating to any appeal of the hearing Outcome as to the allegations of sexual harassment

The President will make a decision on the recommended sanctions pertaining to the allegations of violation(s) of the Professional Responsibilities. The President will communicate this decision in writing pursuant to the applicable process in the Faculty Handbook.

The President's decision is not appealable by any party.

Section 9: Emergency Removal and Administrative Leave

9.1 Emergency removal of a student or employee

CWRU can remove a student or employee who is alleged to have engaged in sexual harassment or other conduct prohibited by this Policy entirely or partially from an education or employment program or activity 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 may be performed by the Title IX Coordinator in conjunction with the Behavioral Intervention Team and campus partners, including the CWRU Police Department, to assess the threat and respond to it using its standard objective violence risk assessment procedures.

The Title IX Coordinator has sole discretion under this Policy to implement or withdraw an emergency removal and to determine its conditions and duration.

9.2 Factors considered in emergency removal assessment

CWRU considers the following factors, among others, when assessing whether to implement an emergency removal of a student or employee: evidence that the student or employee engaged in (or has a known history of) violence or made threats of violence, including aggressive behavior or written or verbal statements; any known preoccupation with death or suicide or weapons; involvement with drugs, alcohol, or tobacco; and evidence of poor behavioral control and/or high emotional distress.

9.3 Notice of emergency removal and process

In all cases in which an emergency removal is imposed, the student, or employee, or, if the person accused of violating this Policy is a student organization, two (2) representatives from the student organization,

will be given notice of the action and the option to request to meet with the Title IX Coordinator prior to such action/removal being imposed, or as soon thereafter as reasonably possible, to explain why the action/removal should not be implemented or should be modified.

A person accused of violating this Policy may be accompanied by an advisor at this meeting. The person accused of violating this Policy will be given access to a written summary of the basis for the emergency removal prior to the meeting to allow for adequate preparation.

The purpose of this meeting is not to determine if the person accused of violating this Policy engaged in sexual harassment or retaliation, but is intended to determine only whether the emergency removal is appropriate. When this meeting is not requested within two days, objections to the emergency removal will be deemed waived.

A person who reports experiencing sexual harassment by the student or employee who is being removed on an emergency basis pursuant to this Policy section, may participate in this meeting if the Title IX Coordinator determines it is equitable to do so.

Both parties may attend this meeting accompanied by an advisor, if desired.

9.4 Least restrictive conditions

CWRU will implement the least restrictive emergency actions possible in light of the circumstances and safety concerns. As determined by the Title IX Coordinator, these actions in relation to the emergency removal of a student could include, but are not limited to: removing a student from a residence hall; restricting a student's access to or use of facilities or equipment; allowing a student to withdraw or take grades of incomplete without financial penalty; authorizing an administrative leave; and suspending a student's participation in extracurricular activities, student employment, student organizational leadership, or intercollegiate/intramural athletics.

When the person subject to emergency removal is an employee, including a post-doctoral scholar or fellow, these actions could include, but are not limited to: requiring the employee to work remotely; changing the employee's work schedule or work location; temporarily re-assigning an employee or postdoctoral scholar or fellow; restricting an employee's or a postdoctoral scholar's or a fellow's access to or use of facilities or equipment; and authorizing an administrative or other leave.

At the discretion of the Title IX Coordinator, alternative coursework options may be pursued to ensure as minimal an academic impact as possible on a person who is being removed pursuant to this Policy section.

9.5 Application to athletics

This process outlined at 9.3. above also applies to any restrictions that a coach or athletic administrator may place on a student-athlete arising from allegations related to sexual harassment.

9.6 No appeal of emergency removal

There is no appeal process for emergency removal decisions.

9.7 Violation of emergency removal conditions

Violation of an emergency removal under this Policy will be grounds for discipline, which may include expulsion.

9.8 Postdoctoral scholars and fellows, and employees

This Policy section also applies to employees, and postdoctoral scholars and fellows, who may also be removed on an emergency basis. When the person for whom emergency removal may be issued is an employee, CWRU policies relating to employees are also applicable.

Section 10: Recordkeeping

CWRU will maintain for a period of at least seven (7) years records of:

- a) Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required under federal regulation
- b) Evidence obtained during the investigation
- c) Any disciplinary sanctions imposed on a person found to have engaged in sexual harassment that violates this Policy
- d) Any remedies, provided to person who experienced sexual harassment, designed to restore or preserve equal access to the university's educational program or activity
- e) Any appeal and its outcome
- f) Any Alternative Resolution and its outcome
- g) All materials used to train Title IX Coordinators, investigators, Decision-Makers, and any person who facilitates an Alternative Resolution Process. CWRU will make these training materials publicly available on CWRU's website
- h) Any actions, including any supportive measures, taken in response to a report, notice or complaint of sexual harassment.

CWRU will also maintain any and all records in accordance with State and federal laws, and will not disclose any personally identifiable information to be released to the public without consent provided, except to the extent permitted by law. CWRU will notify a party in advance of any public release of information regarding the allegation(s) or underlying incident(s), whenever possible.

Section 11: Applicable State Laws

CWRU complies with all State and local laws applicable to sex discrimination and retaliation of students or employees of the university. Persons with questions about that compliance may contact the Title IX Coordinator or the Office of the General Counsel.

Effective date: September 3, 2024

Responsible Official: Senior Associate Vice President for Equity

Responsible University Office: Office of Equity

Revision History: 2014, 2016, 2021, 2022, 2023, 2024, 2025, 2026

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Review Period: 5 Years

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Relates to: All Faculty, Students, Employees, Postdoctoral Fellows and Scholars, and Third Parties