

**Faculty Senate  
Executive Committee**  
Monday, September 16, 2013  
2:00 p.m. – 4:00 p.m. – Adelbert Hall, Toepfer Room

AGENDA

2:00 p.m.	Approval of Minutes from the April 11, 2013 Executive Committee meeting, <i>attachment</i>	S. Garverick
2:05 p.m.	President's Announcements	B. Snyder
2:10 p.m.	Provost's Announcements	B. Baeslack
2:15 p.m.	Chair's Announcements	S. Garverick
2:25 p.m.	School of Dental Medicine- Closing Department of Pathology, Renaming of Department of Oral Diagnosis and Radiology, <i>attachment</i>	K. Victoroff
2:30 p.m.	Approval of FSCUE Vice-Chair (John Ruhl)	S. Garverick
2:35 p.m.	Interim Sexual Misconduct Policy, <i>attachment</i>	M. Mobley C. Treml
2:50 p.m.	Presentation on International Agreement Process, <i>attachment</i>	D. Feke
3:00 p.m.	5-Year Review of Faculty Handbook and Senate By-Laws	S. Garverick
3:05 p.m.	Strategic Plan Update	B. Baeslack
3:15 p.m.	Date Change- Fall Break 2014	B. Baeslack
3:25 p.m.	Approval of September 25, 2013 Faculty Senate Agenda, <i>attachment</i>	S. Garverick

**Faculty Senate Executive Committee  
Minutes of the September 16, 2013 Meeting  
Adelbert Hall, Toepfer Room**

**Committee Members in Attendance**

Bud Baeslack  
Susan Case  
Robin Dubin  
John Fredieu  
Steve Garverick  
Patricia Higgins  
Mark Joseph  
Sandy Russ  
Robert Savinell  
Barbara Snyder  
Glenn Starkman  
Rebecca Weiss

**Committee Members Absent**

Benjamin Schechter  
Katy Mercer

**Others Present**

Robert Kirsch  
Mark De Guire

**Call to Order**

Professor Steven Garverick, chair, Faculty Senate, called the meeting to order at 2:00 p.m.

**Approval of Minutes**

The minutes of the April 11, 2013 meeting of the Faculty Senate Executive Committee were reviewed and approved.

**President's Announcements**

The President welcomed the executive committee representatives and wished them a successful and productive year. She encouraged all committee members to volunteer for Case for Community Day on Friday, October 4<sup>th</sup>.

**Provost's Announcements**

The Provost reported that the retention rate for freshmen has improved. Over the last 10 years, the rate fluctuated between 90-93% and the 2012 rate was 94.2%. He will discuss other matters later in the meeting.

### **Chair's Announcements**

Prof. Garverick made the following announcements:

1. Professor Carol Musil will chair the committee charged with selecting a consulting firm for space planning issues.
2. The October Executive Committee meeting was originally scheduled for October 16<sup>th</sup> but has been changed to October 17<sup>th</sup> from 8:30am-10:30am.

Professor Glenn Starkman inquired about language being drafted for the Faculty Handbook as a result of recommendations made last year by the ad hoc Committee on Appointments outside the Constituent Faculties. It is anticipated that this language will be ready for discussion at the October Executive Committee meeting.

### **School of Dental Medicine- Closing Department of Pathology, Renaming of Department of Oral Diagnosis and Radiology**

Professor Kristi Victoroff, SODM, presented the proposal to close the existing Department of Oral Pathology and to rename the existing Department of Oral Diagnosis and Radiology the Department of Oral and Maxillofacial Medicine and Diagnostic Sciences. The newly named department will subsume the activities of the Department of Oral Pathology. The Department of Oral Pathology has only one faculty member and cannot accomplish the departmental roles of teaching, scholarship, and service. A formal petition for this change signed by five faculty members was unanimously supported by the SODM Executive Board and approved by the SODM faculty. The Executive Committee voted to include the proposal on the agenda for the Faculty Senate meeting. *Attachment*

### **Approval of FSCUE Vice-Chair (John Ruhl)**

The Executive Committee unanimously approved the appointment of John Ruhl, CAS, as vice-chair of FSCUE.

### **Interim Sexual Misconduct Policy**

Colleen Trembl and Marilyn Mobley reported on the new interim sexual misconduct policy adopted by CWRU. The U.S. Department of Education is requiring all educational institutions that receive federal funding to develop a policy as detailed in the "Dear Colleague" letter dated April 4, 2011. Chief among the Department's concerns were underreporting of sexual violence on college campuses, lengthy investigations, inadequacy of action taken and fairness of the grievance process.

Representatives from the Office of Inclusion, Diversity and Equal Opportunity, the Office of Student Affairs, and the Office of General Counsel have been meeting on a regular basis to update the university's current sexual harassment policy contained within Chapter 4 of the Faculty Handbook. The new policy was effective as of August 17, 2013 and will remain in effect until a final policy is adopted.

Among other key changes the interim policy expands reporting requirements, clarifies that each member of the university has an obligation to report, and mandates that complaints be investigated and decided on a more timely basis. Feedback on the policy is being sought from multiple university constituents including the Faculty Senate.

*Attachment*

#### **Presentation on Interim International Agreement Approval Form**

Don Feke presented the interim international agreement approval form on behalf of David Fleshler, Vice Provost for International Affairs. The form had been developed to ensure that 1) accurate data is captured when faculty negotiate international agreements, 2) the agreement meets legal requirements, and 3) the university is partnering with high quality international institutions. It is to be used for agreements that bind the university. The members of the committee discussed the form and agreed that further review was needed. Prof. Garverick said that Professor Robin Dubin would be coordinating the consultative process and that comments from the Executive Committee should be sent to her by October 8<sup>th</sup>. David Fleshler will attend the October 17<sup>th</sup> Executive Committee meeting to respond to questions and concerns and the goal is for a revised form to be presented to the Faculty Senate at its October 29<sup>th</sup> meeting.

*Attachment*

#### **5-Year Review of Faculty Handbook and Senate By-Laws**

Prof. Garverick said that the Faculty Handbook and By-Laws provide that the Committee on By-Laws is to carry out a review of the Constitution of the University Faculty and the Faculty Senate By-Laws at least once every 5 years. The review will take place during this academic year. If senators or faculty in their respective college or schools have comments or changes they should be sent to Prof. Garverick and Rebecca Weiss by the end of November. The Faculty Senate By-Laws committees as well as other standing committees will be involved in making the necessary changes and updates. Prof. Garverick would like to see the review and updates completed by the end of the academic year. It was suggested that the executive committees of the college/schools be made aware of this process. Prof. Garverick said that he would send an email to all senators summarizing the process.

#### **Strategic Plan Update**

The Provost reported that feedback from faculty and other university constituents was taken into consideration in making final revisions to the strategic plan. The goal is to present the final document to the Board of Trustees at its meeting in early October. The next step will be the development of a strategic action plan timed to coincide with the university budget process.

#### **Date Change- Fall Break 2014**

The Provost proposed to reschedule Fall Break 2014 from October 20-21<sup>st</sup> to October 27-28<sup>th</sup>. The best weekend for Homecoming 2014 is October 17-19 but that weekend would precede Fall Break which is not optimal. Homecoming cannot be rescheduled

due to the football schedule and the Jewish holidays. The Executive Committee voted to include this proposal on the Faculty Senate meeting agenda. Professor Susan Case commended the President and Provost for taking the Jewish holidays into consideration when making this scheduling decision.

**Approval of September 25, 2013 Faculty Senate Meeting Agenda**

The Executive Committee approved the agenda for the September 25, 2013 Faculty Senate meeting.

The meeting was adjourned at 4:00p.m.

Approved by the Faculty Senate Executive Committee

A handwritten signature in cursive script that reads "Rebecca Weiss".

Rebecca Weiss  
Secretary of the University Faculty

## **Proposal for the Department of Oral and Maxillofacial Medicine and Diagnostic Sciences**

### **Rationale**

The practice of Dental Medicine has evolved in recent years to a science based on the principles of medicine and the association between oral and systemic health. Oral disease has been linked to conditions such as asthma, systemic infection, immune dysfunction, and levels of circulating inflammatory markers. The oral health clinician of the 21st century should be a professional versed on the impact of oral care in a patient's medical status, and on the role that dentists can play in risk assessment and detection of medical disorders. Oral and Maxillofacial Medicine and Diagnostic Science is the foundation of the overlap between Dental Medicine and Medicine. This discipline combines the skills of oral and maxillofacial pathology, medicine, and radiology into a department that will contribute to the mission of the School of Dental Medicine and Case Western Reserve University. We propose building upon the experience gained with the Department of Oral Diagnosis and Radiology and the Department of Oral Pathology at our institution. Combining the collective strengths of these two departments will create a strong organization with team thinking that will streamline the core missions of the School of Dental Medicine and the University.

### **Vision**

Become a world-class center for oral medicine education, research, and the diagnosis and non-surgical treatment of conditions affecting the oral and maxillofacial complex.

### **Mission**

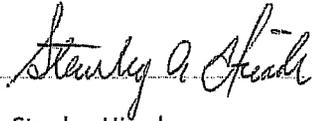
To be an internationally renowned Diagnostic Science center, we will develop focused themes of expertise. These will directly foster and develop interdisciplinary collaboration with other areas of Dental Medicine and Medicine, leading to top quality care. The Department will contribute to the scientific literature with active funded projects and peer-reviewed publications. Regional, national, and international collaborations will promote the inception of multi-site clinical research projects having a major impact in the practice of these disciplines. The core educational mission will prepare general dentists who are proficient with the role of Dental Medicine in health care, and who recognize the importance of Diagnostic Sciences in overall patient care. We will also educate specialists who are keenly aware of the relevance of our disciplines in their respective diagnostic practice.

**Proposed: To disestablish the Department of Oral Pathology and rename the Department of Oral Diagnosis and Radiology as the Department of Oral and Maxillofacial Medicine and Diagnostic Sciences. The renamed Department will subsume the faculty and responsibilities of the Department of Oral Pathology.**

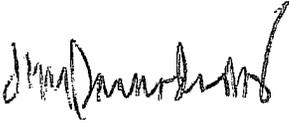
Submitted by:



Andres Pinto



Stanley Hirsch



Jean Iannadrea



Michael Landers



Nabil Bissada

# Interim Sexual Misconduct Policy

September 16, 2013

Marilyn Sanders Mobley  
Louis Stark  
Colleen Trembl

## New Interim Sexual Misconduct Policy

- Department of Education (DOE) oversees Title IX enforcement, including sexual harassment and sexual violence.
- DOE provided direction to colleges & universities via a “Dear Colleague” Letter (DCL) sent to all educational institutions regarding sexual violence and grievance processes.
- The DOE expressed concern about sexual violence on campuses.
  - 1 in 5 college women have experienced sexual violence
  - 6.1% college men have experienced sexual violence
- The DOE’s general concerns: underreporting of sexual violence, lengthy investigations, inadequate action taken, fairness of the grievance process for both parties

## Department of Education “Dear Colleague” Letter

- “Dear Colleague Letter” is “significant guidance” used to evaluate compliance with the law.
- Ongoing discussions between higher education and DOE regarding the letter and clarification of its requirements.
- Representatives of OIDEO, Student Affairs, and Office of General Counsel have been meeting on a regular basis to work on a revised sexual misconduct policy.
- CWRU representatives have sought guidance on DCL from National Center for Higher Education Risk Management (NCHERM) and others, and attended training and certification conference at College of Wooster this summer to discuss implementation of DCL.

# Interim Policy

- Interim policy combines sexual harassment and sexual assault policy into Sexual Misconduct Policy.
- Complex process to combine 2 policies
- Effective August 17, 2013 for start of academic year
- Opportunity for input on interim policy by different constituencies, including President's Council, Faculty Senate, Staff Advisory Council, USG, GSS etc. during this academic year, as well as Board of Trustees.
- Will be in place until final policy approved.

## Key Provisions of “Dear Colleague” Letter

- Sexual violence is a form of sexual discrimination prohibited by Title IX.
- Need to have consistent sexual harassment and sexual assault/violence policies.
- Key steps: 1) stop the misconduct; 2) prevent recurrence; and 3) address effects.
- Off-campus sexual misconduct must be addressed.
- If an institution knows or reasonably should have known, university must investigate and take action.
- Specify Title IX Coordinator.
- Specific requirements for grievance procedures.
- Training of board/investigators/campus community.

# Key Changes to Policy

1. Clarifying that each member of university community has an obligation to report sexual misconduct, which includes reporting if witness sexual misconduct, hear about it from the person who experienced it, or hear about it from another person.
  - Obligation to report existed under prior policy too.
2. Identification of Title IX Coordinator (OIDEO) and Deputy Title IX Coordinators.
3. Provides definitions of misconduct that falls under the policy and elements of each type of misconduct  
i.e. sexual harassment, non-consensual sexual contact, forced sexual intercourse

# Key Changes to Policy

4. Includes definition of “consent” and “incapacitation,” which can be key issues in sexual misconduct cases
5. Revises confidentiality provision with use of term “confidential” for privileged communications and general reporting with confidentiality maintained to extent possible.
  - Need to weigh interests regarding confidentiality
6. Encourages reporting by consideration of educational interventions for witnesses and bystanders who report but may be in violation of another policy i.e. underage drinking.

# Key Changes to Policy

7. Formalizing and creating title of “Sexual Misconduct Investigator/Deputy Title IX Coordinator” position to investigate complaints and provide file to hearing panel.
8. Reconstituting panel for hearings as “Community Standards Board” to hear all sexual misconduct cases and appeals so process and training are consistent.
9. Revising formal board hearing process so that support persons (formerly “advisors”) will be members of the University community, as was the practice under the sexual harassment policy, with exceptions for an appropriate off-campus resource in sexual assault hearings (i.e. Rape Crisis Center).

# Key Changes to Policy

10. Appeals now heard by an appeals board of 3 members of Community Standards Board, rather than President, with review of appeal to assure appeal meets 1 of 3 bases for appeal
  - Bases = New information not available to panel, procedures not followed, inappropriate sanction
11. Complaints investigated and decided in 60 days, except complex cases/extenuating circumstances.
12. CWRU process is independent of any criminal process

# Questions?

**Interim Policy is available at:**

[www.case.edu/diversity/sexualconduct/policies/Sexual-Misconduct-Policy.pdf](http://www.case.edu/diversity/sexualconduct/policies/Sexual-Misconduct-Policy.pdf)

**Questions?**

**Office of Inclusion, Diversity & Equal Opportunity**

**368-8877**

**Office of Student Affairs**

**368-2020**

**Office of General Counsel**

**368-4286**



## UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS

THE ASSISTANT SECRETARY

April 4, 2011

Dear Colleague:

Education has long been recognized as the great equalizer in America. The U.S. Department of Education and its Office for Civil Rights (OCR) believe that providing all students with an educational environment free from discrimination is extremely important. The sexual harassment of students, including sexual violence, interferes with students' right to receive an education free from discrimination and, in the case of sexual violence, is a crime.

Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681 *et seq.*, and its implementing regulations, 34 C.F.R. Part 106, prohibit discrimination on the basis of sex in education programs or activities operated by recipients of Federal financial assistance. Sexual harassment of students, which includes acts of sexual violence, is a form of sex discrimination prohibited by Title IX. In order to assist recipients, which include school districts, colleges, and universities (hereinafter "schools" or "recipients") in meeting these obligations, this letter<sup>1</sup> explains that the requirements of Title IX pertaining to sexual harassment also cover sexual violence, and lays out the specific Title IX requirements applicable to sexual violence.<sup>2</sup> Sexual violence, as that term is used in this letter, refers to physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent due to the victim's use of drugs or alcohol. An individual also may be unable to give consent due to an intellectual or other disability. A number of different acts fall into the category of sexual violence, including rape,

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<sup>1</sup> The Department has determined that this Dear Colleague Letter is a "significant guidance document" under the Office of Management and Budget's Final Bulletin for Agency Good Guidance Practices, 72 Fed. Reg. 3432 (Jan. 25, 2007), available at:

[http://www.whitehouse.gov/sites/default/files/omb/assets/regulatory\\_matters\\_pdf/012507\\_good\\_guidance.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/regulatory_matters_pdf/012507_good_guidance.pdf).

OCR issues this and other policy guidance to provide recipients with information to assist them in meeting their obligations, and to provide members of the public with information about their rights, under the civil rights laws and implementing regulations that we enforce. OCR's legal authority is based on those laws and regulations. This letter does not add requirements to applicable law, but provides information and examples to inform recipients about how OCR evaluates whether covered entities are complying with their legal obligations. If you are interested in commenting on this guidance, please send an e-mail with your comments to [OCR@ed.gov](mailto:OCR@ed.gov), or write to us at the following address: Office for Civil Rights, U.S. Department of Education, 400 Maryland Avenue, SW, Washington, DC 20202.

<sup>2</sup> Use of the term "sexual harassment" throughout this document includes sexual violence unless otherwise noted. Sexual harassment also may violate Title IV of the Civil Rights Act of 1964 (42 U.S.C. § 2000c), which prohibits public school districts and colleges from discriminating against students on the basis of sex, among other bases. The U.S. Department of Justice enforces Title IV.

sexual assault, sexual battery, and sexual coercion. All such acts of sexual violence are forms of sexual harassment covered under Title IX.

The statistics on sexual violence are both deeply troubling and a call to action for the nation. A report prepared for the National Institute of Justice found that about 1 in 5 women are victims of completed or attempted sexual assault while in college.<sup>3</sup> The report also found that approximately 6.1 percent of males were victims of completed or attempted sexual assault during college.<sup>4</sup> According to data collected under the Jeanne Clery Disclosure of Campus Security and Campus Crime Statistics Act (Clery Act), 20 U.S.C. § 1092(f), in 2009, college campuses reported nearly 3,300 forcible sex offenses as defined by the Clery Act.<sup>5</sup> This problem is not limited to college. During the 2007-2008 school year, there were 800 reported incidents of rape and attempted rape and 3,800 reported incidents of other sexual batteries at public high schools.<sup>6</sup> Additionally, the likelihood that a woman with intellectual disabilities will be sexually assaulted is estimated to be significantly higher than the general population.<sup>7</sup> The Department is deeply concerned about this problem and is committed to ensuring that all students feel safe in their school, so that they have the opportunity to benefit fully from the school's programs and activities.

This letter begins with a discussion of Title IX's requirements related to student-on-student sexual harassment, including sexual violence, and explains schools' responsibility to take immediate and effective steps to end sexual harassment and sexual violence. These requirements are discussed in detail in OCR's *Revised Sexual Harassment Guidance* issued in 2001 (*2001 Guidance*).<sup>8</sup> This letter supplements the *2001 Guidance* by providing additional guidance and practical examples regarding the Title IX requirements as they relate to sexual violence. This letter concludes by discussing the proactive efforts schools can take to prevent sexual harassment and violence, and by providing examples of remedies that schools and OCR may use to end such conduct, prevent its recurrence, and address its effects. Although some examples contained in this letter are applicable only in the postsecondary context, sexual

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<sup>3</sup> CHRISTOPHER P. KREBS ET AL., THE CAMPUS SEXUAL ASSAULT STUDY: FINAL REPORT xiii (Nat'l Criminal Justice Reference Serv., Oct. 2007), available at <http://www.ncjrs.gov/pdffiles1/nij/grants/221153.pdf>. This study also found that the majority of campus sexual assaults occur when women are incapacitated, primarily by alcohol. *Id.* at xviii.

<sup>4</sup> *Id.* at 5-5.

<sup>5</sup> U.S. Department of Education, Office of Postsecondary Education, Summary Crime Statistics (data compiled from reports submitted in compliance with the Clery Act), available at <http://www2.ed.gov/admins/lead/safety/criminal2007-09.pdf>. Under the Clery Act, forcible sex offenses are defined as any sexual act directed against another person, forcibly and/or against that person's will, or not forcibly or against the person's will where the victim is incapable of giving consent. Forcible sex offenses include forcible rape, forcible sodomy, sexual assault with an object, and forcible fondling. 34 C.F.R. Part 668, Subpt. D, App. A.

<sup>6</sup> SIMONE ROBERS ET AL., INDICATORS OF SCHOOL CRIME AND SAFETY: 2010 at 104 (U.S. Dep't of Educ. & U.S. Dep't of Justice, Nov. 2010), available at <http://nces.ed.gov/pubs2011/2011002.pdf>.

<sup>7</sup> ERIKA HARRELL & MICHAEL R. RAND, CRIME AGAINST PEOPLE WITH DISABILITIES, 2008 (Bureau of Justice Statistics, U.S. Dep't of Justice, Dec. 2010), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/capd08.pdf>.

<sup>8</sup> The *2001 Guidance* is available on the Department's Web site at <http://www2.ed.gov/about/offices/list/ocr/docs/shguide.pdf>. This letter focuses on peer sexual harassment and violence. Schools' obligations and the appropriate response to sexual harassment and violence committed by employees may be different from those described in this letter. Recipients should refer to the *2001 Guidance* for further information about employee harassment of students.

harassment and violence also are concerns for school districts. The Title IX obligations discussed in this letter apply equally to school districts unless otherwise noted.

## **Title IX Requirements Related to Sexual Harassment and Sexual Violence**

### **Schools' Obligations to Respond to Sexual Harassment and Sexual Violence**

Sexual harassment is unwelcome conduct of a sexual nature. It includes unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature. Sexual violence is a form of sexual harassment prohibited by Title IX.<sup>9</sup>

As explained in OCR's *2001 Guidance*, when a student sexually harasses another student, the harassing conduct creates a hostile environment if the conduct is sufficiently serious that it interferes with or limits a student's ability to participate in or benefit from the school's program. The more severe the conduct, the less need there is to show a repetitive series of incidents to prove a hostile environment, particularly if the harassment is physical. Indeed, a single or isolated incident of sexual harassment may create a hostile environment if the incident is sufficiently severe. For instance, a single instance of rape is sufficiently severe to create a hostile environment.<sup>10</sup>

Title IX protects students from sexual harassment in a school's education programs and activities. This means that Title IX protects students in connection with all the academic, educational, extracurricular, athletic, and other programs of the school, whether those programs take place in a school's facilities, on a school bus, at a class or training program

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<sup>9</sup> Title IX also prohibits gender-based harassment, which may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex-stereotyping, even if those acts do not involve conduct of a sexual nature. The Title IX obligations discussed in this letter also apply to gender-based harassment. Gender-based harassment is discussed in more detail in the *2001 Guidance*, and in the 2010 Dear Colleague letter on Harassment and Bullying, which is available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.pdf>.

<sup>10</sup> See, e.g., *Jennings v. Univ. of N.C.*, 444 F.3d 255, 268, 274 n.12 (4th Cir. 2006) (acknowledging that while not an issue in this case, a single incident of sexual assault or rape could be sufficient to raise a jury question about whether a hostile environment exists, and noting that courts look to Title VII cases for guidance in analyzing Title IX sexual harassment claims); *Vance v. Spencer Cnty. Pub. Sch. Dist.*, 231 F.3d 253, 259 n.4 (6th Cir. 2000) ("[w]ithin the context of Title IX, a student's claim of hostile environment can arise from a single incident" (quoting *Doe v. Sch. Admin. Dist. No. 19*, 66 F. Supp. 2d 57, 62 (D. Me. 1999))); *Soper v. Hoben*, 195 F.3d 845, 855 (6th Cir. 1999) (explaining that rape and sexual abuse "obviously qualify[ed] as...severe, pervasive, and objectively offensive sexual harassment"); see also *Berry v. Chi. Transit Auth.*, 618 F.3d 688, 692 (7th Cir. 2010) (in the Title VII context, "a single act can create a hostile environment if it is severe enough, and instances of uninvited physical contact with intimate parts of the body are among the most severe types of sexual harassment"); *Turner v. Saloon, Ltd.*, 595 F.3d 679, 686 (7th Cir. 2010) (noting that "[o]ne instance of conduct that is sufficiently severe may be enough," which is "especially true when the touching is of an intimate body part" (quoting *Jackson v. Cnty. of Racine*, 474 F.3d 493, 499 (7th Cir. 2007))); *McKinnis v. Crescent Guardian, Inc.*, 189 F. App'x 307, 310 (5th Cir. 2006) (holding that "the deliberate and unwanted touching of [a plaintiff's] intimate body parts can constitute severe sexual harassment" in Title VII cases (quoting *Harvill v. Westward Commc'ns, L.L.C.*, 433 F.3d 428, 436 (5th Cir. 2005))).

sponsored by the school at another location, or elsewhere. For example, Title IX protects a student who is sexually assaulted by a fellow student during a school-sponsored field trip.<sup>11</sup>

If a school knows or reasonably should know about student-on-student harassment that creates a hostile environment, Title IX requires the school to take immediate action to eliminate the harassment, prevent its recurrence, and address its effects.<sup>12</sup> Schools also are required to publish a notice of nondiscrimination and to adopt and publish grievance procedures. Because of these requirements, which are discussed in greater detail in the following section, schools need to ensure that their employees are trained so that they know to report harassment to appropriate school officials, and so that employees with the authority to address harassment know how to respond properly. Training for employees should include practical information about how to identify and report sexual harassment and violence. OCR recommends that this training be provided to any employees likely to witness or receive reports of sexual harassment and violence, including teachers, school law enforcement unit employees, school administrators, school counselors, general counsels, health personnel, and resident advisors.

Schools may have an obligation to respond to student-on-student sexual harassment that initially occurred off school grounds, outside a school's education program or activity. If a student files a complaint with the school, regardless of where the conduct occurred, the school must process the complaint in accordance with its established procedures. Because students often experience the continuing effects of off-campus sexual harassment in the educational setting, schools should consider the effects of the off-campus conduct when evaluating whether there is a hostile environment on campus. For example, if a student alleges that he or she was sexually assaulted by another student off school grounds, and that upon returning to school he or she was taunted and harassed by other students who are the alleged perpetrator's friends, the school should take the earlier sexual assault into account in determining whether there is a sexually hostile environment. The school also should take steps to protect a student who was assaulted off campus from further sexual harassment or retaliation from the perpetrator and his or her associates.

Regardless of whether a harassed student, his or her parent, or a third party files a complaint under the school's grievance procedures or otherwise requests action on the student's behalf, a school that knows, or reasonably should know, about possible harassment must promptly investigate to determine what occurred and then take appropriate steps to resolve the situation. As discussed later in this letter, the school's Title IX investigation is different from any law enforcement investigation, and a law enforcement investigation does not relieve the school of its independent Title IX obligation to investigate the conduct. The specific steps in a school's

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<sup>11</sup> Title IX also protects third parties from sexual harassment or violence in a school's education programs and activities. For example, Title IX protects a high school student participating in a college's recruitment program, a visiting student athlete, and a visitor in a school's on-campus residence hall. Title IX also protects employees of a recipient from sexual harassment. For further information about harassment of employees, see *2001 Guidance* at n.1.

<sup>12</sup> This is the standard for administrative enforcement of Title IX and in court cases where plaintiffs are seeking injunctive relief. See *2001 Guidance* at ii-v, 12-13. The standard in private lawsuits for monetary damages is actual knowledge and deliberate indifference. See *Davis v. Monroe Cnty. Bd. of Ed.*, 526 U.S. 629, 643, 648 (1999).

investigation will vary depending upon the nature of the allegations, the age of the student or students involved (particularly in elementary and secondary schools), the size and administrative structure of the school, and other factors. Yet as discussed in more detail below, the school's inquiry must in all cases be prompt, thorough, and impartial. In cases involving potential criminal conduct, school personnel must determine, consistent with State and local law, whether appropriate law enforcement or other authorities should be notified.<sup>13</sup>

Schools also should inform and obtain consent from the complainant (or the complainant's parents if the complainant is under 18 and does not attend a postsecondary institution) before beginning an investigation. If the complainant requests confidentiality or asks that the complaint not be pursued, the school should take all reasonable steps to investigate and respond to the complaint consistent with the request for confidentiality or request not to pursue an investigation. If a complainant insists that his or her name or other identifiable information not be disclosed to the alleged perpetrator, the school should inform the complainant that its ability to respond may be limited.<sup>14</sup> The school also should tell the complainant that Title IX prohibits retaliation, and that school officials will not only take steps to prevent retaliation but also take strong responsive action if it occurs.

As discussed in the *2001 Guidance*, if the complainant continues to ask that his or her name or other identifiable information not be revealed, the school should evaluate that request in the context of its responsibility to provide a safe and nondiscriminatory environment for all students. Thus, the school may weigh the request for confidentiality against the following factors: the seriousness of the alleged harassment; the complainant's age; whether there have been other harassment complaints about the same individual; and the alleged harasser's rights to receive information about the allegations if the information is maintained by the school as an "education record" under the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g; 34 C.F.R. Part 99.<sup>15</sup> The school should inform the complainant if it cannot ensure confidentiality. Even if the school cannot take disciplinary action against the alleged harasser because the complainant insists on confidentiality, it should pursue other steps to limit the effects of the alleged harassment and prevent its recurrence. Examples of such steps are discussed later in this letter.

Compliance with Title IX, such as publishing a notice of nondiscrimination, designating an employee to coordinate Title IX compliance, and adopting and publishing grievance procedures, can serve as preventive measures against harassment. Combined with education and training programs, these measures can help ensure that all students and employees recognize the

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<sup>13</sup> In states with mandatory reporting laws, schools may be required to report certain incidents to local law enforcement or child protection agencies.

<sup>14</sup> Schools should refer to the *2001 Guidance* for additional information on confidentiality and the alleged perpetrator's due process rights.

<sup>15</sup> For example, the alleged harasser may have a right under FERPA to inspect and review portions of the complaint that directly relate to him or her. In that case, the school must redact the complainant's name and other identifying information before allowing the alleged harasser to inspect and review the sections of the complaint that relate to him or her. In some cases, such as those where the school is required to report the incident to local law enforcement or other officials, the school may not be able to maintain the complainant's confidentiality.

nature of sexual harassment and violence, and understand that the school will not tolerate such conduct. Indeed, these measures may bring potentially problematic conduct to the school's attention before it becomes serious enough to create a hostile environment. Training for administrators, teachers, staff, and students also can help ensure that they understand what types of conduct constitute sexual harassment or violence, can identify warning signals that may need attention, and know how to respond. More detailed information and examples of education and other preventive measures are provided later in this letter.

### **Procedural Requirements Pertaining to Sexual Harassment and Sexual Violence**

Recipients of Federal financial assistance must comply with the procedural requirements outlined in the Title IX implementing regulations. Specifically, a recipient must:

- (A) Disseminate a notice of nondiscrimination;<sup>16</sup>
- (B) Designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under Title IX;<sup>17</sup> and
- (C) Adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee sex discrimination complaints.<sup>18</sup>

These requirements apply to all forms of sexual harassment, including sexual violence, and are important for preventing and effectively responding to sex discrimination. They are discussed in greater detail below. OCR advises recipients to examine their current policies and procedures on sexual harassment and sexual violence to determine whether those policies comply with the requirements articulated in this letter and the *2001 Guidance*. Recipients should then implement changes as needed.

#### **(A) Notice of Nondiscrimination**

The Title IX regulations require that each recipient publish a notice of nondiscrimination stating that the recipient does not discriminate on the basis of sex in its education programs and activities, and that Title IX requires it not to discriminate in such a manner.<sup>19</sup> The notice must state that inquiries concerning the application of Title IX may be referred to the recipient's Title IX coordinator or to OCR. It should include the name or title, office address, telephone number, and e-mail address for the recipient's designated Title IX coordinator.

The notice must be widely distributed to all students, parents of elementary and secondary students, employees, applicants for admission and employment, and other relevant persons. OCR recommends that the notice be prominently posted on school Web sites and at various

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<sup>16</sup> 34 C.F.R. § 106.9.

<sup>17</sup> *Id.* § 106.8(a).

<sup>18</sup> *Id.* § 106.8(b).

<sup>19</sup> *Id.* § 106.9(a).

locations throughout the school or campus and published in electronic and printed publications of general distribution that provide information to students and employees about the school's services and policies. The notice should be available and easily accessible on an ongoing basis.

Title IX does not require a recipient to adopt a policy specifically prohibiting sexual harassment or sexual violence. As noted in the *2001 Guidance*, however, a recipient's general policy prohibiting sex discrimination will not be considered effective and would violate Title IX if, because of the lack of a specific policy, students are unaware of what kind of conduct constitutes sexual harassment, including sexual violence, or that such conduct is prohibited sex discrimination. OCR therefore recommends that a recipient's nondiscrimination policy state that prohibited sex discrimination covers sexual harassment, including sexual violence, and that the policy include examples of the types of conduct that it covers.

(B) *Title IX Coordinator*

The Title IX regulations require a recipient to notify all students and employees of the name or title and contact information of the person designated to coordinate the recipient's compliance with Title IX.<sup>20</sup> The coordinator's responsibilities include overseeing all Title IX complaints and identifying and addressing any patterns or systemic problems that arise during the review of such complaints. The Title IX coordinator or designee should be available to meet with students as needed. If a recipient designates more than one Title IX coordinator, the notice should describe each coordinator's responsibilities (*e.g.*, who will handle complaints by students, faculty, and other employees). The recipient should designate one coordinator as having ultimate oversight responsibility, and the other coordinators should have titles clearly showing that they are in a deputy or supporting role to the senior coordinator. The Title IX coordinators should not have other job responsibilities that may create a conflict of interest. For example, serving as the Title IX coordinator and a disciplinary hearing board member or general counsel may create a conflict of interest.

Recipients must ensure that employees designated to serve as Title IX coordinators have adequate training on what constitutes sexual harassment, including sexual violence, and that they understand how the recipient's grievance procedures operate. Because sexual violence complaints often are filed with the school's law enforcement unit, all school law enforcement unit employees should receive training on the school's Title IX grievance procedures and any other procedures used for investigating reports of sexual violence. In addition, these employees should receive copies of the school's Title IX policies. Schools should instruct law enforcement unit employees both to notify complainants of their right to file a Title IX sex discrimination complaint with the school in addition to filing a criminal complaint, and to report incidents of sexual violence to the Title IX coordinator if the complainant consents. The school's Title IX coordinator or designee should be available to provide assistance to school law enforcement unit employees regarding how to respond appropriately to reports of sexual violence. The Title IX coordinator also should be given access to school law enforcement unit investigation notes

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<sup>20</sup> *Id.* § 106.8(a).

and findings as necessary for the Title IX investigation, so long as it does not compromise the criminal investigation.

(C) Grievance Procedures

The Title IX regulations require all recipients to adopt and publish grievance procedures providing for the prompt and equitable resolution of sex discrimination complaints.<sup>21</sup> The grievance procedures must apply to sex discrimination complaints filed by students against school employees, other students, or third parties.

Title IX does not require a recipient to provide separate grievance procedures for sexual harassment and sexual violence complaints. Therefore, a recipient may use student disciplinary procedures or other separate procedures to resolve such complaints. Any procedures used to adjudicate complaints of sexual harassment or sexual violence, including disciplinary procedures, however, must meet the Title IX requirement of affording a complainant a prompt and equitable resolution.<sup>22</sup> These requirements are discussed in greater detail below. If the recipient relies on disciplinary procedures for Title IX compliance, the Title IX coordinator should review the recipient's disciplinary procedures to ensure that the procedures comply with the prompt and equitable requirements of Title IX.<sup>23</sup>

Grievance procedures generally may include voluntary informal mechanisms (*e.g.*, mediation) for resolving some types of sexual harassment complaints. OCR has frequently advised recipients, however, that it is improper for a student who complains of harassment to be required to work out the problem directly with the alleged perpetrator, and certainly not without appropriate involvement by the school (*e.g.*, participation by a trained counselor, a trained mediator, or, if appropriate, a teacher or administrator). In addition, as stated in the *2001 Guidance*, the complainant must be notified of the right to end the informal process at any time and begin the formal stage of the complaint process. Moreover, in cases involving allegations of sexual assault, mediation is not appropriate even on a voluntary basis. OCR recommends that recipients clarify in their grievance procedures that mediation will not be used to resolve sexual assault complaints.

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<sup>21</sup> *Id.* § 106.8(b). Title IX also requires recipients to adopt and publish grievance procedures for employee complaints of sex discrimination.

<sup>22</sup> These procedures must apply to all students, including athletes. If a complaint of sexual violence involves a student athlete, the school must follow its standard procedures for resolving sexual violence complaints. Such complaints must not be addressed solely by athletics department procedures. Additionally, if an alleged perpetrator is an elementary or secondary student with a disability, schools must follow the procedural safeguards in the Individuals with Disabilities Education Act (at 20 U.S.C. § 1415 and 34 C.F.R. §§ 300.500-300.519, 300.530-300.537) as well as the requirements of Section 504 of the Rehabilitation Act of 1973 (at 34 C.F.R. §§ 104.35-104.36) when conducting the investigation and hearing.

<sup>23</sup> A school may not absolve itself of its Title IX obligations to investigate and resolve complaints of sexual harassment or violence by delegating, whether through express contractual agreement or other less formal arrangement, the responsibility to administer school discipline to school resource officers or "contract" law enforcement officers. See 34 C.F.R. § 106.4.

Prompt and Equitable Requirements

As stated in the *2001 Guidance*, OCR has identified a number of elements in evaluating whether a school's grievance procedures provide for prompt and equitable resolution of sexual harassment complaints. These elements also apply to sexual violence complaints because, as explained above, sexual violence is a form of sexual harassment. OCR will review all aspects of a school's grievance procedures, including the following elements that are critical to achieve compliance with Title IX:

- Notice to students, parents of elementary and secondary students, and employees of the grievance procedures, including where complaints may be filed;
- Application of the procedures to complaints alleging harassment carried out by employees, other students, or third parties;
- Adequate, reliable, and impartial investigation of complaints, including the opportunity for both parties to present witnesses and other evidence;
- Designated and reasonably prompt time frames for the major stages of the complaint process;
- Notice to parties of the outcome of the complaint;<sup>24</sup> and
- An assurance that the school will take steps to prevent recurrence of any harassment and to correct its discriminatory effects on the complainant and others, if appropriate.

As noted in the *2001 Guidance*, procedures adopted by schools will vary in detail, specificity, and components, reflecting differences in the age of students, school sizes and administrative structures, State or local legal requirements, and past experiences. Although OCR examines whether all applicable elements are addressed when investigating sexual harassment complaints, this letter focuses on those elements where our work indicates that more clarification and explanation are needed, including:

(A) Notice of the grievance procedures

The procedures for resolving complaints of sex discrimination, including sexual harassment, should be written in language appropriate to the age of the school's students, easily understood, easily located, and widely distributed. OCR recommends that the grievance procedures be prominently posted on school Web sites; sent electronically to all members of the school community; available at various locations throughout the school or campus; and summarized in or attached to major publications issued by the school, such as handbooks, codes of conduct, and catalogs for students, parents of elementary and secondary students, faculty, and staff.

(B) Adequate, Reliable, and Impartial Investigation of Complaints

OCR's work indicates that a number of issues related to an adequate, reliable, and impartial investigation arise in sexual harassment and violence complaints. In some cases, the conduct

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<sup>24</sup> "Outcome" does not refer to information about disciplinary sanctions unless otherwise noted. Notice of the outcome is discussed in greater detail in Section D below.

may constitute both sexual harassment under Title IX and criminal activity. Police investigations may be useful for fact-gathering; but because the standards for criminal investigations are different, police investigations or reports are not determinative of whether sexual harassment or violence violates Title IX. Conduct may constitute unlawful sexual harassment under Title IX even if the police do not have sufficient evidence of a criminal violation. In addition, a criminal investigation into allegations of sexual violence does not relieve the school of its duty under Title IX to resolve complaints promptly and equitably.

A school should notify a complainant of the right to file a criminal complaint, and should not dissuade a victim from doing so either during or after the school's internal Title IX investigation. For instance, if a complainant wants to file a police report, the school should not tell the complainant that it is working toward a solution and instruct, or ask, the complainant to wait to file the report.

Schools should not wait for the conclusion of a criminal investigation or criminal proceeding to begin their own Title IX investigation and, if needed, must take immediate steps to protect the student in the educational setting. For example, a school should not delay conducting its own investigation or taking steps to protect the complainant because it wants to see whether the alleged perpetrator will be found guilty of a crime. Any agreement or Memorandum of Understanding (MOU) with a local police department must allow the school to meet its Title IX obligation to resolve complaints promptly and equitably. Although a school may need to delay temporarily the fact-finding portion of a Title IX investigation while the police are gathering evidence, once notified that the police department has completed its gathering of evidence (not the ultimate outcome of the investigation or the filing of any charges), the school must promptly resume and complete its fact-finding for the Title IX investigation.<sup>25</sup> Moreover, nothing in an MOU or the criminal investigation itself should prevent a school from notifying complainants of their Title IX rights and the school's grievance procedures, or from taking interim steps to ensure the safety and well-being of the complainant and the school community while the law enforcement agency's fact-gathering is in progress. OCR also recommends that a school's MOU include clear policies on when a school will refer a matter to local law enforcement.

As noted above, the Title IX regulation requires schools to provide equitable grievance procedures. As part of these procedures, schools generally conduct investigations and hearings to determine whether sexual harassment or violence occurred. In addressing complaints filed with OCR under Title IX, OCR reviews a school's procedures to determine whether the school is using a preponderance of the evidence standard to evaluate complaints. The Supreme Court has applied a preponderance of the evidence standard in civil litigation involving discrimination under Title VII of the Civil Rights Act of 1964 (Title VII), 42 U.S.C. §§ 2000e *et seq.* Like Title IX,

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<sup>25</sup> In one recent OCR sexual violence case, the prosecutor's office informed OCR that the police department's evidence gathering stage typically takes three to ten calendar days, although the delay in the school's investigation may be longer in certain instances.

Title VII prohibits discrimination on the basis of sex.<sup>26</sup> OCR also uses a preponderance of the evidence standard when it resolves complaints against recipients. For instance, OCR’s Case Processing Manual requires that a noncompliance determination be supported by the preponderance of the evidence when resolving allegations of discrimination under all the statutes enforced by OCR, including Title IX.<sup>27</sup> OCR also uses a preponderance of the evidence standard in its fund termination administrative hearings.<sup>28</sup> Thus, in order for a school’s grievance procedures to be consistent with Title IX standards, the school must use a preponderance of the evidence standard (*i.e.*, it is more likely than not that sexual harassment or violence occurred). The “clear and convincing” standard (*i.e.*, it is highly probable or reasonably certain that the sexual harassment or violence occurred), currently used by some schools, is a higher standard of proof. Grievance procedures that use this higher standard are inconsistent with the standard of proof established for violations of the civil rights laws, and are thus not equitable under Title IX. Therefore, preponderance of the evidence is the appropriate standard for investigating allegations of sexual harassment or violence.

Throughout a school’s Title IX investigation, including at any hearing, the parties must have an equal opportunity to present relevant witnesses and other evidence. The complainant and the alleged perpetrator must be afforded similar and timely access to any information that will be used at the hearing.<sup>29</sup> For example, a school should not conduct a pre-hearing meeting during which only the alleged perpetrator is present and given an opportunity to present his or her side of the story, unless a similar meeting takes place with the complainant; a hearing officer or disciplinary board should not allow only the alleged perpetrator to present character witnesses at a hearing; and a school should not allow the alleged perpetrator to review the complainant’s

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<sup>26</sup> See, e.g., *Desert Palace, Inc. v. Costa*, 539 U.S. 90, 99 (2003) (noting that under the “conventional rule of civil litigation,” the preponderance of the evidence standard generally applies in cases under Title VII); *Price Waterhouse v. Hopkins*, 490 U.S. 228, 252-55 (1989) (approving preponderance standard in Title VII sex discrimination case) (plurality opinion); *id.* at 260 (White, J., concurring in the judgment); *id.* at 261 (O’Connor, J., concurring in the judgment). The 2001 *Guidance* noted (on page vi) that “[w]hile *Gebser* and *Davis* made clear that Title VII agency principles do not apply in determining liability for money damages under Title IX, the *Davis* Court also indicated, through its specific references to Title VII caselaw, that Title VII remains relevant in determining what constitutes hostile environment sexual harassment under Title IX.” See also *Jennings v. Univ. of N.C.*, 482 F.3d 686, 695 (4th Cir. 2007) (“We look to case law interpreting Title VII of the Civil Rights Act of 1964 for guidance in evaluating a claim brought under Title IX.”).

<sup>27</sup> OCR’s Case Processing Manual is available on the Department’s Web site, at <http://www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.html>.

<sup>28</sup> The Title IX regulations adopt the procedural provisions applicable to Title VI of the Civil Rights Act of 1964. See 34 C.F.R. § 106.71 (“The procedural provisions applicable to Title VI of the Civil Rights Act of 1964 are hereby adopted and incorporated herein by reference.”). The Title VI regulations apply the Administrative Procedure Act to administrative hearings required prior to termination of Federal financial assistance and require that termination decisions be “supported by and in accordance with the reliable, probative and substantial evidence.” 5 U.S.C. § 556(d). The Supreme Court has interpreted “reliable, probative and substantial evidence” as a direction to use the preponderance standard. See *Steadman v. SEC*, 450 U.S. 91, 98-102 (1981).

<sup>29</sup> Access to this information must be provided consistent with FERPA. For example, if a school introduces an alleged perpetrator’s prior disciplinary records to support a tougher disciplinary penalty, the complainant would not be allowed access to those records. Additionally, access should not be given to privileged or confidential information. For example, the alleged perpetrator should not be given access to communications between the complainant and a counselor or information regarding the complainant’s sexual history.

statement without also allowing the complainant to review the alleged perpetrator’s statement.

While OCR does not require schools to permit parties to have lawyers at any stage of the proceedings, if a school chooses to allow the parties to have their lawyers participate in the proceedings, it must do so equally for both parties. Additionally, any school-imposed restrictions on the ability of lawyers to speak or otherwise participate in the proceedings should apply equally. OCR strongly discourages schools from allowing the parties personally to question or cross-examine each other during the hearing. Allowing an alleged perpetrator to question an alleged victim directly may be traumatic or intimidating, thereby possibly escalating or perpetuating a hostile environment. OCR also recommends that schools provide an appeals process. If a school provides for appeal of the findings or remedy, it must do so for both parties. Schools must maintain documentation of all proceedings, which may include written findings of facts, transcripts, or audio recordings.

All persons involved in implementing a recipient’s grievance procedures (*e.g.*, Title IX coordinators, investigators, and adjudicators) must have training or experience in handling complaints of sexual harassment and sexual violence, and in the recipient’s grievance procedures. The training also should include applicable confidentiality requirements. In sexual violence cases, the fact-finder and decision-maker also should have adequate training or knowledge regarding sexual violence.<sup>30</sup> Additionally, a school’s investigation and hearing processes cannot be equitable unless they are impartial. Therefore, any real or perceived conflicts of interest between the fact-finder or decision-maker and the parties should be disclosed.

Public and state-supported schools must provide due process to the alleged perpetrator. However, schools should ensure that steps taken to accord due process rights to the alleged perpetrator do not restrict or unnecessarily delay the Title IX protections for the complainant.

(C) *Designated and Reasonably Prompt Time Frames*

OCR will evaluate whether a school’s grievance procedures specify the time frames for all major stages of the procedures, as well as the process for extending timelines. Grievance procedures should specify the time frame within which: (1) the school will conduct a full investigation of the complaint; (2) both parties receive a response regarding the outcome of the complaint; and (3) the parties may file an appeal, if applicable. Both parties should be given periodic status updates. Based on OCR experience, a typical investigation takes approximately 60 calendar days following receipt of the complaint. Whether OCR considers complaint resolutions to be timely, however, will vary depending on the complexity of the investigation and the severity and extent of the harassment. For example, the resolution of a complaint involving multiple incidents with multiple complainants likely would take longer than one involving a single incident that

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<sup>30</sup> For instance, if an investigation or hearing involves forensic evidence, that evidence should be reviewed by a trained forensic examiner.

occurred in a classroom during school hours with a single complainant.

(D) Notice of Outcome

Both parties must be notified, in writing, about the outcome of both the complaint and any appeal,<sup>31</sup> *i.e.*, whether harassment was found to have occurred. OCR recommends that schools provide the written determination of the final outcome to the complainant and the alleged perpetrator concurrently. Title IX does not require the school to notify the alleged perpetrator of the outcome before it notifies the complainant.

Due to the intersection of Title IX and FERPA requirements, OCR recognizes that there may be confusion regarding what information a school may disclose to the complainant.<sup>32</sup> FERPA generally prohibits the nonconsensual disclosure of personally identifiable information from a student's "education record." However, as stated in the *2001 Guidance*, FERPA permits a school to disclose to the harassed student information about the sanction imposed upon a student who was found to have engaged in harassment when the sanction directly relates to the harassed student. This includes an order that the harasser stay away from the harassed student, or that the harasser is prohibited from attending school for a period of time, or transferred to other classes or another residence hall.<sup>33</sup> Disclosure of other information in the student's "education record," including information about sanctions that do not relate to the harassed student, may result in a violation of FERPA.

Further, when the conduct involves a crime of violence or a non-forcible sex offense,<sup>34</sup> FERPA permits a postsecondary institution to disclose to the alleged victim the final results of a

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<sup>31</sup> As noted previously, "outcome" does not refer to information about disciplinary sanctions unless otherwise noted.

<sup>32</sup> In 1994, Congress amended the General Education Provisions Act (GEPA), of which FERPA is a part, to state that nothing in GEPA "shall be construed to affect the applicability of title VI of the Civil Rights Act of 1964, title IX of Education Amendments of 1972, title V of the Rehabilitation Act of 1973, the Age Discrimination Act, or other statutes prohibiting discrimination, to any applicable program." 20 U.S.C. § 1221(d). The Department interprets this provision to mean that FERPA continues to apply in the context of Title IX enforcement, but if there is a direct conflict between the requirements of FERPA and the requirements of Title IX, such that enforcement of FERPA would interfere with the primary purpose of Title IX to eliminate sex-based discrimination in schools, the requirements of Title IX override any conflicting FERPA provisions. *See 2001 Guidance* at vii.

<sup>33</sup> This information directly relates to the complainant and is particularly important in sexual harassment cases because it affects whether a hostile environment has been eliminated. Because seeing the perpetrator may be traumatic, a complainant in a sexual harassment case may continue to be subject to a hostile environment if he or she does not know when the perpetrator will return to school or whether he or she will continue to share classes or a residence hall with the perpetrator. This information also directly affects a complainant's decision regarding how to work with the school to eliminate the hostile environment and prevent its recurrence. For instance, if a complainant knows that the perpetrator will not be at school or will be transferred to other classes or another residence hall for the rest of the year, the complainant may be less likely to want to transfer to another school or change classes, but if the perpetrator will be returning to school after a few days or weeks, or remaining in the complainant's classes or residence hall, the complainant may want to transfer schools or change classes to avoid contact. Thus, the complainant cannot make an informed decision about how best to respond without this information.

<sup>34</sup> Under the FERPA regulations, crimes of violence include arson; assault offenses (aggravated assault, simple assault, intimidation); burglary; criminal homicide (manslaughter by negligence); criminal homicide (murder and

disciplinary proceeding against the alleged perpetrator, regardless of whether the institution concluded that a violation was committed.<sup>35</sup> Additionally, a postsecondary institution may disclose to anyone—not just the alleged victim—the final results of a disciplinary proceeding if it determines that the student is an alleged perpetrator of a crime of violence or a non-forcible sex offense, and, with respect to the allegation made, the student has committed a violation of the institution’s rules or policies.<sup>36</sup>

Postsecondary institutions also are subject to additional rules under the Clery Act. This law, which applies to postsecondary institutions that participate in Federal student financial aid programs, requires that “both the accuser and the accused must be informed of the outcome<sup>37</sup> of any institutional disciplinary proceeding brought alleging a sex offense.”<sup>38</sup> Compliance with this requirement does not constitute a violation of FERPA. Furthermore, the FERPA limitations on redisclosure of information do not apply to information that postsecondary institutions are required to disclose under the Clery Act.<sup>39</sup> Accordingly, postsecondary institutions may not require a complainant to abide by a nondisclosure agreement, in writing or otherwise, that would prevent the redisclosure of this information.

### **Steps to Prevent Sexual Harassment and Sexual Violence and Correct its Discriminatory Effects on the Complainant and Others**

#### **Education and Prevention**

In addition to ensuring full compliance with Title IX, schools should take proactive measures to prevent sexual harassment and violence. OCR recommends that all schools implement preventive education programs and make victim resources, including comprehensive victim services, available. Schools may want to include these education programs in their (1) orientation programs for new students, faculty, staff, and employees; (2) training for students who serve as advisors in residence halls; (3) training for student athletes and coaches; and (4) school assemblies and “back to school nights.” These programs should include a

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non-negligent manslaughter); destruction, damage or vandalism of property; kidnapping/abduction; robbery; and forcible sex offenses. Forcible sex offenses are defined as any sexual act directed against another person forcibly or against that person’s will, or not forcibly or against the person’s will where the victim is incapable of giving consent. Forcible sex offenses include rape, sodomy, sexual assault with an object, and forcible fondling. Non-forcible sex offenses are incest and statutory rape. 34 C.F.R. Part 99, App. A.

<sup>35</sup> 34 C.F.R. § 99.31(a)(13). For purposes of 34 C.F.R. §§ 99.31(a)(13)-(14), disclosure of “final results” is limited to the name of the alleged perpetrator, any violation found to have been committed, and any sanction imposed against the perpetrator by the school. 34 C.F.R. § 99.39.

<sup>36</sup> 34 C.F.R. § 99.31(a)(14).

<sup>37</sup> For purposes of the Clery Act, “outcome” means the institution’s final determination with respect to the alleged sex offense and any sanctions imposed against the accused. 34 C.F.R. § 668.46(b)(11)(vi)(B).

<sup>38</sup> 34 C.F.R. § 668.46(b)(11)(vi)(B). Under the Clery Act, forcible sex offenses are defined as any sexual act directed against another person forcibly or against that person’s will, or not forcibly or against the person’s will where the person is incapable of giving consent. Forcible sex offenses include forcible rape, forcible sodomy, sexual assault with an object, and forcible fondling. Non-forcible sex offenses include incest and statutory rape. 34 C.F.R. Part 668, Subpt. D, App. A.

<sup>39</sup> 34 C.F.R. § 99.33(c).

discussion of what constitutes sexual harassment and sexual violence, the school's policies and disciplinary procedures, and the consequences of violating these policies.

The education programs also should include information aimed at encouraging students to report incidents of sexual violence to the appropriate school and law enforcement authorities. Schools should be aware that victims or third parties may be deterred from reporting incidents if alcohol, drugs, or other violations of school or campus rules were involved.<sup>40</sup> As a result, schools should consider whether their disciplinary policies have a chilling effect on victims' or other students' reporting of sexual violence offenses. For example, OCR recommends that schools inform students that the schools' primary concern is student safety, that any other rules violations will be addressed separately from the sexual violence allegation, and that use of alcohol or drugs never makes the victim at fault for sexual violence.

OCR also recommends that schools develop specific sexual violence materials that include the schools' policies, rules, and resources for students, faculty, coaches, and administrators. Schools also should include such information in their employee handbook and any handbooks that student athletes and members of student activity groups receive. These materials should include where and to whom students should go if they are victims of sexual violence. These materials also should tell students and school employees what to do if they learn of an incident of sexual violence. Schools also should assess student activities regularly to ensure that the practices and behavior of students do not violate the schools' policies against sexual harassment and sexual violence.

### **Remedies and Enforcement**

As discussed above, if a school determines that sexual harassment that creates a hostile environment has occurred, it must take immediate action to eliminate the hostile environment, prevent its recurrence, and address its effects. In addition to counseling or taking disciplinary action against the harasser, effective corrective action may require remedies for the complainant, as well as changes to the school's overall services or policies. Examples of these actions are discussed in greater detail below.

Title IX requires a school to take steps to protect the complainant as necessary, including taking interim steps before the final outcome of the investigation. The school should undertake these steps promptly once it has notice of a sexual harassment or violence allegation. The school should notify the complainant of his or her options to avoid contact with the alleged perpetrator and allow students to change academic or living situations as appropriate. For instance, the school may prohibit the alleged perpetrator from having any contact with the complainant pending the results of the school's investigation. When taking steps to separate the complainant and alleged perpetrator, a school should minimize the burden on the

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<sup>40</sup> The Department's Higher Education Center for Alcohol, Drug Abuse, and Violence Prevention (HEC) helps campuses and communities address problems of alcohol, other drugs, and violence by identifying effective strategies and programs based upon the best prevention science. Information on HEC resources and technical assistance can be found at [www.higheredcenter.org](http://www.higheredcenter.org).

complainant, and thus should not, as a matter of course, remove complainants from classes or housing while allowing alleged perpetrators to remain. In addition, schools should ensure that complainants are aware of their Title IX rights and any available resources, such as counseling, health, and mental health services, and their right to file a complaint with local law enforcement.<sup>41</sup>

Schools should be aware that complaints of sexual harassment or violence may be followed by retaliation by the alleged perpetrator or his or her associates. For instance, friends of the alleged perpetrator may subject the complainant to name-calling and taunting. As part of their Title IX obligations, schools must have policies and procedures in place to protect against retaliatory harassment. At a minimum, schools must ensure that complainants and their parents, if appropriate, know how to report any subsequent problems, and should follow-up with complainants to determine whether any retaliation or new incidents of harassment have occurred.

When OCR finds that a school has not taken prompt and effective steps to respond to sexual harassment or violence, OCR will seek appropriate remedies for both the complainant and the broader student population. When conducting Title IX enforcement activities, OCR seeks to obtain voluntary compliance from recipients. When a recipient does not come into compliance voluntarily, OCR may initiate proceedings to withdraw Federal funding by the Department or refer the case to the U.S. Department of Justice for litigation.

Schools should proactively consider the following remedies when determining how to respond to sexual harassment or violence. These are the same types of remedies that OCR would seek in its cases.

Depending on the specific nature of the problem, remedies for the complainant might include, but are not limited to:<sup>42</sup>

- providing an escort to ensure that the complainant can move safely between classes and activities;
- ensuring that the complainant and alleged perpetrator do not attend the same classes;
- moving the complainant or alleged perpetrator to a different residence hall or, in the case of an elementary or secondary school student, to another school within the district;
- providing counseling services;
- providing medical services;
- providing academic support services, such as tutoring;

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<sup>41</sup> The Clery Act requires postsecondary institutions to develop and distribute a statement of policy that informs students of their options to notify proper law enforcement authorities, including campus and local police, and the option to be assisted by campus personnel in notifying such authorities. The policy also must notify students of existing counseling, mental health, or other student services for victims of sexual assault, both on campus and in the community. 20 U.S.C. §§ 1092(f)(8)(B)(v)-(vi).

<sup>42</sup> Some of these remedies also can be used as interim measures before the school's investigation is complete.

- arranging for the complainant to re-take a course or withdraw from a class without penalty, including ensuring that any changes do not adversely affect the complainant’s academic record; and
- reviewing any disciplinary actions taken against the complainant to see if there is a causal connection between the harassment and the misconduct that may have resulted in the complainant being disciplined.<sup>43</sup>

Remedies for the broader student population might include, but are not limited to:

*Counseling and Training*

- offering counseling, health, mental health, or other holistic and comprehensive victim services to all students affected by sexual harassment or sexual violence, and notifying students of campus and community counseling, health, mental health, and other student services;
- designating an individual from the school’s counseling center to be “on call” to assist victims of sexual harassment or violence whenever needed;
- training the Title IX coordinator and any other employees who are involved in processing, investigating, or resolving complaints of sexual harassment or sexual violence, including providing training on:
  - the school’s Title IX responsibilities to address allegations of sexual harassment or violence
  - how to conduct Title IX investigations
  - information on the link between alcohol and drug abuse and sexual harassment or violence and best practices to address that link;
- training all school law enforcement unit personnel on the school’s Title IX responsibilities and handling of sexual harassment or violence complaints;
- training all employees who interact with students regularly on recognizing and appropriately addressing allegations of sexual harassment or violence under Title IX; and
- informing students of their options to notify proper law enforcement authorities, including school and local police, and the option to be assisted by school employees in notifying those authorities.

*Development of Materials and Implementation of Policies and Procedures*

- developing materials on sexual harassment and violence, which should be distributed to students during orientation and upon receipt of complaints, as well as widely posted throughout school buildings and residence halls, and which should include:
  - what constitutes sexual harassment or violence
  - what to do if a student has been the victim of sexual harassment or violence
  - contact information for counseling and victim services on and off school grounds
  - how to file a complaint with the school
  - how to contact the school’s Title IX coordinator

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<sup>43</sup> For example, if the complainant was disciplined for skipping a class in which the harasser was enrolled, the school should review the incident to determine if the complainant skipped the class to avoid contact with the harasser.

- what the school will do to respond to allegations of sexual harassment or violence, including the interim measures that can be taken
- requiring the Title IX coordinator to communicate regularly with the school’s law enforcement unit investigating cases and to provide information to law enforcement unit personnel regarding Title IX requirements;<sup>44</sup>
- requiring the Title IX coordinator to review all evidence in a sexual harassment or sexual violence case brought before the school’s disciplinary committee to determine whether the complainant is entitled to a remedy under Title IX that was not available through the disciplinary committee;<sup>45</sup>
- requiring the school to create a committee of students and school officials to identify strategies for ensuring that students:
  - know the school’s prohibition against sex discrimination, including sexual harassment and violence
  - recognize sex discrimination, sexual harassment, and sexual violence when they occur
  - understand how and to whom to report any incidents
  - know the connection between alcohol and drug abuse and sexual harassment or violence
  - feel comfortable that school officials will respond promptly and equitably to reports of sexual harassment or violence;
- issuing new policy statements or other steps that clearly communicate that the school does not tolerate sexual harassment and violence and will respond to any incidents and to any student who reports such incidents; and
- revising grievance procedures used to handle sexual harassment and violence complaints to ensure that they are prompt and equitable, as required by Title IX.

*School Investigations and Reports to OCR*

- conducting periodic assessments of student activities to ensure that the practices and behavior of students do not violate the school’s policies against sexual harassment and violence;
- investigating whether any other students also may have been subjected to sexual harassment or violence;
- investigating whether school employees with knowledge of allegations of sexual harassment or violence failed to carry out their duties in responding to those allegations;
- conducting, in conjunction with student leaders, a school or campus “climate check” to assess the effectiveness of efforts to ensure that the school is free from sexual harassment and violence, and using the resulting information to inform future proactive steps that will be taken by the school; and

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<sup>44</sup> Any personally identifiable information from a student’s education record that the Title IX coordinator provides to the school’s law enforcement unit is subject to FERPA’s nondisclosure requirements.

<sup>45</sup> For example, the disciplinary committee may lack the power to implement changes to the complainant’s class schedule or living situation so that he or she does not come in contact with the alleged perpetrator.

- submitting to OCR copies of all grievances filed by students alleging sexual harassment or violence, and providing OCR with documentation related to the investigation of each complaint, such as witness interviews, investigator notes, evidence submitted by the parties, investigative reports and summaries, any final disposition letters, disciplinary records, and documentation regarding any appeals.

### **Conclusion**

The Department is committed to ensuring that all students feel safe and have the opportunity to benefit fully from their schools' education programs and activities. As part of this commitment, OCR provides technical assistance to assist recipients in achieving voluntary compliance with Title IX.

If you need additional information about Title IX, have questions regarding OCR's policies, or seek technical assistance, please contact the OCR enforcement office that serves your state or territory. The list of offices is available at <http://wdcroboelp01.ed.gov/CFAPPS/OCR/contactus.cfm>. Additional information about addressing sexual violence, including victim resources and information for schools, is available from the U.S. Department of Justice's Office on Violence Against Women (OVW) at <http://www.ovw.usdoj.gov/>.<sup>46</sup>

Thank you for your prompt attention to this matter. I look forward to continuing our work together to ensure that all students have an equal opportunity to learn in a safe and respectful school climate.

Sincerely,

/s/

Russlynn Ali  
Assistant Secretary for Civil Rights

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<sup>46</sup> OVW also administers the Grants to Reduce Domestic Violence, Dating Violence, Sexual Assault, and Stalking on Campus Program. This Federal funding is designed to encourage institutions of higher education to adopt comprehensive, coordinated responses to domestic violence, dating violence, sexual assault, and stalking. Under this competitive grant program, campuses, in partnership with community-based nonprofit victim advocacy organizations and local criminal justice or civil legal agencies, must adopt protocols and policies to treat these crimes as serious offenses and develop victim service programs and campus policies that ensure victim safety, offender accountability, and the prevention of such crimes. OVW recently released the first solicitation for the Services, Training, Education, and Policies to Reduce Domestic Violence, Dating Violence, Sexual Assault and Stalking in Secondary Schools Grant Program. This innovative grant program will support a broad range of activities, including training for school administrators, faculty, and staff; development of policies and procedures for responding to these crimes; holistic and appropriate victim services; development of effective prevention strategies; and collaborations with mentoring organizations to support middle and high school student victims.

# SEXUAL MISCONDUCT POLICY

Case Western Reserve University

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### **ACKNOWLEDGEMENT**

Significant portions of this policy have been adapted from the *NCHERM Model Title IX Compliance Policy, Grievance Process and Civil Rights Investigation Protocol* (2011) and are used as permitted by NCHERM.

## Introduction

Case Western Reserve University is a community based upon trust and respect for its constituent members. Sexual misconduct is a violation of that trust and respect and will not be tolerated. Members of the Case Western Reserve community, guests and visitors have the right to be free from sexual misconduct. All members of the community are expected to conduct themselves in a manner that does not infringe upon the rights of others. The purpose of this policy is to define sexual misconduct and the procedures the university uses to investigate and take appropriate action on complaints of sexual misconduct. When complaints are reported, the university will act to end the discrimination, prevent its recurrence, and remedy the effects on both individuals and the university community. This policy and the accompanying procedures shall serve as the only internal university forum of resolution and appeal of sexual misconduct complaints.

This policy applies to all members of the university community including all students, Post-Doctoral Fellows and Post-Doctoral Scholars, faculty, staff, and other university officials, whether full or part-time, and guest lecturers, volunteers, contractors and visitors.

This policy governs university-sponsored activities occurring both on and off university property and applies to non-university sponsored or related events that occur off university property that may have a demonstrable and significant disruptive impact on a university community member or on the campus. The work or educational environment includes, but is not limited to: offices, classrooms and clinical settings; residence halls and Greek Houses; on-campus or off-campus interactions between university community members, whether personal or virtual; and all university-sponsored activities, programs, or events (including off-campus activities such as international travel programs).

Sexual misconduct may involve the behavior of a person(s) regardless of the person's gender identity or expression against a person(s) of the opposite or same gender or against a person who is transsexual or transgender.

The university does not discriminate on the basis of sex in its educational program and in other activities operated by the university and is required by Title IX, and specifically 34 C.F.R. Part 106.9, as well as Title VII, not to discriminate in such a manner. This extends to employees of and applicants for employment or admission to the university. Inquiries concerning the application of Title IX may be directed to the Title IX Coordinator for the university or to the Assistant Secretary for the Office of Civil Rights of the Department of Education.

The Title IX Coordinator is:

Dr. Marilyn Mobley  
Vice President, Office of Inclusion, Diversity and Equal Opportunity  
Adelbert Hall 315  
10900 Euclid Ave.  
Cleveland, Ohio 44106  
216-368-8877  
[msm73@case.edu](mailto:msm73@case.edu)

The role, names and contact information for the Title IX Coordinator, Deputy Title IX Coordinators and Investigators are listed in Appendix A, along with contact information for the Office of Civil Rights of the Department of Education.

Complaints of other forms of gender discrimination that do not meet the definition of sexual misconduct will be addressed via existing university policies and procedures. See [www.case.edu/finadmin/humres/policies/standards/aa\\_eeo.html](http://www.case.edu/finadmin/humres/policies/standards/aa_eeo.html); [link to student code of conduct]

## Definitions and Examples

Misconduct that falls within this policy includes:

### **Sexual Harassment**

Sexual harassment can be defined as any unwelcome verbal or non-verbal sexual advances, requests for sexual favors, other verbal or physical conduct of a sexual nature, and/or conduct directed at an individual(s) because of gender when:

1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or student status; or
2. Submission to or rejection of such conduct is used as the basis for decisions affecting that individual with regard to employment (raises, job, work assignments, discipline, etc.) or to student status (grades, references, assignments, etc.); or
3. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or educational experience or creates an intimidating, hostile, or offensive work and/or educational environment. Such conduct generally involves more than one incident and must be severe or pervasive (or may be both severe and pervasive).

Acts that constitute sexual harassment take a variety of forms and may include but are not limited to the following unwelcome actions:

- a. Propositions, invitations, solicitations, and flirtations of a sexual nature.
- b. Threats or insinuations that a person's employment, wages, academic grade, promotional opportunities, classroom or work assignments, or other conditions of employment or academic life may be adversely affected by not submitting to sexual advances.
- c. Verbal expressions of a sexual nature, including sexual communications about a person's body, dress, appearance or sexual activities; the use of sexually degrading language, name calling, sexually suggestive jokes, or innuendoes; suggestive or insulting gestures, sounds or whistles; sexually suggestive phone calls.
- d. Sexually suggestive objects or written materials, such as e-mail or internet communications, pictures, photographs, cartoons, text messages, videos, or DVD's.
- e. Inappropriate and unwelcome physical contact such as touching, patting, pinching, hugging or other sexually suggestive contact.
- f. Stalking of a sexual nature (i.e. persistent and unwanted contact of any form whether physical, electronic or by any other means). For stalking to fall within this policy, the content or the nature of the stalking must have a sexual component.
- g. Stereotyping or generalizing about a group based on gender. These types of comments typically constitute sexual harassment when associated with other sexual behavior or comments.

While a particular interaction must be offensive to both a reasonable person and to the victim to be defined as harassment, faculty and staff members and other persons of authority should be sensitive to questions about mutuality of consent that may be raised and to the conflict of interests that are inherent in personal relationships that result from professional and educational interactions. Harassment is particularly damaging when it exploits the educational dependence and trust between students and faculty/staff. When the authority and power inherent in faculty/staff relationships with students, whether overtly, implicitly, or through misinterpretation, is abused in any way, there is potentially great damage to the individual student, to the accused individual, and to the climate of the institution.

### **Sexual Exploitation:**

Occurs when an individual takes non-consensual, unjust or abusive sexual advantage of another; for his/her own advantage or benefit; or to benefit or advantage anyone other than the one being exploited; and that behavior does not

otherwise constitute non-consensual sexual contact, non-consensual sexual intercourse or sexual harassment. Sexual exploitation includes, but is not limited to:

- a. Non-consensual video or audio taping of any form of sexual activity
- b. Voyeurism
- c. Knowingly transmitting an STI or HIV to another person
- d. Prostituting another person
- e. Invasion of sexual privacy, including exposing one's sexual body parts or exposing another's sexual body parts

**Non-Consensual Sexual Contact:**

- a. Any intentional sexual touching;
- b. with any object or body part;
- c. by a person upon another person;
- d. without consent and/or by force

Sexual Contact includes: Intentional contact with the breast(s), buttock(s), groin or genitals, or touching another with any of these body parts; making another person touch you or themselves with any of these body parts; and/or any intentional bodily contact in a sexual manner.

**Forced Sexual Activity:**

- a. Sexual activity by force or against the will of the victim;
- b. force includes: the use of physical means, violence, threats, intimidation or coercion;
- c. with any object or body part;
- d. by a person upon another person.

Sexual activity includes: Intentional contact with the breast(s), buttock(s), groin, or genitals, or touching another with any of these body parts; making another person touch you or themselves with any of these body parts; and/or any intentional bodily contact in a sexual manner.

**Non-Consensual Sexual Intercourse:**

- a. Any sexual intercourse (anal, oral or vaginal);
- b. with any object or body part;
- c. by a person upon a person;
- d. without consent.

**Forced Sexual Intercourse:**

- a. Sexual intercourse (anal, oral or vaginal) by the use of force, including physical force, threat, intimidation or coercion;
- b. with any object or body part;
- c. by a person upon another person.

## **Additional Applicable Definitions**

### **Unwelcome Behavior**

Unwelcome behavior is an action that is not solicited or invited and is undesirable or offensive. Behavior that is perceived to be voluntary does not necessarily mean that it is welcome. Power relationships, intimidation and/or fear of consequences may be contributing factors in this determination.

## **Consent**

Consent is the equal approval, given freely, willingly, and knowingly, of each participant to desired sexual involvement. Consent is an affirmative, conscious decision – indicated clearly by words or actions – to engage in mutually accepted sexual contact. A person forced to engage in sexual contact by force, threat of force, or coercion has not consented to contact.

Lack of mutual consent is the crucial factor in any sexual misconduct. Consent to some form of sexual activity does not necessarily constitute consent to another form of sexual activity. Silence without demonstrating permission does not constitute consent. Consent CANNOT be given if a person's ability to resist or consent is incapacitated because of a mental illness or physical condition or if there is a significant age or perceived power differential.

Incapacitation is a state in which someone cannot make rationale, reasonable decisions because the person lacks the capacity to give knowing consent (e.g., to understand the “who, what, when, where, why or how” of their sexual interaction). Examples include, but are not limited to, being:

- a. unconscious,
- b. frightened,
- c. physically or psychologically pressured or forced,
- d. intimidated,
- e. incapacitated because of a psychological health condition,
- f. incapacitated because of voluntary intoxication, or
- g. incapacitated because of the deceptive administering of any drug, intoxicant or controlled substance.

## **Coercion**

Coercion is unreasonable pressure for sexual activity.

## **Force**

Force is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation (implied threats) and coercion that overcome resistance or produce consent.

## **Relevant Considerations**

### **Relationships Involving Authority or Power**

When one party has any professional responsibility for another's academic or job performance or professional future, the university considers sexual relationships between the two individuals to be a basic violation of professional ethics and responsibility. This includes but is not limited to sexual relationships between faculty (including teaching assistants and laboratory supervisors) and their students or between supervisors and their employees, even if deemed to be mutually consenting relationships. 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 also may have the potential to result in claims of sexual harassment. See Consensual Relationship Policy at <http://www.case.edu/finadmin/humres/policies/standards/cr.html>. or <http://www.case.edu/president/facsen/frames/handbook.htm>.

Although sexual harassment often takes place when the alleged harasser is in a position of power or influence (e.g., a faculty advisor to a student, supervisor to supervisee), other types of sexual misconduct are also possible e.g., peer to peer.

## **Intention vs. Impact**

The fact that someone did not intend to engage in sexual misconduct against an individual is not considered a sufficient explanation to a complaint of sexual misconduct. For example, in some instances, cultural differences may play a role in the interpretation of behavior, by either the complainant or respondent, which may result in a complaint of sexual misconduct. It is expected that all members of the university community are knowledgeable about what constitutes sexual misconduct under this policy. Although the respondent's perceptions will be considered, in most cases, it is the effect and characteristics of the behavior on the complainant, and whether a reasonable person in a similar situation would find the conduct offensive that determine whether the behavior constitutes sexual misconduct.

## **Academic Freedom**

Case Western Reserve University adheres to the principles and traditions of academic freedom. As stated in the Faculty Handbook, academic freedom is a right of all members of the university faculty and applies to university activities including teaching and research. See <http://www.case.edu/president/facsen/frames/handbook>. Each faculty member may consider in his or her classes any topic relevant to the subject matter of the course as defined by the appropriate educational unit.

Case Western Reserve University also recognizes, however, that these freedoms must be in balance with the rights of others not to be sexually harassed. It is therefore understood that the principles of academic freedom permit topics of all types, including those with sexual content, to be part of courses, lectures, and other academic pursuits. If there are questions about whether the course material or the manner in which it is presented falls within the definition of sexual harassment, the concerned party(s) should contact a Designated Reporting Representative (See: Designated Reporting Offices section in this policy).

## **Reporting**

The university strongly encourages persons who experience sexual misconduct to report the misconduct, to seek assistance and to pursue university action for their own protection and that of the entire campus community.

Anyone who has experienced sexual misconduct may choose to use this university process as well as a criminal process. Choosing not to pursue university or criminal action, however, does not remove the responsibility of the university to investigate and/or take action. If pursuing a criminal process, see section on Emergency Room Examination/Preservation of Evidence, as applicable.

Reports can be submitted anytime following an incident of sexual misconduct, although the university's ability to take action may be limited by the timeliness of the report and the status of the alleged respondent. Generally, complaints should be brought to the attention of the university within two years of the alleged incident. The university reserves the right to utilize the sexual misconduct policy and procedures to take action concerning a complaint brought beyond this period of time.

When conducting the investigation under this policy, the university's primary focus will be on addressing the sexual misconduct. Other policy violations discovered may be referred to another process.

Different people on campus have different reporting responsibilities and different abilities to maintain confidentiality, depending on their roles at the university and upon university policy. On campus, some resources can offer you confidentiality, sharing options and advice without any obligation to tell anyone unless you want them to. Other resources are expressly there for you to report crimes and policy violations, and they will take action when you report the incident to them. Most resources fall in the middle of these two extremes. Neither the university nor the law requires them to divulge private information that is shared with them except in certain circumstances, some of which are described below.

### **Designated Reporting and Confidential Support Resources**

A person wishing to pursue university action must report the conduct to one of the three university Designated Reporting Representatives (See Chart I). Taking this action does not preclude reporting the matter to the Case Police and Security. To contact the Case Police and Security Services, call 216-368-3333.

### **Role of Designated Reporting Representatives**

- a. To receive initial complaint(s) regarding alleged sexual misconduct and to make the complainant aware of the university obligation to take action if the respondent is identified or identifiable.
- b. To provide the complainant and the respondent information about the policy and process.
- c. To hear the initial complaint by the complainant and the respondent, and to make safety and support arrangements as appropriate.
- d. To determine if the complaint falls within the Sexual Misconduct Policy and if so, to determine appropriate next steps.
- e. To conduct an inquiry into reports from anonymous sources. In such instances, the university may be limited in its ability to conduct an effective inquiry and to take action concerning the report.

<b>Chart I. Designated Reporting Representatives</b>
<b>For Student Concerns:</b> <b>Director of Student Conduct</b> <b>Adelbert Hall 110</b> (216)368-2020 -- (M-Fri) 8:30 a.m. to 5:00 p.m.
<b>For Faculty Concerns:</b> <b>Faculty Diversity Officer</b> <b>Adelbert Hall 315</b> (216)368-8877 -- (M-Fri) 8:30 a.m. to 5:00 p.m.
<b>For Staff Concerns:</b> <b>Equal Employment Opportunity &amp; Diversity Manager</b> <b>Adelbert Hall 315</b> (216) 368-8877 -- (M-Fri) 8:30 a.m. to 5:00 p.m.

### **Role of Confidential Support Resources**

Confidential resources are those members of the university who are licensed or designated by law as professionals who can receive privileged communication, and receive information regarding possible sexual misconduct in the context of a professional relationship with the reporter of that information.

Confidential resources are not required to report allegations of sexual misconduct to Designated Reporting Representatives unless required by law such as the duty to report an imminent threat to self or others (see Charts IIa. and IIb.). Confidential resources provide advice, support, and guidance about how to manage the situation without initiating university action. Discussions with a confidential source are not considered a report to the university or a request that any action be taken by the university in response to any allegation.

**Chart IIa. Student Confidential Support Resources**

On-Campus Resources	Off-Campus Resources
<p><b>(SAFE) Line</b>                      (216) 368-7777 – Anytime 24 / 7                      For privileged and confidential conversations about sexual assault and relationship violence.</p> <p><b>University Counseling Services</b>                      Sears 201                      (216) 368-5872 – 24 Hours</p> <p><b>University Health Services</b>                      2145 Adelbert Rd.                      (216) 368-2450 – 24 Hours</p> <p><b>Flora Stone Mather Center for Women</b>                      Thwing Center 309                      (216) 368-0985-(M-Fri) 8:30 am - 5:00 pm                      Ask to speak with the Licensed Professional Health Advocate</p> <p><b>Inter-Religious Center:</b>                      Church of the Covenant                      11205 Euclid Avenue—Annex                      Muslim Campus Ministry, Newman Catholic Campus Ministry, and United Protestant Campus Ministry                      (216) 421-9614 or Hillel (216) 231-0040                      (Ask to speak with a Clergy person)</p>	<p><b>The Cleveland Rape Crisis Center</b>                      (216) 619-6192 – 24 hours</p> <p><b>The Domestic Violence Center</b>                      (216) 391-HELP (4357) – 24 hours</p>

**Chart IIb. Faculty & Staff Confidential Support Resources**

On-Campus Resources	Off-Campus Resources
<p><b>Employee Assistance Program</b>                      (216) 241-EASE (3273) or                      (800) 521-3273 – 24 Hours</p>	<p><b>The Cleveland Rape Crisis Center</b>                      (216) 619-6192 – 24 hours</p> <p><b>The Domestic Violence Center</b>                      (216) 391-HELP (4357) – 24 hours</p>

**Anonymous Reports**

In the event that the university receives an anonymous report of sexual misconduct, the university will conduct an inquiry into the matter. In such instances, the university may be limited in its ability to conduct an effective inquiry and to take action concerning the report.

**Confidentiality & Retaliation**

**Confidentiality**

The Designated Reporting Representative(s) will attempt to keep complaints confidential to the extent possible and consistent with legal requirements and/or the university’s requirement to investigate allegations and take appropriate action. In reviewing a complainant’s request for confidentiality, the Designated Reporting Representative will weigh the

request against other factors such as the seriousness of the alleged misconduct, whether other complaints have been made against the respondent, and the respondent's right to receive information about the allegation under the Family Educational Rights and Privacy Act (FERPA).

In order to protect the integrity of the inquiry, investigation, and resolution through the use of this policy, all parties and witnesses are expected to maintain the confidentiality of the process. However, confidentiality is not required if disclosure is required by law, or if disclosure is necessary to report a crime or violation of law or to engage in concerted activity regarding terms or conditions of employment, or in relation to the right of a student respondent or complainant to re-disclose the outcome of the process under FERPA and/or Campus Crime Statistics Act (Clery Act) laws.

Although there is an expectation of confidentiality with regard to the process, the university recognizes that the complainant, respondent, and witnesses may need support. Should the need arise for parties and/or witnesses to share with others information regarding this process, they are encouraged to confer with the Designated Reporting Representatives before taking this action.

### **Retaliation**

Retaliation against persons raising concerns about sexual misconduct, against a person initiating a complaint, or against witnesses or any person cooperating in the sexual misconduct process is prohibited and will constitute separate grounds for disciplinary action. Retaliation is the act of taking adverse action against a complainant, a respondent, or any other person involved in the process under this policy based on the person's reporting or participation in the process under this policy. Retaliation includes behavior on the part of the respondent or the complainant and other related persons, including, but not limited to, acquaintances, friends, and family members. Although independent action will be taken against anyone engaging in retaliation, the complainant and the respondent are responsible for discouraging such actions and will also be held responsible to the extent of their involvement in the retaliation.

An individual who believes they have experienced retaliation should contact a Designated Reporting Representative (see Chart I) under this policy, and the university will investigate the complaint. If the university determines that evidence exists to support that retaliation occurred, appropriate action will be taken regardless of the outcome of the underlying sexual misconduct complaint. This may involve referral of the retaliation concerns to another university process for resolution.

### **Responsibilities of the University Community**

Any member of the university community who is consulted about and/or witnesses behavior involving potential sexual misconduct has the responsibility to report the potential misconduct to one of the Designated Reporting Representatives. In addition, to the extent possible, the member of the university community should advise the complainant of the university's sexual misconduct policy and encourage prompt reporting to a Designated Reporting Representative (see Chart I). The university community member's duty to report includes instances in which that member learns of the allegation from:

- a. A person who has experienced the sexual misconduct;
- b. A person who witnessed the sexual misconduct; or
- c. A person who heard about the sexual misconduct from another individual.

Because the university is committed to a positive educational and work environment, in instances in which individuals believe that behavior has occurred that could be construed as sexual misconduct, the individual is encouraged to report the incident to a Designated Reporting Representative.

### **Cooperating with Investigations**

All members of the university community are encouraged to cooperate and participate in inquiries and investigations, appear before a hearing panel as requested, and cooperate with resolutions of complaints and implementations of recommended sanctions as applicable.

## **Police Responsibility**

There may be instances in which sexual misconduct constitutes a criminal act. The police have a responsibility to uphold and enforce the law even if the person experiencing the misconduct does not want to participate in the process and/or make a complaint. As a result, once a report is made to a police officer and/or once the officer learns of possible criminal activity, the officer has a duty to investigate and may have a duty to forward information to the appropriate prosecutor's office for possible criminal prosecution. The Case Police will also notify Student Affairs or the Office of Inclusion, Diversity and Equal Opportunity as appropriate.

When the person who has experienced sexual misconduct is under the age of 18, or under 21 and physically or mentally impaired, the Designated Reporting Representative may be required to report the sexual misconduct to the appropriate social service agency or the police.

## **Support of Witnesses and Bystanders**

The welfare of our community is of paramount importance. The university encourages community members to offer help and assistance to others in need. Sometimes individuals are hesitant to offer assistance to others for fear that they will be subject to sanctions for other policy violations (e.g. alcohol violations). While policy violations cannot be overlooked, the university will consider providing an educational intervention as a response to those who have offered assistance.

## **University's Investigative Responsibility**

Once a report of sexual misconduct is made to one of the Designated Reporting Representatives, the university is obligated by law to investigate and to take appropriate action regardless of whether the complainant wishes to participate or considers the behavior sexual misconduct.

The university's authority to investigate, to compel cooperation, or to impose sanctions against those who are not members of the university community is limited. The informal and formal processes as described in this Policy apply to faculty, staff, and students of the university. (See Flow Chart in this Policy). Complaints against guest lecturers, volunteers, contractors and visitors will be referred to the Vice President of Inclusion, Diversity and Equal Opportunity or his/her designee for investigation and appropriate action

## **Notifications**

### **Parental/Legal Guardian/Partner Notification**

The university is committed to providing support to anyone involved in an incident of sexual misconduct. In some instances when there is a health or safety concern involving a dependent or a non-dependent student, the university may need to notify the parent(s), guardian(s), or partner. In making this determination, the university will consider the wishes of those involved, as well as their personal safety, and the safety of the campus community. The university may contact the parent(s) or guardian(s) of a dependent student when there is a concerning behavioral pattern or a change in student status. In addition, when a person who is under the age of 18, or under 21 and physically or mentally impaired, reports sexual misconduct other than sexual harassment, both Designated Reporting Representatives and confidential sources may be required to report the sexual misconduct to the appropriate social service agency or the police who then may contact the parent or legal guardian.

### **Federal Timely Warning Obligations**

Once a report of sexual misconduct is made, the university is obligated by law to take all necessary steps to protect the campus and the person who has experienced the misconduct. This may include alerting the campus of crimes that it determines pose a substantial threat of bodily harm or danger to members of the campus community. In making such determinations, the university will consider the safety of students, faculty, and staff as well as the privacy interests of all persons involved in such incidents. Regardless of the action taken by the university, the university will make every effort

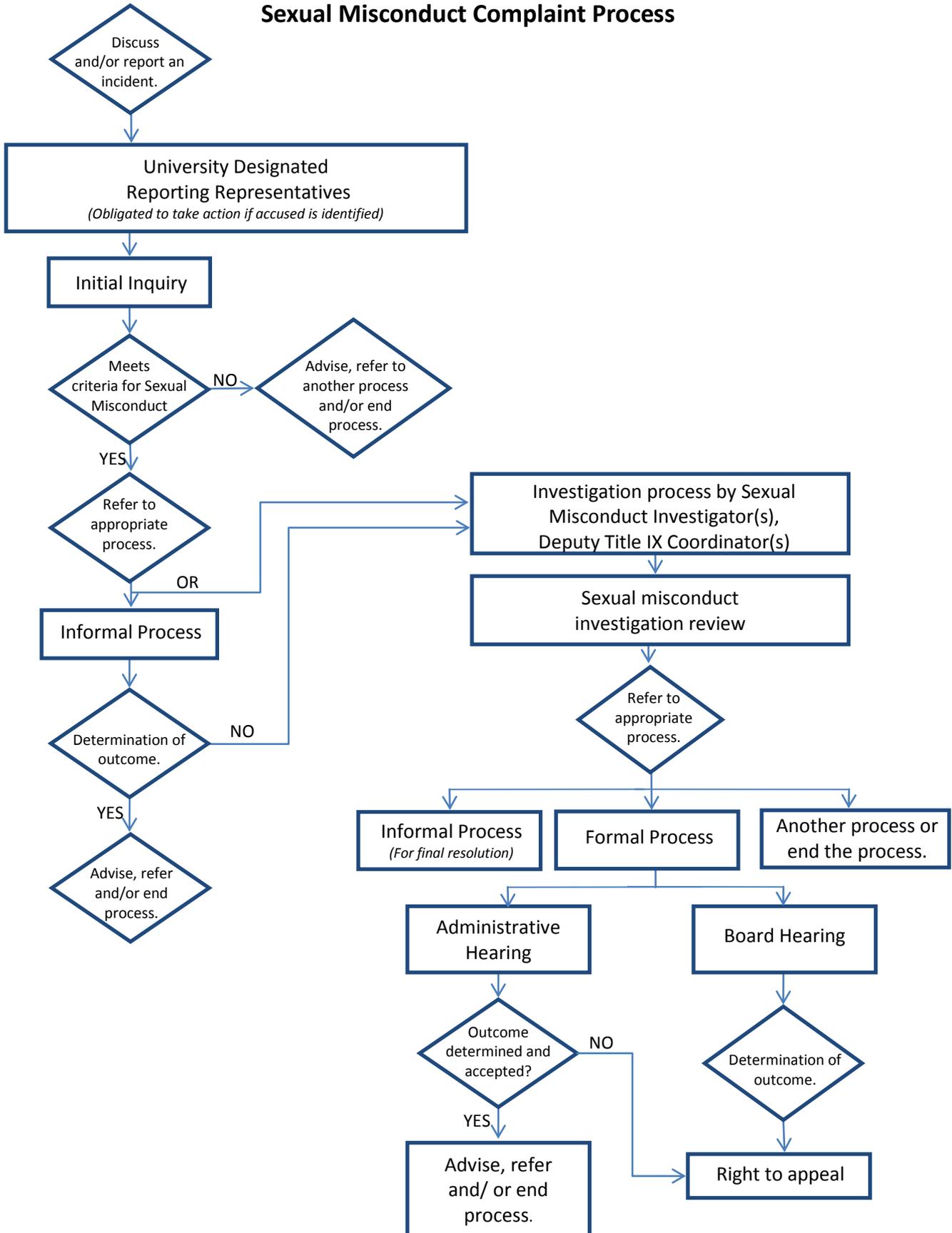
to ensure that a victim's name and other identifying information is not disclosed, while still providing enough information for community members to take safety precautions.

### **Federal Statistical Reporting Obligations**

In compliance with the Clery Act (Campus Crime Statistics Act), Designated Reporting Representatives are required to report to Case Police sexual misconduct that constitutes a crime (i.e. anything not defined in this policy as sexual harassment). In addition, anonymous reports received by the Case Police are also included in the Clery Act Report. Typically, the following information is included: crime, date, location, and status (i.e. student, faculty, staff, stranger, etc.) of the individuals involved in the crime. The university never includes the names of the complainant or the respondent in crime statistics.

When a complaint of sexual misconduct is made that may also constitute a criminal act, the Designated Reporting Representative also will inform the complainant of the right to file a criminal complaint.

## Student, Faculty & Staff Sexual Misconduct Complaint Process



## **University Complaint Processes**

The university strongly encourages persons who experience sexual misconduct to report the misconduct, to seek assistance and to pursue university action for their own protection and that of the entire campus community.

When a complaint of alleged sexual misconduct is received, an initial inquiry is conducted by the Designated Reporting Representatives, who are neutral administrators in the process. The Designated Reporting Representatives are responsible for coordinating the sexual misconduct process. The usual practice will be that the inquiry will be conducted in collaboration with the Office of Inclusion, Diversity and Equal Opportunity and the University Office of Student Affairs as appropriate and possible.

### **Time Table**

The university intends to resolve complaints of sexual misconduct in a timely manner. The University generally attempts to resolve complaints from the filing of a complaint to a determination, including any appeals, within sixty (60) days. However extenuating or more complex circumstances may preclude the university from resolving a complaint within such a timeframe. Complainants and respondents will be provided periodic updates as to the status of the process as appropriate.

### **Initial Inquiry**

An initial inquiry is conducted by the Designated Reporting Representative/Deputy Title IX Coordinator and may include interviews with the complainant and the respondent and a review of relevant documents. Following the initial inquiry, the Designated Reporting Representative will determine whether the information gathered during the initial inquiry indicates that the complaint falls within this policy.

If it is determined that the complaint falls within this policy, the Designated Reporting Representative will either: 1) proceed with the informal process; or 2) refer the matter to the Sexual Misconduct Investigator/Deputy Title IX Coordinator. The Designated Reporting Representative will make this determination by reviewing the following factors surrounding the complaint:

- a. The wishes of the complainant and the respondent;
- b. Consideration of a pattern of behavior; and
- c. The nature and severity of the behavior or action.

### **Interim University Actions**

Upon receiving a complaint, the Designated Reporting Representative may need to take interim actions to protect the safety and well-being of the individuals involved in a complaint of sexual misconduct. The university will consider interim or remedial measures, as appropriate or legally supported, to protect the safety and well-being of those involved. Generally, such actions include, but are not limited to, the following:

- a. Notify the respondent that a complaint has been made against them;
- b. Provide a copy of the university sexual misconduct policy to both parties;
- c. Establish an agreement between the parties that they are not to initiate contact with the other party or parties until further notice by the university. Failure to cooperate or honor the agreement could result in restricting either party's presence on campus;
- d. Have each of the parties and any witnesses acknowledge the expectation of confidentiality as outlined in this policy;
- e. Advise all parties and any witnesses that they may not retaliate against any party or any witness involved in a sexual misconduct complaint.

- f. Notify the dean, department chair or supervisor of the complaint to assist with managing the rights of the complainant and the respondent as appropriate.

The university has the right to impose an interim separation or suspension, as provided for under other university policies or procedures.

### **Role of the Designated Reporting Representative and/or Sexual Misconduct Investigator(s)**

The Designated Reporting Representative and/or Sexual Misconduct Investigator conducts a prompt and thorough investigation of the complaint, which includes identifying and interviewing witnesses, gathering and securing relevant documentation, and identifying other relevant information. The Representative/ Investigator provides a report of the finding of the investigation for review by at least one other Deputy Title IX Coordinator in consultation with the Office of General Counsel. A decision will be made as to the appropriate next steps to bring resolution to the complaint, which will include one of the following:

- a. Formal Process (Administrative Hearing or Board Hearing);
- b. Informal Process;
- c. Another university process;
- d. End the process.

In making this determination, the reviewers will consider the following factors:

- a. The wishes of the complainant and the respondent;
- b. Consideration of a pattern of behavior; and
- c. The nature and severity of the behavior or action.

If the investigation finds that the complaint does not fall within the sexual misconduct policy, the matter and other possible policy violations discovered (including any relevant information) may be referred to other university processes.

### **Rights Under the Informal and Formal Processes**

The complainant and the respondent can expect the university to respect the rights of all involved by following the stated university sexual misconduct process.

#### **Rights of the Complainant and the Respondent:**

- a. To confidentiality as provided in this policy (see above).
- b. To options outlined below in the informal process or formal process if applicable.
- c. To the presence of a support person (as described in this policy below) at meetings during the initial inquiry and during the Informal process and/or Administrative/Formal Hearing (see Hearing Procedures).
- d. To not be questioned about past sexual conduct unless relevant to the case.
- e. To have the allegations investigated in a thorough and timely manner.
- f. To refrain from making self-incriminating statements. However, the university will make a determination of whether a violation of the sexual misconduct policy occurred based on the information presented.
- g. To be informed of the outcome of the sexual misconduct process.

### **Informal Process**

The informal process is an opportunity to bring resolution to an informal complaint through awareness, education, and/or a facilitated discussion. During an informal process, written statements are not taken from the complainant or the respondent, and no hearing is conducted to determine whether the sexual misconduct policy has been violated. Normally, the informal process will not be used to resolve allegations of Non-Consensual Sexual Contact, Forced Sexual Activity, Non-Consensual Sexual Intercourse, Forced Sexual Intercourse and Sexual Exploitation.

### **Step 1-Facilitate Resolution**

The Designated Reporting Representative(s) utilizes the information gathered during the initial inquiry to facilitate an appropriate resolution to the informal complaint. The Designated Reporting Representative(s) may determine that the informal action may be facilitated by an appropriate designee (e.g. for students, a Residential Coordinator or other designee; for staff, Human Resource representative; for faculty, the Chair). The following are examples of possible options, one or more of which may be used to bring resolution to an informal complaint.

- a. Distribute a copy of the sexual misconduct policy to the respondent and/or the complainant and/or to the department or area whose behavior is being questioned;
- b. Educate the respondent or all parties regarding the university sexual misconduct policy;
- c. Conduct a sexual misconduct educational workshop for the designated department/school/university organization;
- d. Meet with the respondent to raise awareness about alleged inappropriate behavior and provide notice about possible university consequences;
- e. Facilitated discussion with the agreement of the complainant, respondent, and the Designated Reporting Representative(s) or designee;
- f. Institute alternative work arrangements, living arrangements, class schedule, advisor/supervisor arrangements as feasible; or
- g. Limit contact or impose no contact between respondent and complainant.

### **Step 2-Document Informal Resolution**

At the conclusion of the informal process, a letter summarizing the outcome(s) of the process will be sent by the Designated Reporting Representative(s) to the complainant and respondent and other appropriate university officials to bring closure to the matter (see Retention of Documents section in this policy).

If the matter is not resolved to the satisfaction of the complainant or the respondent utilizing the informal process, and/or the university determines the matter should be resolved through the formal process, the complainant, the respondent and/or the university may pursue the formal process. In such an instance, the complainant, the respondent and/or the university may request to utilize the formal process by submitting a written request to the Designated Reporting Representative within five (5) business days of the date of the receipt of the informal outcome letter.

### **Complaints by the University**

The university may bring a complaint against a respondent in instances in which the complainant is not willing to bring a complaint and the university determines it is necessary to initiate a complaint. In such a case, the university will select a representative to act during the formal process.

Generally, if the respondent is a faculty member, the university representative shall be the Provost or his/her designee; if the respondent is a student, the university representative shall be the Vice President for Student Affairs or his/her designee; and if the respondent is a staff member, the university representative shall be the Vice President for Human Resources or his/her designee. If the university representative is the respondent or a potential witness, the Vice President for Inclusion, Diversity and Equal Opportunity shall appoint the university representative. The university representative shall have the same rights and responsibilities as the complainant as outlined in this policy. The university representative shall not be an attorney from the Office of General Counsel.

### **Formal Process**

#### **Determination of Administrative Hearing vs. Board Hearing:**

A formal process may be facilitated in one of two ways, through an administrative hearing or a board hearing.

An administrative hearing may be used when all of the following exist:

- a. The complainant wishes to use an administrative hearing to resolve the complaint;

- b. The respondent has admitted to the alleged sexual misconduct and admits that the conduct is or could be construed as sexual misconduct under the university's policy;
- c. The respondent agrees to an administrative hearing to resolve the complaint;
- d. The investigation or review determine(s) that an administrative hearing is appropriate to bring resolution to the complaint.

A board hearing is used when the following exists:

- a. The complainant wants to use a board hearing to resolve the complaint, and/or the review of the investigation determines that a board hearing is necessary to resolve the complaint.
- b. The respondent does not admit that the alleged sexual misconduct has occurred and/or does not admit that the alleged conduct is or could be construed as sexual misconduct under this policy.

To move the formal process forward, the Sexual Misconduct Investigator/Deputy Title IX Coordinator will submit the following documents to the Community Standards Panel or administrative hearing representative for their consideration at a formal hearing:

1. The written account from the complainant of the sexual misconduct complaint. When possible, the account should include dates, times, locations, a description of the alleged behavior/incident, and the name(s) of the respondent.
2. The written account from the respondent of the sexual misconduct complaint. When possible, the account should include dates, times, locations, a description of the alleged behavior/incident.
3. Additional written accounts from witnesses collected during the investigation.
4. Other relevant documents collected during the investigation, including the report of the Sexual Misconduct Investigator/Deputy Title IX Coordinator.
5. In addition, the complainant and the respondent may submit their own written statement about the facts of the alleged behavior/incident for consideration by the panel. Written statements must be submitted no later than two (2) business days prior to the scheduled hearing.
6. The complainant and the respondent may also submit their own written statement about the impact of the alleged behavior/incident for consideration by the panel during the sanction phase of the process, if applicable. Written statements must be submitted no later than two (2) business days prior to the scheduled hearing.
7. The complainant and respondent may provide a list of any person(s) who may have relevant information about the behavior/incident.
8. Once 1-7 have been completed, the case will be turned over to the chairperson of the Community Standards Board or the administrative hearing representative who will contact the complainant and respondent within five (5) business days to schedule a pre-hearing meeting and/or a hearing.

**Formal Process: Administrative Hearing**

The function of this hearing is to review the relevant documents, hear from the respondent, and to determine an appropriate sanction.

All administrative hearings will be conducted by a representative of the Office of Inclusion, Diversity or Equal Opportunity or his or her designee ("the administrative hearing representative").

### ***Administrative Hearing Procedure***

1. The complainant and respondent will be notified of the date, time and location of the hearing.
2. The hearing is closed and generally includes the respondent and the administrative hearing representative. The complainant will be notified of the option to attend the hearing if the complainant wishes to do so.
3. The complainant may submit an additional written statement concerning the effect of the sexual misconduct and the desired sanction for the respondent. The written statement must be submitted no later than two (2) business days prior to the scheduled hearing.
4. The respondent may make a statement about the sexual misconduct and the possible sanction(s) for the misconduct. The written statement must be submitted no later than two (2) business days prior to the scheduled hearing.
5. The administrative hearing representative may ask questions of the respondent and will consider the statements and any relevant information received during the investigation.
6. Prior to determining a sanction, the administrative hearing representative will normally consult with the following individuals depending on the constituency of the respondent:
  - When a student is the respondent: Vice President for Student Affairs or his/her designee;
  - When a faculty member is the respondent: Provost or his/her designee;
  - When a staff member is the respondent: Vice President for Human Resources or his/her designee.

After the hearing is concluded, the administrative hearing representative will make a decision promptly on the appropriate sanction and communicate that decision in writing to the respondent, complainant, and to any university administrators, faculty or staff who require the information to carry out the sanction. Generally, notification will be provided to the parties within two (2) business days after the administrative hearing is held, except when extenuating circumstances preclude notification to the parties within such a timeframe.

### ***Administrative Hearing Appeal Process***

If the complainant or the respondent is not satisfied with the outcome of the administrative hearing, either may notify the administrative hearing officer of the desire to file an appeal with the Appeals Board. Appeals must be submitted within five (5) business days of receipt of the written decision. An appeal as outlined below will then be held.

### ***Formal Process: University Community Standards Board***

The Office of Inclusion, Diversity and Equal Opportunity and the University Office of Student Affairs collaboratively select and train a Community Standards Board that includes representation from all constituent groups within the university community (students, faculty, staff) and that is charged to hear and make a determination about whether the sexual misconduct policy has been violated and if so, the appropriate sanction for the violation.

All formal complaints referred to the University Community Standards Board in which the complainant and the respondent are both students will be chaired by the Associate Vice President for Student Affairs for Student Conduct or his/her designee. For all other complaints involving different constituencies within the university (students, faculty or staff), a representative of the Office of Inclusion, Diversity and Equal Opportunity or the Office of Student Affairs will chair the hearing.

When a complaint is referred to the formal board process, the designated chairperson will select three representative members from the Community Standards Board at-large (faculty, staff and/or students) to serve as the hearing panel for an individual case. The hearing panel will be comprised of three voting members and a non-voting chairperson.

### ***Pre-Hearing Procedure:***

Prior to the board hearing, the chairperson will:

1. Determine available and appropriate hearing panel members from the Community Standards Board. Every attempt will be made to include panel members representing the constituencies of the complainant and the respondent. During certain times of the academic year (e.g. during break periods, final exam times etc.), the panel may not include student representation;
2. Consult with the complainant, the respondent and potential panel members to determine any personal and/or professional conflicts of interest that may make the panel member unable to render an unbiased decision. All panel participants are required to disclose any personal and/or professional conflicts of interest to the chairperson prior to agreeing to participate in a board hearing. The chairperson will determine whether a member should not serve on the panel because of a conflict of interest;
3. Advise the complainant and respondent of their right to have a support person at the hearing, whose function is to provide support for the complainant or the respondent. During the hearing, the support person may talk quietly with the complainant or the respondent or pass notes in a non-disruptive manner. The support person may not, in any way, intervene in the hearing or address the panel.

A support person must be a current member of the university community (i.e. student, full-time faculty or full-time staff member). Neither party is entitled to legal representation (as the term is commonly understood) during the hearing. A support person may not be an attorney from the Office of General Counsel, or a witness in the matter. A support person from the university community may be an attorney by training, but is only permitted to act as a support person (as described above) during the hearing. In cases of sexual misconduct other than sexual harassment or sexual exploitation, an exception may be made in order to permit use of a support person from an appropriate off campus resource (e.g. Rape Crisis Center);

4. Notify all panel members, the complainant, the respondent, the witnesses and all those involved in the hearing process that the hearing is closed and confidential and should not be discussed outside the hearing proceedings, except as provided in the Confidentiality section of this policy;
5. Provide to the panel members access to the information to be considered by the panel. The information shall include the file compiled by the Sexual Misconduct Investigator/Deputy Title IX Coordinator, which shall include the items compiled by the Sexual Misconduct Investigator/Deputy Title IX Coordinator (see listing above), as well as:
  - a. Any other information submitted by the complainant or respondent as deemed relevant to the complaint. The chairperson, in consultation with the Sexual Misconduct Investigator/Deputy Title IX Coordinator, will make determinations as to the relevance of information submitted ;
  - b. Any other information that may be relevant to the complaint;
  - c. Witness list and witness accounts/statements. The Sexual Misconduct Investigator/Deputy Title IX Coordinator will confer with both the complainant and the respondent regarding which of their identified witnesses will be included in the hearing. The chairperson, in consultation with the Sexual Misconduct Investigator/Deputy Title IX Coordinator, will make the final determination as to which witnesses have relevant information.
6. Provide complainant, respondent, and support persons an opportunity to review all information prior to the hearing;
7. Arrange a hearing date, time, and location and notify all hearing participants;
8. Advise panel members about the complaint and the hearing procedures.

### ***Hearing Procedure***

1. The chairperson will convene the hearing by introducing the participants and explaining the sexual misconduct hearing purpose, procedures and standard of proof. Standard of Proof is the preponderance of evidence, which means that the panel must be convinced, in light of all the information presented, that it is more likely than not that the sexual misconduct policy was violated.
2. An audio recording of the hearing will be made.
3. The chairperson may determine that a complainant and/or the respondent may participate by telephone or video conference.
4. The complainant will be invited to make a statement to the panel.
5. The respondent will be invited to make a statement to the panel.
6. Panel members will be permitted to ask questions at the conclusion of each statement. The complainant and the respondent may then ask questions of each other by submitting written questions to the chair.
7. Witnesses are invited to make a statement before the panel. The panel members, the complainant and the respondent are invited to ask questions of each witness.
8. The complainant, the respondent and their support persons will be permitted to sit in the hearing during all statements and questioning. Witnesses will be permitted to attend only during their own statements and questioning.
9. The panel may ask further questions of the complainant and the respondent after it has heard from all witnesses.
10. After all statements and questioning are completed, the panel will dismiss the complainant, the respondent and their support persons from the hearing and meet to discuss the finding.
11. The panel will consider all information received as part of the hearing process. The panel will issue one of the following findings, based on a preponderance of the evidence:
  - a. The University Sexual Misconduct Policy was not violated or;
  - b. The University Sexual Misconduct Policy was violated.

In addition, the panel may determine that the respondent's actions may violate some other university policy. The chairperson will refer the matter and all relevant information to the appropriate university process.

12. If the panel determines that the sexual misconduct policy was violated, the panel members will determine sanctions. Sanctions will be based on the nature and severity of the offense and/or on prior violations of university policy. The panel may consider the statements of the complainant and respondent regarding the impact of the behavior/incident during the sanction process. In general, sanctions may include, but are not limited to, one or more of the following:
  - a. Apology;
  - b. Participation in educational, skills or management training;
  - c. Written warning, or letter of reprimand;
  - d. Institute alternative work and/or living arrangements, class schedules, advisor/supervisor arrangements;
  - e. Limit contact between respondent and complainant;
  - f. Limit contact between the respondent and other members of the university community
  - g. Faculty and staff may face suspension without pay, consideration of or denial of advancement or pay raise, demotion, removal or suspension from administrative or honorary duties or appointments, or termination for cause;

- h. Students may be suspended from the university, university housing, selected activities or organizations; placed on probation; or expelled from the university.
13. Prior to determining a sanction, the panel will normally consult with the following individuals depending on the constituency of the respondent:
- When a student is the respondent: Vice President for Student Affairs or his/her designee
  - When a faculty member is the respondent: Provost or his/her designee
  - When a staff member is the respondent: Vice President for Human Resources or his/her designee

***Report of Findings***

1. The chairperson, in consultation with the panel, will draft a written report that includes the panel's finding that:
  - a. The Sexual Misconduct Policy has been violated and the type of sexual misconduct violated as defined in this policy, or
  - b. The University Sexual Misconduct Policy has not been violated.
2. The report will also include the reason for the finding, and sanctions (if applicable).
3. The chairperson will distribute a copy of the report to the complainant, respondent, and to the respondent's department chair, dean/supervisor, and appropriate vice president(s) or his/her designee. A copy of the report will be kept on file in the Office of Inclusion, Diversity and Equal Opportunity.
4. The chairperson will identify and notify the appropriate individuals to carry out the respondent's sanctions, if applicable.
5. Sanctions are imposed immediately unless the chairperson stays their implementation in extraordinary circumstances, pending the outcome of the appeal.

***Appeal Process***

Either the respondent or the complainant may appeal the panel's decision and/or the sanction to an Appeals Board. The Appeals Board shall consist of three (3) members of the Community Standards Board, selected by the Vice President for Inclusion, Diversity and Equal Opportunity or his/her designee. The members of the Appeals Board shall not have served as a member of the hearing panel. The grounds on which an appeal may be filed are limited to the following:

1. New information not available to the panel which, if available at the time of the hearing, may have affected the decision;
2. Evidence that established procedures were not followed in a manner that may have affected the decision, and/or;
3. The sanction was inappropriate for the violation.

Appeals must be submitted to the Vice President for Inclusion, Diversity and Equal Opportunity or his/her designee within five (5) business days of receipt of the written decision and must specify the grounds for the appeal. The Vice President for Inclusion, Diversity and Equal Opportunity shall determine whether the appeal submitted falls within one of the three grounds for appeal of a decision.

In reviewing the appeal, the Appeals Board shall review the panel's report and sanctions to be imposed, and may review any documents, the recording or statements presented to the panel. The Appeals Board also has the option to confer with the appropriate Vice President(s) for the constituencies of the complainant or the respondent.

The Appeals Board may accept the panel's finding and/or sanction, or reject, or modify the finding and/or sanctions of the panel based on one of the three grounds for appeal. The Appeals Board will make the final decision regarding the finding and the sanction.

The Vice President for Inclusion, Diversity and Equal Opportunity or his/her designee will communicate the decision, in writing, to the respondent, the complainant, the panel members and to the appropriate administrators (i.e. respondent's department chair, dean/supervisor, and appropriate vice president).

The Appeals Board's decision shall be final with the exception of certain faculty sanctions described in "Additional Faculty Sanction Process."

### ***Additional Faculty Sanction Process***

If the sanction issued to a faculty member, following any appeals, is (1) termination of a tenured faculty member's appointment or (2) demotion in academic rank of a faculty appointment (professor, associate professor, assistant professor, or instructor), then the procedures in Section IV of the Faculty Handbook are initiated. The factual findings and conclusions of the Community Standards panel, or the Vice President for Inclusion, Diversity and Equal Opportunity following appeal, shall be determinative as to whether the university's sexual misconduct policy has been violated. The Section IV of the Faculty Handbook proceedings shall be limited to a determination of whether the finding constitutes just cause for termination of the tenured faculty appointment or for demotion in academic rank.

### **False Allegations**

No complaint will be considered "false" solely because it cannot be corroborated. The university reserves the right to discipline members of the university community who bring documented false complaints of sexual misconduct. In such cases of proven false allegations, discipline may include up to, but not limited to, suspension or termination.

### **Support Resources**

The following resources and options are available for individuals reporting sexual misconduct. Similarly, the university recognizes that a person being accused of a sexual misconduct may also utilize the following resources and options as appropriate and applicable.

### **Alternative Housing & Academic Accommodations**

The university will accommodate requests for alternative living, working, and academic arrangements as available and appropriate. This is available with all reporting options in both informal and formal choices of action. The university reserves the right, based on the circumstances, to determine the most appropriate course of action in making alternative housing arrangements.

### **Counseling**

Counseling may be pursued following an incident of sexual misconduct, no matter how much time has elapsed since the incident. The university offers a 24-hour telephone hotline for privileged and confidential conversations about sexual assault and relationship violence (216-368-7777). By calling this number, students may choose to be connected with on and off-campus resources.

On-campus counseling services are available for students at University Counseling Service in Sears, University Health Service, and the Women's Health Advocate at the Flora Stone Mather Center for Women. There is no charge to students and the services are privileged communications. Counseling services are also available for faculty and staff through the Employee Assistance Program (EASE). See Support Resource Charts IIa. or IIb.

### **Emergency Room Examination/ Preservation of Evidence**

Any person who is a victim of physical sexual violence is urged go directly to the Emergency Room at any local hospital for medical attention. For a list of hospitals close to campus, including those with a SANE (Sexual Misconduct Nurse Examiner)

Unit or staff specially trained for sexual misconduct examination and evidence collection, refer to the appropriate Confidential Support Resource charts in this policy or go to the university's Sexual Misconduct website at <http://www.case.edu/diversity/sexualconduct/> for more information.

It is important to note that the preservation of physical evidence is critical in the event of criminal prosecution and may also be useful if university action is pursued. To obtain the best evidence, a person who has experienced sexual violence should not wash her/his hands; shower or douche; brush her/his hair or teeth; or change her/his clothes immediately following the incident. If a victim goes to the hospital, local police will be called, and if the name of the accused is provided, the police will investigate, but the victim is not obligated to talk to the police or to pursue prosecution. Having the evidence collected in this manner will help to keep all options available to a victim, but will not obligate him or her to pursue any course of action.

### **University Health Service**

Students can seek treatment or advice at the University Health Service for any medical concerns, including a physical exam, sexually transmitted infections, pregnancy testing, and to obtain emergency contraception. All medical information and services are privileged and confidential. There is a nurse and physician on-call 24 hours a day, 7 days a week at 216-368-2450.

If a student decides to file criminal charges, the student must sign a *University Health Service Medical Information Release Form* if the student wishes to allow the police, the university or their representative to gain access to medical information applicable to the sexual violence.

### **Retention of Documents**

All records will be retained for at least as long as the respondent and/or the complainant(s) are members of the university community. For students, records will be kept for five (5) years after the student graduates. For faculty and staff, records will be kept for at least six (6) years after the matter is closed and after the individuals are no longer members of the University community. Records will be kept in a confidential and secure location and only made available to Designated Reporting Representative(s), other appropriate university officials, or other authorized individuals as determined by law. In determining when it is appropriate to make available records regarding informal and formal complaints, the following provisions will apply:

#### **Informal Complaints:**

Information about all informal complaints will be kept on file in the offices of the Designated Reporting Representatives, and in the Office of Inclusion, Diversity and Equal Opportunity, and in a confidential file in the appropriate dean's and/or department chair's and/or supervisor's office when such dean/chair/supervisor is notified of the informal complaint to ensure that the university is maintaining records of those individuals about whom multiple informal complaints have been made and/or to enforce the informal resolution. Information concerning informal sexual misconduct complaints will not be considered in processes concerning future university misconduct unless the matter involves an allegation of sexual misconduct.

#### **Formal Complaints:**

If the respondent is found to have violated the sexual misconduct policy, a copy of the decision letter will be retained in the individual's official university file. If a future complaint of sexual misconduct is referred to a formal process, information regarding the previous sexual misconduct complaint(s) may be considered by the panel.

In the event that the respondent is involved in and found responsible for other university violations unrelated to sexual misconduct, information about formal sexual misconduct violations and sanctions will be shared with the board during the sanctioning phase.

If the person found in violation is a:

Faculty: The information will be kept on file in the Office of the Provost, the office of the appropriate dean and department, and the Office of Inclusion, Diversity and Equal Opportunity.

Staff: The information will be kept on file in Human Resources, the appropriate dean and/or department, and the Office of Inclusion, Diversity and Equal Opportunity.

Student: The information will be kept on file in the University Office of Student Affairs, the Dean's Office of the appropriate school, and the Office of Inclusion, Diversity and Equal Opportunity.

If the respondent is found not to have violated the sexual harassment policy, a copy of the decision will be retained in the Office of Inclusion, Diversity and Equal Opportunity.

## **Annual Report**

An annual report of sexual harassment complaints and their resolutions shall be produced by the Vice President of Inclusion, Diversity and Equal Opportunity or his/her designee and accessible on the Office of Inclusion, Diversity and Equal Opportunity website. The report shall identify complainants and respondent by constituency only, e.g., student, staff, faculty.

## Appendix A

### Deputy Title IX Coordinators:

Gia Adeen  
E.E.O. & Diversity Manager  
Adelbert Hall 315  
10900 Euclid Ave.  
Cleveland, Ohio 44106  
216-368-5371

Kendra Svilar  
Director of Student Conduct  
Adelbert Hall 110  
10900 Euclid Ave.  
Cleveland, Ohio 44106  
216-368-2020

Melissa Burrows  
Faculty Diversity Officer  
Adelbert Hall 315  
10900 Euclid Ave.  
Cleveland, Ohio 44106  
216-368-4299

Ashleigh Wade  
Assistant Director of Student Conduct  
Adelbert Hall 110  
10900 Euclid Ave.  
Cleveland, Ohio 44106  
216-368-2020

G. Dean Patterson  
Associate Vice President for Student Affairs  
Adelbert Hall 110  
10900 Euclid Ave.  
Cleveland, Ohio 44106  
216-368-1527

TBA  
Assistant Director of Student Conduct  
Adelbert Hall 110  
10900 Euclid Hall  
Cleveland, Ohio 44106  
216-368-2020

### Position Descriptions:

#### Title IX Coordinator

The Title IX Coordinator is responsible for monitoring and oversight and overall implementation of Title IX Compliance at the University, including coordination of training, education communications and administration of grievance procedures for faculty, staff, students and other members of the university community.

#### Designated Reporting Representative

The Designated Reporting Representative is responsible for coordinating the sexual misconduct process. An initial inquiry is conducted by the Designated Reporting Representative and may include interviews with the complainant and the respondent and a review of relevant documents. Following the initial inquiry, the Designated Reporting Representative will determine whether the information gathered during the initial inquiry indicates that the complaint falls within this policy and will utilize criteria outlined in this policy to determine what process will be used to bring resolution to the sexual misconduct case.

#### Sexual Misconduct Investigator/Deputy Title IX Coordinator

The Sexual Misconduct Investigator/Deputy Title IX Coordinator serves as the investigator for sexual misconduct matters and conducts a prompt and thorough investigation of alleged sexual misconduct complaints, which includes identifying and interviewing witnesses, gathering and securing relevant documentation, and identifying other relevant information.

### Other Sources for Information:

Office for Civil Rights  
The U.S. Department of Education  
600 Superior Ave. East Suite 750  
Cleveland, Ohio 44114-2611  
216-522-4970  
Fax: 216-522-2573  
OCR.Cleveland@ed.gov

## **Interim International Agreement Approval Form: Process and Instructions**

**TO: Proposers of Agreements with International Institutions**

**FROM: David Fleshler, Associate Provost for International Affairs**

The process described below, and the attached approval form, are both interim steps for approval of international agreements. This process will be used until the Faculty Senate adopts a permanent process and form. The Center for International Affairs is testing the paper process and form in advance of implementing a digital format. Please email me ([david.fleshler@case.edu](mailto:david.fleshler@case.edu)) with any thoughts or suggestions.

The interim process and form are designed to provide the information and approvals needed in order for the President, Provost or their designees to sign an agreement with an international institution, thereby obligating Case Western Reserve University. Instructions to complete this form are as follows:

1. The faculty member proposing that the University, or a division of the University, enter into an agreement (the Proposer) should attach the proposed draft agreement to this form.
2. The Proposer should fill out and sign the form in the spaces indicated. By signing the form, the Proposer asserts that the proposed agreement conforms with the criteria set forth below. The Proposer should also attach one or more pages that demonstrate why the proposed partner institution meets the international agreement criteria.
3. The Proposer should forward the Approval Form, with attachments, to his or her department chair, if applicable. The department chair should sign the form in the space indicated. The department chair should then return this form, with attachments, to the Proposer.
4. The Proposer should then forward this form, with attachments, to his or her dean. The dean should then sign the form in the space indicated. By signing the form, the dean asserts that the proposed agreement conforms to the criteria and that the proposed agreement has been approved through whatever process is necessary in his/her school to approve the agreement and abide by its provisions. The dean should then return this form, with attachments, to the Proposer.
5. The Proposer will then forward this form, with attachments and signatures, to the Associate Provost for International Affairs (APIA). The APIA will ask for review and signature by the Vice Provost for Undergraduate Education, the Vice Provost and Dean of Graduate Studies and Postdoctoral Affairs and the Office of General Counsel. Each of those administrators will sign the form if he/she agrees that the proposed agreement meets all requirements and needs no further approvals from other University or outside bodies (such as the Faculty Senate, Board of Trustees, Ohio Board of Regents, Higher Learning Commission, etc.). The APIA must also sign the form, which indicates the APIA's approval.
6. If all required offices sign the form, then the APIA will inform the Proposer, who will then contact the partner institution to arrange for execution of the document.
7. In the event one of the offices does not sign the form, the APIA will inform the Proposer and the APIA and Proposer will then determine the next steps.

The proposed international partner should have a quality reputation, as determined by the international ranking of the institution, the in-country ranking of the institution, the research quality of the individual department, the reputation of the faculty at the institution and/or other measures as indicated by the Proposer. In addition, the proposed international partner and CWRU should be improved due to the partnership.

## Approval Form

Name of Proposer: \_\_\_\_\_

Department: \_\_\_\_\_

School: \_\_\_\_\_

Telephone: \_\_\_\_\_

Email address: \_\_\_\_\_

Name of Institution for proposed agreement: \_\_\_\_\_

Location of Institution (City, Country): \_\_\_\_\_

Type of Agreement: \_\_\_\_\_

### Required Signatures:

Before signing this Approval Form, please read the Interim International Agreement Approval Form: Process and Instructions. By signing this Approval Form, you are indicating your agreement to the terms set out in the instructions.

Proposer: \_\_\_\_\_

Department Chair: \_\_\_\_\_

Dean: \_\_\_\_\_

Vice Provost for Undergraduate Education: \_\_\_\_\_

Vice Provost and Dean of Graduate Studies and Postdoctoral Affairs:  
\_\_\_\_\_

Office of General Counsel: \_\_\_\_\_

Associate Provost for International Affairs: \_\_\_\_\_

### Required Attachments

In order to complete the packet for approval by all signatories, the Proposer should attach the following (and put an "X" in the box):

- The proposed agreement with the international institution.
- One or more pages demonstrating why the proposed partner institution meets the international agreement criteria on the previous page.