

WAYNESBURG UNIVERSITY ANTI-HARASSMENT AND ANTI-DISCRIMINATION POLICY

- Introduction** Waynesburg University does not discriminate on the basis of race, color, sex, gender identity, national or ethnic origin, religion, age (over 40), or disability status as a Vietnam-era, qualified disabled veteran or other protected veteran, or status as a member of any other protected class under federal or state law in the educational programs or activities it offers, and is in compliance with Title IX of the Education Amendments of 1972. A student desiring specific information about these requirements or about the grievance procedure should contact Tom Helmick, Director of Human Resources and the University Title IX Coordinator at 724-852-3210 or at thelmick@waynesburg.edu.
- a. Policy** It is the policy of Waynesburg University (the “University”) to make decisions in student admission, employment and administration of its educational programs and activities without regard to race, color, sex, gender identity, national or ethnic origin, religion, age (over 40), disability or status as a Vietnam-era, qualified disabled veteran or other protected veteran, or status as a member of any other protected class under federal or state law.
- The University is committed to maintaining an atmosphere where basic rights and its Christian educational mission are upheld. The University condemns discrimination and harassment of any kind and prohibits behavior or practices which would be regarded as such. To help ensure an environment free from discrimination and harassment, all members of the University community are responsible for reporting incidents of discrimination and harassment of any kind.
- Tom Helmick, the Human Resource Director, is the University’s, Title IX Coordinator and the designated coordinator for overseeing compliance with this Anti-Harassment and Anti-Discrimination Policy. He may be contacted at thelmick@waynesburg.edu or 724-852-3210. The Title IX Coordinator is the resource available to anyone seeking additional information or to file a complaint related to, discrimination or harassment. Inquiries concerning Title IX may also be referred to the U.S. Department of Education, Office for Civil Rights (OCR). OCR is the federal agency charged with enforcing compliance with Title IX. Information regarding OCR can be found at: www.ed.gov/ocr.
- The University prohibits retaliation against any individual who complains of a violation of this Policy or assists in providing information about a complaint of discrimination or harassment, including, but not limited to, sexual assault, sexual misconduct and sexual harassment.
- This Policy shall govern the treatment of discrimination and harassment cases at the University, including sexual assault, sexual misconduct, sexual harassment, domestic violence, dating violence and stalking. To the extent the Policy conflicts with the provisions found in the Student Handbook, the Administrative Staff handbook or the Faculty Handbook, the terms of this Policy shall control.
- b. Definitions** **Discrimination:** Discrimination is the unfair treatment that prejudices an individual or class of individuals based on race, color, sex, gender identity, national or ethnic origin, religion, age (over 40), disability or status as a Vietnam-era, qualified disabled veteran or other protected veteran or status as a member of any protected class under federal or state law. Decisions based on race, color, sex, gender identity, national or ethnic origin, religion, age (over 40), disability or status as a Vietnam-era, qualified disabled veteran or other protected veteran or status as a member of any protected class under federal or state law in admissions, employment and administration of the University's programs or activities are prohibited.

Harassment: Harassment is any action that may be reasonably expected to threaten, coerce or intimidate an individual or class of individuals based on race, color, sex, gender identity, national or ethnic origin, religion, age (over 40) or disability or status as a Vietnam-era, qualified disabled veteran or other protected veteran or status as a member of any protected class under federal or state law. Harassment includes derogatory remarks, slurs or actions motivated by an individual's race, color, sex, gender identity, national or ethnic origin, religion, age (over 40) or disability or status as a Vietnam-era, qualified disabled veteran or other protected veteran or status as a member of any protected class under federal or state law. Harassing conduct may take many forms, including verbal acts; written statements; displays of racist, sexist or age-related objects or pictures; or other conduct that may be physically threatening, harmful or humiliating. Harassing conduct may include the use of cell phones or the internet. Harassment does not have to include intent to harm, be directed at a specific target or involve repeated incidents. Harassment of any employee or student of the University in any form is prohibited.

Sexual Harassment: Sexual harassment is unwelcome conduct of a sexual nature. It includes unwelcome sexual advances (including sexual assault and sexual misconduct), requests for sexual favors, and/or physical, verbal or written conduct of a sexual nature when:

- a. Submission to such conduct is made explicitly or implicitly a term or condition of an individual's employment, education, or participation in University programs or activities; or
- b. Submission to or rejection of such conduct by an individual is used as a basis for decisions pertaining to an individual's employment, education, or participation in University programs or activities; or
- c. Such speech or conduct is directed against another and is abusive or humiliating and persists after the objection of the person targeted by the speech or conduct, or
- d. Such conduct would be regarded by a reasonable person as creating an intimidating, hostile or offensive environment that substantially interferes with an individual's work, education, or participation in or benefit from University programs or activities.

The educational setting within the University, as distinct from other work places within the University, requires wide latitude for professional judgment in determining the appropriate content and presentation of academic material. Conduct, including pedagogical techniques, that serves a legitimate educational purpose does not constitute sexual harassment. Those participating in the educational setting bear a responsibility to balance their rights of free expression with a consideration of the reasonable sensitivities of other participants.

Sexual Assault: Sexual assault is a form of sexual harassment and is governed by this Policy. Sexual assault occurs when an unwelcomed physical contact of a sexual nature is intentional and is committed either by a) physical force, violence, threat, or intimidation; b) ignoring the objections of another person; c) causing another's intoxication or impairment through the use of drugs or alcohol; or d) taking advantage of another person's incapacitation, state of intimidation, helplessness, or other inability to provide consent.

Sexual Misconduct: Sexual misconduct is a form of sexual harassment and is governed by this Policy. Sexual misconduct occurs when unwelcomed physical contact of a sexual nature is committed without the intent to harm another and where, by failing to correctly assess the circumstances, a person believes unreasonably that consent was given without having met his/her

responsibility to gain such consent. Situations involving physical force, violence, threat or intimidation fall under the definition of Sexual Assault, not Sexual Misconduct, and will be treated as such under this Policy.

Stalking: Can be a form of harassment or discrimination and occurs when an individual(s) engages in a pattern of repeated and unwanted attention, advances, contact or any other course of repeated and unwanted conduct directed at a specific person that would cause a reasonable person to (a) fear for his/her safety or the safety of others, or (b) suffer substantial emotional distress.

Dating Violence: Includes violence, discrimination, assault, harassment, coercion, intimidation, stalking or any other threatening conduct committed by (a) a person with whom the complainant shares a child in common; or (b) a person who is cohabitating with or has cohabitated with the complainant as a spouse; or (c) a person similarly situated to a spouse of the complainant under state or federal domestic or family violence laws; or (d) any other person against an adult or youth victim who is protected from that person's acts under state or federal domestic or family violence laws.

Dating violence includes violence, discrimination, assault, harassment, coercion, intimidation, stalking or any other threatening conduct committed by a person (a) who is or has been in a social relationship of a romantic or intimate nature with the complainant; and (b) where the existence of such a relationship shall be determined based on a consideration of the following factors:

1. The length of the relationship.
2. The type of relationship.
3. The frequency of interaction between the persons involved in the relationship.

Consent: Consent is an understandable exchange of affirmative words or actions that indicate a willingness to participate in mutually agreed upon sexual activity. Consent is active, not passive, and must be informed and freely and actively given.

It is incumbent upon each individual involved in the activity to either obtain or give consent prior to any sexual activity. If at any time any confusion or ambiguity should arise on the issue of consent, it is incumbent upon each individual involved in the activity to stop and clarify, verbally, the other's willingness to continue.

- a. A verbal "no," even if it may sound indecisive or insincere, constitutes lack of consent.
- b. When consent is requested verbally, absence of any explicit verbal response constitutes lack of consent.
- c. It is expected that, after consent has been established, a person who changes his/her mind during the sexual activity will communicate through words or actions, his/her decision to no longer proceed.
- d. Past consent to sexual activity does not imply future ongoing consent, and the fact that two persons reside together or are in an on-going relationship shall not preclude the possibility that sexual assault, sexual misconduct or sexual harassment might occur within that relationship.
- e. A person, who is asleep or mentally or physically incapacitated, either through the effect of drugs or alcohol, or for any other reason, is not capable of giving valid consent and consent is not valid if a reasonable person would understand that such

- a person is incapable of giving consent.
- f. A person's use of alcohol, other drugs, and/or other intoxicants shall not diminish a person's responsibility to obtain informed and freely given consent.

Preponderance of evidence: Preponderance of evidence means that it is more likely than not that discrimination or harassment occurred.

Probable cause: Probable cause means a reasonable belief that discrimination or harassment occurred.

c. What to Do if Sexually Assaulted

If you are a victim of sexual assault and believe you are still in danger, you should call the Department of Public Safety at extension 303 or 724-852-3303 and/or the Waynesburg police at 911 or 724-627-8113.

If you are a victim of sexual assault, seek medical attention as soon as possible. You can call the Student Health Services at 724-852-3332 during regular business hours or go to the Emergency Room at the Southwest Regional Medical Center. Be sure to tell the examining physician or nurse that you were sexually assaulted.

The Sexual Harassment and Assault brochure provides additional information and can be obtained from the Counseling Center, Health Services and Student Services Office.

d. Reporting and Investigation

Reporting and the Complaint Process

Under Title IX, all "responsible employees" must report all experienced or observed incidents of discrimination and harassment, including sexual assault, sexual misconduct and sexual harassment. A "responsible employee" is someone who has the authority to take action to redress the alleged misconduct, who has the duty to report the alleged misconduct to appropriate University officials, or an individual who a student could reasonably believe has this authority or responsibility to redress or report the alleged misconduct. Members of the University community are strongly encouraged to promptly report all observed or experienced incidents of discrimination and harassment, including sexual assault, sexual misconduct, and sexual harassment. Prompt reporting of such incidents makes investigation of the incident more effective and enhances the ability of the University to take action on a complaint.

Each academic year, the Vice President of Student Services will designate three administrative staff members to assist the University's Title IX Coordinator with investigating any complaints of discrimination or harassment ("Investigators"). The Investigators will have training or experience in handling complaints of discrimination and harassment, the procedures under this Policy and the applicable confidentiality requirements.

If a student or employee, in good faith, believes that he or she has encountered, witnessed or been a victim of discrimination or harassment from a University student, employee or a third party on campus (including, but not limited to, sexual assault and sexual misconduct as defined above), he or she should report the discrimination or harassment promptly to the University's Title IX Coordinator or one of the Investigators designated under paragraph (a) above. Such reports will be kept as confidential as reasonably possible. Whenever possible, this report should occur within ten (10) business days of the alleged discrimination or harassment. It is the responsibility of the complainant to report a complaint in a timely manner in cases where the University's jurisdiction over the accused might otherwise be lost.

Sexual assault, sexual misconduct, domestic violence, dating violence and stalking are crimes. A complainant has the right to decide whether to report sexual assault, sexual misconduct, domestic violence, dating violence and stalking to local authorities. If a complainant wishes to report a sexual assault, sexual misconduct, domestic violence and stalking to local authorities, the University will assist the complainant.

University Investigations Without A Complaint: When necessary to meet its commitment to provide an environment free of unlawful discrimination and harassment, the University may investigate alleged incidents of discrimination or harassment of which it becomes aware, even if no formal complaint has been filed or the individual(s) involved is unwilling to pursue a complaint or cooperate in an investigation. If a University employee becomes aware of specific and credible allegations of discrimination or harassment, whether through a complainant or otherwise, the allegations should be reported promptly to the Title IX Coordinator.

Confidentiality of Complaints of Sexual Assault, Sexual Misconduct, Sexual Harassment, Domestic Violence, Dating Violence and Stalking: In all instances and to the extent possible, the University will protect the privacy of all parties to a report of sexual assault, sexual misconduct, domestic violence, dating violence and stalking consistent with the requirements of Title IX and the April 4, 2011 Dear Colleague Letter issued by the United States Department of Education, Office of Civil Rights. When the University receives a report of sexual assault, sexual misconduct, domestic violence, dating violence and stalking with enough information to reasonably determine key facts (e.g., time, date, location and names of parties), whether from the student involved or a third party, the University is obligated under the law to investigate the complaint and take action to eliminate the discrimination or form of sexual harassment, prevent its recurrence and address its effects. The University is obligated to conduct this investigation regardless of the complainant's requests. In the course of the administrative investigation, information may be shared as necessary with people who need to know, such as investigators, witnesses, and the accused. Any response by the University may be hindered by the complainant's requests for anonymity and/or inaction.

e. Anti-Retaliation

In order to encourage students and employees to report violations of this Policy, to discourage violations of this Policy, and to remedy violations of this Policy, the University strictly prohibits retaliation for reporting discrimination or harassment; making a complaint of alleged discrimination or harassment; participating in a University or government investigation of discrimination or harassment; and/or participating in court action regarding discrimination or harassment. Any actual or threatened retaliation or any act of intimidation to prevent or otherwise obstruct the reporting of discrimination or harassment or the participation in proceedings relating to discrimination or harassment by an accused individual or third party will result in disciplinary sanctions. Any incidents of actual or threatened retaliation or any act of intimidation should be reported immediately to the Title IX Coordinator or one of the Investigators. Complaints of retaliation will be governed by disciplinary process set forth in the Student Code of Conduct.

f. Interim Measures and Resolutions

The Title IX Coordinator or his/her designee may take interim measures he/she deems necessary to protect the safety and well-being of the complainant, the accused student or employee and all third-party witnesses pending completion of the procedures outlined below. Interim measures that may be taken include, but are not limited to, interim suspension for students, administrative leave for employees, issuance of a no contact order, changes to class or housing assignments for students or work assignments for employees, or any other protective measure the Title IX coordinator deems appropriate to address the interaction between and among the complainant, the accused student or employee or third-party witnesses.

Where appropriate, the University encourages voluntary informal resolution of some types of

complaints of discrimination or harassment. Informal resolution is not an option for cases of sexual assault or sexual misconduct, including sexual or inappropriate touching of any kind. If a student or employee chooses to proceed informally, he or she must notify the Investigator or Title IX Coordinator and the Investigator or Title IX Coordinator must determine that the complaint is appropriate for informal resolution. A student or employee who chooses to proceed informally may end the informal process at any time and request formal resolution of his or her complaint.

A student or employee electing to proceed informally may wish to discuss the complaint directly with the individual against whom the complaint is made. If the alleged discrimination or harassment involves a department or unit rather than an individual, the reporting party should discuss the complaint with a representative of that department/unit. Alternatively, the student or employee can elect to have the Investigator or Title IX Coordinator discuss the complaint with the individual against whom the complaint is made and/or mediate a discussion between the student or employee and the individual against whom the complaint is made. In any case, whenever possible, the conversation should occur within ten (10) business days of the alleged discrimination or harassment. Regardless of the informal procedure employed, the Investigator or Title IX Coordinator should monitor the progress of the informal dispute resolution process.

If the matter is resolved informally to the satisfaction of the reporting party, the Investigator or Title IX Coordinator will place a written summary of the matter in a separate harassment/discrimination file, which will be consulted for only the following purposes: (1) to ensure that the University is aware of repeat incidents by the same individual and (2) for record-keeping purposes so that the University can gauge the effectiveness of its Anti-Harassment and Anti-Discrimination policy and programs. If the matter is not resolved informally, the reporting party can make a request to the Title IX Coordinator or Investigator for formal resolution.

**g. Formal
Resolution of
Complaints
against
Employees**

Notifications: All written notifications required by the procedures set forth below will be made by simultaneous emails to the complainant's and the accused employee's University accounts (if any) as well as simultaneous mailings to the complainant's and the accused employee's current local addresses on record with the University.

Investigation

When a complaint of discrimination or harassment against an employee requires formal resolution, either because it cannot be or has not been resolved through informal procedures, the Title IX Coordinator shall appoint one or more Investigators to fully and impartially investigate the complaint.

The Investigator(s) will use reasonable efforts to speak with the complainant and draft an Incident Report setting forth a summary of the factual basis for the allegations against the accused employee within five (5) business days of being put on notice of the need for formal resolution.

Within five (5) business days of the date of the Incident Report, the Investigator(s) will use reasonable efforts to meet with the accused employee and notify the accused employee that a complaint has been filed, informs the accused employee of the nature of the complaint, and provide the accused employee with a written copy of the Incident Report. The Investigator(s) also shall provide the accused employee with a copy of this Policy. The accused employee shall be afforded five (5) business days in which to provide a written response to the Incident Report, a copy of which shall be provided to the complainant. During this same period, the investigation shall begin and the Investigator(s) shall review relevant documents and speak to any witnesses who are identified as having relevant information. Witnesses with relevant information include, but are not limited to, the complainant, the accused employee and any witnesses to events surrounding the

allegations.

The Investigator's Report

Within fifteen (15) business days of the date of the Incident Report, the Investigator(s) will complete the investigation and make a written report to the Title IX Coordinator and the President (the "Investigator's Report"). If the allegations involve extensive or complex issues, more than fifteen (15) business days may be needed to complete a thorough and equitable investigation. In those cases where additional time is needed, the complainant and accused employee will be advised in writing that additional time is required.

The Investigator's Report will summarize the facts and allegations made by the complainant, the accused employee's response, the witness meetings, and the factual findings of the Investigator(s). The Investigator's Report will include recommended actions, if any. A copy of the Investigator's Report will be provided to the Title IX Coordinator.

After review of the Investigator's Report, the Title IX Coordinator, will initiate disciplinary action as soon as reasonably practicable, when in his/her judgment it is appropriate, and will attempt to take whatever steps are necessary to prevent recurrence and remedy the effects of the offending behavior. Any disciplinary action initiated shall be in consistent with the procedures outlined in the Waynesburg University Administrative Staff Handbook and Employee Handbook.

The complainant and accused employee will be informed, in writing, of the final decision and any actions to be taken.

Implementation of and challenge to any disciplinary action will be handled according to applicable procedure in the University's Administrative Staff Handbook or Faculty Handbook.

h. Formal Resolution of Complaints against Students

Notifications: All written notifications required by the procedures set forth below will be made by simultaneous emails to the complainant's and the accused student's University accounts as well as simultaneous mailings to the complainant's and the accused student's current local addresses on record with the University.

Investigation

When a complaint of discrimination or harassment against a student requires formal resolution, either because it cannot be or has not been resolved through informal procedures, the Title IX Coordinator shall appoint one or more Investigators to fully and impartially investigate the complaint.

In order to comply with laws and regulations protecting education records of students and to provide an orderly process for the consideration of relevant evidence without undue intimidation or pressure, the investigation findings are confidential. Investigation findings may not be disclosed except as provided in this Policy, as required or authorized by law or as may be authorized by the Title IX Coordinator in connection with responsibilities of the University.

The Investigator(s) will use reasonable efforts to speak with the complainant and draft an Incident Report setting forth a summary of the factual basis for the allegations against the accused student within five (5) business days of being put on notice of the need for formal resolution.

Within five (5) business days of the date of the Incident Report, the Investigator(s) will use reasonable efforts to meet with the accused student and notify the accused student that a complaint has been filed, inform the accused student of the nature of the complaint, and provide the accused student with a written copy of the Incident Report. The Investigator(s) also shall provide the accused student with a copy of this Policy. The accused student shall be afforded five (5) business days in which to provide a written response to the Incident Report, a copy of which shall be provided to the complainant. During this same period, the investigation shall begin and the Investigator(s) shall review relevant documents and speak to any witnesses who are identified as having relevant information. Witnesses with relevant information include, but are not limited to, the complainant, the accused student and any witnesses to events surrounding the allegations.

The Investigator's Report

Within fifteen (15) business days of the date of the Incident Report, the Investigator(s) will complete the investigation and make a written report to the Title IX Coordinator (the "Investigator's Report"). If the allegations involve extensive or complex issues, more than fifteen (15) business days may be needed to complete a thorough and equitable investigation. In those cases where additional time is needed, the complainant and accused student will be advised in writing that additional time is required.

The Investigator's Report will summarize the facts and allegations made by the complainant, the accused student's response, the witness meetings, and the factual findings of the Investigator(s). The Investigator's Report will indicate whether, in the opinion of the Investigator(s), based upon the information reviewed, there is probable cause for this matter to proceed to a hearing to determine whether the accused student violated the University's Anti-Harassment and Anti-Discrimination Policy. The Investigator's Report may be made available to read upon request to the Title IX Coordinator.

Within five (5) business days after receipt of the Investigator's Report, the Title IX Coordinator will decide whether to convene a formal hearing based on his/her determination that there is probable cause to proceed. In some instances, the Title IX Coordinator may deem it necessary to

question the complainant, the accused student, or the Investigator(s) before determining whether to convene a hearing.

If the Title IX Coordinator decides that a formal hearing is not warranted, within five (5) business days of the Title IX Coordinator's receipt of the Investigator's Report, the Title IX Coordinator will issue a written notice to the complainant and accused student that the complaint has been investigated and a determination has been made that there is not probable cause to support charges against the accused student. The complainant will have the right to appeal the denial of a formal hearing pursuant to the appeal procedures within five (5) business days of the decision.

Notice of Charges

If the Title IX Coordinator determines a formal hearing is warranted, the Title IX Coordinator will determine what charges (e.g., discrimination, sexual assault, sexual misconduct, domestic violence, dating violence, stalking or other forms of sexual harassment or harassment); will be the subject of the formal hearing.

The Title IX Coordinator's determination will be communicated in writing to the complainant and the accused student in a document entitled "Notice of Charges" within five (5) business days of the Title IX Coordinator's receipt of the Investigator's Report. The Notice of Charges will state, (1) the names of the complainant and accused student, (2) the offense charged, (3) the date by which the complainant and the accused student must submit their witness lists and any documents or other evidence they wish to have presented, (4) the date on which the complainant and the accused will be notified of the witnesses to be called at the hearing, (5) the date, time and place of the hearing, and (6) the names of the hearing officers, including the presiding chair. The following documents will be attached to the Notices of Charges: (1) the Incident Report, (2) the accused student's written response to the Incident Report, if any.

i. Pre-Hearing Procedures

The Title IX Coordinator will designate three (3) trained, professional staff members of the University Community to serve as hearing officers. The Title IX Coordinator is not permitted to serve as a hearing officer and will serve in a non-voting capacity. The hearing officers will have training or experience in handling complaints of discrimination and harassment, the procedures under this Policy and the applicable confidentiality requirements. The Title IX Coordinator will designate one hearing officer to serve as the presiding chair of the hearing.

Hearing officers will serve as impartial fact finders and not advocates for either the complainant or the accused student. Once an individual has been named as a hearing officer, he/she may not privately discuss the facts or merits of the case with the parties or with anyone acting on behalf of the parties. In advance of the hearing date, the Title IX Coordinator will provide the hearing officers with the Incident Report, the accused student's written response to the Incident Report, if any, the Investigator's Report, the Notice of Charges, and lists of witnesses and documents or other evidence submitted by the parties.

The Investigator will serve as the moderator of the hearing ("Moderator"). In the event that more than one Investigator participated in the investigation, the Investigators will decide among themselves who will serve as the Moderator. Alternatively, the Title IX Coordinator can elect, in his/her discretion, to serve as the Moderator.

The hearing will be convened within ten (10) business days of the date of the Notice of Charges, unless the Moderator or presiding chair of the hearing in their sole discretion, allows for a longer period of time.

No later than five (5) business days prior to the hearing, the complainant and the accused student shall each submit to the Moderator: (1) copies of documents and a description of any other evidence they believe should be presented at the hearing; and (2) a list of those individuals they believe should be called as witnesses at the hearing. The list must include for each witness an address and brief description of the facts to which the person is expected to testify.

The Moderator will have the discretion to determine which witnesses to call and evidence to present at the hearing. In exercising this discretion, the Moderator will give primary consideration to the presentation of all relevant information to the hearing officers. The Moderator may decline to present witnesses who do not have firsthand knowledge of relevant information, whose information is repetitive and merely cumulative of information presented by other witnesses, or otherwise will not, in the opinion of the Moderator, advance the truth finding process. Similarly, the Moderator may decline to present documents and other evidence that are not relevant, that are repetitive and cumulative of other evidence, or will not, in the opinion of the Moderator, advance the truth finding process.

No later than three (3) business days prior the hearing, each party's witness list, documents and other proposed evidence will be provided to the other party. At the same time, the Moderator will advise the parties in writing of: (1) the identity of the witnesses the Moderator intends to call at the hearing; and (2) the identity of any witnesses on either party's list that the Moderator intends not to present at the hearing at the hearing.

The Moderator will notify in writing the individuals on the final witness list of the date and time of the hearing and will request their appearance. While the Moderator will urge the witnesses to cooperate, the Moderator cannot compel an individual to appear at the hearing.

j. Hearing

In order to comply with laws and regulations protecting education records of students and to provide an orderly process for the consideration of relevant evidence without undue intimidation or pressure, the hearing is confidential and closed to the public. Documents prepared in anticipation of the hearing (such as the Incident Report, Investigator's Report, Notice of Charges, or any written pre-hearing submissions); documents, testimony or other evidence introduced at the hearing; any audio recording or transcript of the hearing; or the Determination Letter may not be disclosed except as described in this Policy, as required or authorized by law or as may be authorized by the Title IX Coordinator in connection with responsibilities of the University.

The Moderator will control the hearing, and ensure the hearing follows procedural guidelines. The Moderator will be impartial and have no interest or input in the outcome of the hearing. Counsel for the University may also be present.

Both the complainant and the accused student are permitted to have a support person present during the hearing to provide moral support and attend to the needs of the complainant or the accused student. The support person will not be allowed to speak at the hearing or question the witnesses. The support person must be a member of the University community.

Typically, attorneys will not be allowed to be present at the hearing on behalf of either party. In cases where criminal charges are pending, the accused student may have an attorney present during the hearing for the sole purpose of advising the accused student on how best to respond to certain questions in order to protect rights in the public court proceedings. If the accused student's attorney is present, the complainant may have an attorney present. Attorneys are not permitted to examine witnesses or otherwise directly participate in the hearing on behalf of either party.

Moreover, attorneys will not receive notices which might be sent to the complainant or the accused student.

The University will maintain documentation of the hearing, which may include written findings of facts, transcripts or audio recordings.

At the hearing the Moderator will determine the order of the witnesses and resolve any questions of procedure arising during the hearing. The Moderator will call and question the witnesses before the hearing officers. The parties and witnesses will not be expected to repeat undisputed details or non-material circumstances that would merely duplicate the written materials.

After the Moderator has completed his/her questioning, the complainant and the accused student will have the opportunity to ask questions of each witness, except that the complainant and the accused student will not be permitted to question each other. The Moderator is empowered to disallow any questions or evidence that is irrelevant or redundant. The hearing officers may also ask questions.

With the exception of evidence concerning a prior relationship between the complainant and the accused student, the prior sexual history of the complainant shall not be admissible as evidence.

The accused student shall have the right not to testify at the hearing, however, the exercise of that right shall not preclude the hearing officers from proceeding and determining responsibility on the basis of the facts and circumstances presented. Exercise of the right not to testify shall not create a presumption of responsibility.

If a majority of the hearing officers determine that unresolved issues exist that would be clarified by the presentation of additional evidence, the hearing may be recessed and reconvened for the presentation of additional evidence in a timely manner. A recess may not be based on the failure of a witness to appear without good cause or on the proposed introduction of documents or other evidence that should have been presented to the Moderator prior to the hearing.

After all of the witnesses have been questioned, the complainant and the accused student will be given the opportunity to present any additional witnesses or information they believe to be pertinent.

k. Decisions and Sanctions

All decisions by the hearing officers will be made by majority vote. The hearing officers shall first determine whether the accused student is responsible for the alleged discrimination or harassment (including, but not limited to, sexual assault, sexual misconduct, sexual harassment, domestic violence, dating violence or stalking). The hearing officers will determine whether the charges against the accused student are supported by a preponderance of the evidence, meaning that it is more likely than not that the accused student committed the conduct with which he/she is charged.

If the charge against the accused student is "Sexual Assault," the hearing officers shall determine whether that charge has been established by a preponderance of evidence. If the hearing officers determine that there is not a preponderance of evidence warranting a finding of Sexual Assault, the hearing officers then shall consider whether Sexual Misconduct, Sexual Harassment or other discrimination or other Code of Conduct violations have been established by a preponderance of evidence, whether or not such conduct or charge is specifically set forth in the Notice of Charges.

Sanctions: If the accused student is found responsible for charges against him/her, the hearing officers will determine by majority vote the sanction to be imposed on the accused student. The

hearing officers may impose any sanction that they find to be fair and proportionate to the violation; in the interests of the University community (including the complainant and accused student); and authorized by the Student Code of Conduct.

Any substantiated charge of prohibited conduct, discrimination or unlawful harassment may result in disciplinary action, up to and including educational counseling, community service, suspension, dismissal or expulsion. Any disciplinary action shall result in the inclusion of the sanction in the student or personnel file.

In determining an appropriate sanction, the hearing officers may consider the nature and severity of the violation(s) and any mitigating circumstances; any record on the part of the accused student of past violations of the Student Code of Conduct; and the sanctions imposed in any similar cases. The hearing officers will consider as part of their deliberations whether the accused student poses a continuing risk to the complainant and/or University community.

All sanctions shall require a finding that the sanction to be imposed is warranted by a preponderance of the evidence.

Any deliberate false accusation intended to bring harm to an innocent person may result in disciplinary action against the person bringing the accusation.

Determination Letter: Within five (5) business days following the hearing, or such longer time as the hearing officers may for good cause determine, the hearings officers will issue their decision in a written Determination Letter. The Determination Letter will contain only the following information (1) the name of the accused student, (2) whether the accused student has been found responsible or not responsible for the charges, and (3) if found responsible, the sanction imposed when the sanction directly relates to the complainant (e.g., an order that the accused stay away from the complainant, or that the accused is prohibited from attending school for a period of time, or that the accused be transferred to other classes or another residence hall).

I. Appeal

Either the complainant or the accused student may appeal an adverse decision of the hearing officers by submitting a request in writing setting forth the specific grounds for the appeal to the Vice President of Student Services within five (5) business days after notification of the decision.

The non-appealing party shall have five (5) business days to respond in writing to any written appeal. A non-appealing party is under no obligation to file a written response to any appeal.

All appeals will be reviewed by an appellate panel (the “Appellate Panel”) consisting of the Vice President of Student Services, and two other administrators appointed by the Vice President of Student Services to resolve the appeal.

The Appellate Panel’s review of the hearing officers’ decision is limited to: 1) ensuring that all University policies and procedures have been followed; and 2) ensuring that the hearing officers’ decision is not arbitrary and capricious. A decision will be considered to be arbitrary and capricious only when it is not supported by the testimony and evidence found to be credible by the hearing officers.

When challenging a decision as arbitrary and capricious, the complainant or accused student must identify with particularity those witnesses and pieces of tangible evidence he/she believes supports his or her position on appeal. Failure to do so may result in the appeal being denied without consideration.

The decision of the Appellate Panel shall be reached within five (5) business days and be based on a majority vote. The decision of the Appellate Panel shall be final.