
NOTRE DAME OF MARYLAND UNIVERSITY

**INTERIM PROCEDURES ON SEXUAL HARASSMENT
AND OTHER SEXUAL MISCONDUCT**

Notre Dame of Maryland University Notice of Non-Discrimination

Notre Dame of Maryland University (the “University” or “NDMU”) values safety, cultural and ethnic diversity, social responsibility, lifelong learning, equity, and civic engagement. Consistent with these principles, the University does not discriminate in offering equal access to its educational programs and activities or with respect to employment terms and conditions on the basis of age, color, creed, disability, genetic information, marital status, national or ethnic origin or ancestry, race, religion, sex (including pregnancy, sexual orientation, or gender identity or expression) or protected veteran status or any other characteristic protected in accordance with applicable federal, state, and local laws and regulations including but not limited to Title IX of the Education Amendments of 1972 as amended (Title IX), Title VI of the Civil Rights Act of 1964 as amended (Title VI), Title VII of the Civil Rights Act of 1964 as amended (Title VII), Section 504 of the Rehabilitation Act of 1973 (Section 504), Americans with Disabilities Act of 1990 as amended (ADA), and Age Discrimination in Employment Act of 1967 as amended, etc.

Inquiries or concerns regarding the application of this statement and related policies may be referred to:

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SEXUAL MISCONDUCT PROCEDURES

I. Applicability:

These Sexual Harassment and Other Sexual Misconduct Procedures (the “Procedures”) are part of Notre Dame of Maryland University’s (“NDMU” or “the University”) Policy on Sexual Harassment and Other Sexual Misconduct (the “Policy”) and are the exclusive procedures that govern the handling of all reports or complaints of Prohibited Conduct under this Policy. Please refer to the Policy for all definition, which are incorporated herein by reference.

II. University Action Upon Notice of Prohibited Conduct

Once the University receives notice of an allegation of a violation of the Policy, it will take prompt action, in accordance with its Sexual Harassment and Other Sexual Misconduct Procedures. This obligation applies to reports of violations of the Policy regardless of whether a parallel law enforcement Investigation or action is pending or whether a Formal Complaint is filed.

University action typically includes, as appropriate:

- A. Report Intake
- B. Initial review;
- C. Filing A Formal Complaint;
- D. Review/Designation of the Formal Complaint, if filed;
- E. Notice to both Parties;
- F. Supportive Measures to both parties;
- G. Investigation;
- H. Hearing; and
- I. Notice of finding to both parties (including the right to appeal).

III. Report Intake and Formal Complaint

A. Report of Prohibited Conduct

Upon receipt of a report alleging Prohibited Conduct from a Reporting Party, the Title IX Coordinator or designee will provide written acknowledgement of receipt of the report to the Reporting Party, if known, and include: a copy of the Policy and Procedures, options under the resolution process, and the *Notice of Rights and Responsibilities*.

The Reporting Party will be informed of available community and campus resources and services; available Supportive Measures as specified in the Policy their right to a Support Person and the Support Person’s role; their right to an Advisor and the Advisor’s role; their right to file a report with law enforcement; and the University’s prohibition against Retaliation.

If the report is received from someone who is not the Reporting Party or the Responding Party, the Title IX Coordinator or designee will provide written acknowledgement of receipt of the report and take appropriate action as the information provided allows. Receipt of a report

alleging Prohibited Conduct shall not constitute the filing of a Formal Complaint under the Policy.

As explained more fully in the Policy, the Reporting Party may ask the Title IX Coordinator to take no further action beyond offering Supportive Measures, or they may file a Formal Complaint. Requests to take no further action will be assessed by the Title IX Coordinator in accordance with the Policy.

B. Initial Review

The Title IX Coordinator or designee will contact the Reporting Party to conduct an intake and initial review, which will determine whether the reported conduct, if substantiated, would constitute a potential violation of this Policy.

Based on the available information, the Title IX Coordinator will assess the Reporting Party's immediate safety and well-being and make appropriate referrals (e.g., to medical care, mental health counseling, etc.). The Reporting Party will receive information about community and campus resources and services. Supportive Measures that are appropriate can be discussed and arranged. They will also have an opportunity to ask questions and seek additional information.

While the University cannot force a Reporting Party to meet with the Title IX Coordinator for an Intake Meeting, such a meeting enables the University to conduct a thorough Initial Review, described above, of the report/complaint and take appropriate action. Where a student does not wish to meet with the Title IX Coordinator the University will proceed with assessing the report and determining whether additional action is necessary regardless of participation from the Reporting Party.

For additional information on Supportive Measures, please see the Policy.

C. Filing a Formal Complaint

A Formal Complaint alleging Prohibited Conduct against a Responding Party may be filed with the Title IX Coordinator in person, by mail, or by email using the contact information contained in the Policy.

Should the Reporting Party decide to file a Formal Complaint, the Title IX Coordinator will review the Formal Complaint and determine whether it should be dismissed or move into the resolution process.

For additional information on Requests for Anonymity or for No University Action, please see the Policy. The Title IX Coordinator has ultimate discretion over whether the University proceeds, and the Title IX Coordinator may sign a Formal Complaint to initiate the resolution process when appropriate. When the Title IX Coordinator signs the Formal Complaint, the Title IX Coordinator does not become the Reporting Party and is not otherwise a Party. Overall, the University's ability to remedy and respond to the Formal Complaint may be limited if the Complainant does not want the University to proceed with the resolution process. The goal

is to provide the Complainant with the opportunity to file a Formal Complaint and participate while balancing the University's obligation to protect its community.

At the discretion of the Title IX Coordinator or designee, multiple reports may be consolidated into one Informal Resolution and/or investigation if the information related to each incident is relevant in reaching a resolution. Matters may be consolidated where the matters involve multiple Complainants, multiple Respondents, or related facts and circumstances involving the same Parties, including those arising out of the same or different events(s).

IV. Designation of Prohibited Conduct and Dismissal of Formal Complaint

As indicated above in the previous section of this Policy, the Title IX Coordinator or designee will gather information to assess whether the reported conduct, if substantiated, would constitute a potential violation of the Policy. Title IX requires the University to determine whether the reported conduct is designated as Title IX-based Prohibited Conduct. A decision not to designate the alleged conduct as Title IX-based Prohibited Conduct constitutes a mandatory dismissal of the case for Title IX purposes. However, such a dismissal does not preclude the University from investigating and resolving a Formal Complaint of Sexual Harassment or OSM that is outside Title IX jurisdiction.

Upon receipt of a Formal Complaint, the Title IX Coordinator or designee will promptly send simultaneously to both Parties the *Written Notice of Formal Complaint* and a *Written Notice of Designation* of:

1. The decision about whether to designate the alleged conduct as Title IX-based Prohibited Conduct, and the reasons for this decision;
2. The decision to proceed with the resolution process or to dismiss the Formal Complaint as described below; and
3. The Parties' rights to appeal the designation and/or dismissal decision.

Title IX-based Prohibited Conduct

The Title IX Coordinator or designee must designate the alleged conduct as Title IX-based Prohibited Conduct if:

1. The alleged conduct would constitute Sexual Harassment within an Education Program or Activity against a person in the United States if substantiated; and
2. The Reporting Party is participating or attempting to participate in an Education Program or Activity at the time the Reporting Party files a Formal Complaint or when the Title IX Coordinator files a Formal Complaint because the alleged conduct meets the above definition.

Mandatory Dismissal

The Title IX Coordinator or designee **must** dismiss a Formal Complaint or any allegations therein if at any time during the Resolution Processes it is determined that:

1. The conduct alleged in the Formal Complaint, if substantiated, would not constitute Prohibited Conduct; or
2. The allegations in the Formal Complaint do not fall within the University's jurisdiction.

If the University decides to move forward with the investigation and adjudication of a Formal Complaint involving non-Title IX-based forms of Prohibited Conduct, the *Notice of Designation* will inform the Parties that the University will nonetheless be moving forward with investigating the Formal Complaint as a violation of the Policy. In such instances, both Parties will receive the same notice and process set forth in this Policy and these Procedures as if there were Title IX jurisdiction.

Dismissal under this Policy and Procedures also does not preclude a referral to another University process and/or office as may be appropriate in cases where the reported conduct may violate other University policies.

Permissive Dismissal

The Title IX Coordinator or designee **may** dismiss a Formal Complaint or any allegations therein if at any time during the Resolution Processes:

1. Reporting Party notifies the Title IX Coordinator or designee in writing that the Reporting Party requests to withdraw the Formal Complaint or any allegations therein; or
2. The Responding Party is no longer enrolled in or employed by the University; or
3. Specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.

If the Responding Party is not a member of the campus community or if they withdraw or leave during the process, the Title IX Coordinator or designee will determine whether the case should be dismissed or whether it should continue to be pursued in the absence of the Responding Party. Decisions on whether to dismiss a case in these instances will be considered carefully. The Title IX Coordinator or designee will assess the effect that nonparticipation by the Responding Party may have on the availability of evidence and the ability to pursue the resolution process fairly and effectively. If the Title IX Coordinator or designee determines that the case should be dismissed, the Title IX Coordinator or designee will still offer Supportive Measures to the Complainant as appropriate.

Appeal of Designation and/or Dismissal

Either Party may appeal the *Written Notice of Designation*. The bases for appeal are limited to procedural irregularity, new evidence, and conflict of interest as explained later in these Procedures.

V. Informal Resolution Process

Informal Resolution may serve to address the alleged Prohibited Conduct as an alternative to proceeding to an investigation and Hearing. Informal Resolution can encompass a variety of approaches agreed to by the Parties including, but not limited to, mediation, Respondent acknowledgement of responsibility, and/or negotiated interventions and Remedies facilitated by the Title IX Coordinator or designee.

The purpose of Informal Resolution is to take appropriate action by imposing individual and community interventions and remedies designed to maximize the equal access to the Education Program or Activity, as well as to address the effects of the conduct on the larger University community.

1. Request for Informal Resolution

Either Party may request Informal Resolution, including their preferred approach of reaching a resolution, such as mediation, Responding Party acknowledgement of responsibility, and/or negotiated interventions and Remedies. Both Parties and the Title IX Coordinator or designee must agree to the process in writing. Either Party may terminate an ongoing Informal Resolution at any time prior to reaching an agreement. The Title IX Coordinator or designee has the discretion to determine whether a Formal Complaint is appropriate for Informal Resolution and which resolution approach is best utilized given the specifics of the Formal Complaint. The Title IX Coordinator or designee retains discretion to terminate an ongoing Informal Resolution process at any time, at which point the Title IX Coordinator or designee will determine appropriate next steps. The Title IX Coordinator or designee will inform both Parties simultaneously in writing of the reason(s) for terminating an Informal Resolution process.

2. Informal Resolution Not Permitted

Although the Title IX Coordinator or designee retains discretion to determine whether a Formal Complaint is appropriate for Informal Resolution in other cases, Informal Resolution is not permitted under the following circumstances:

- a.** Formal Complaints by a student alleging Sexual Harassment against an employee (staff or faculty); or
- b.** Formal Complaints alleging Sexual Assault.

3. Informal Resolution Permitted

When Informal Resolution is utilized, the process is voluntary and is not a requirement or condition of continued enrollment or employment at the University. In such case, Parties will receive a written *Notice of Informal Resolution* containing the following

- a.** Summary of the allegations;
- b.** Notice that neither Party is required to accept responsibility for the alleged Prohibited Conduct, unless a Responding Party chooses to do so;
- c.** Notice that there is no finding of a Policy violation or Sanction unless agreed to by the Responding Party;
- d.** Notice that agreement to Informal Resolution is not a waiver of right to proceed with an investigation and Hearing;
- e.** Notice that until an Informal Resolution agreement is finalized, the Parties may, at any time, opt out of Informal Resolution, at which point the Formal Complaint would proceed or resume to investigation and Hearing, as appropriate;
- f.** Notice of any potential consequences resulting from participating in the Informal Resolution process, including whether records will be maintained or could be shared;
- g.** Notice that the reasonable confidentiality restrictions of the Informal Resolution process mean that information shared or obtained during this process cannot be used in an investigation and adjudication under these Procedures, if Informal Resolution fails;
- h.** Notice that if an Informal Resolution agreement is finalized and implemented, it

precludes the Parties from resuming investigation and adjudication of a Formal Complaint arising from the same allegations; and

- i. Notice that the results of Informal Resolution are not eligible for appeal.

4. Mediation and Other Informal Resolution

Informal Resolution, including mediation, must be conducted by a trained facilitator who guides the Parties in a confidential dialogue to reach an effective resolution, if possible. Information shared or obtained during this process cannot be used in an investigation and adjudication under these Procedures, if Informal Resolution fails. The trained facilitator may be internal or external to the University depending on the needs of the specific case as determined by the Title IX Coordinator or designee. Sanctions are not possible as a result of Informal Resolution unless the Parties agree to accept Sanctions and/or appropriate Remedies.

5. Negotiated Informal Resolution Interventions and Remedies

If agreed to by the Parties and determined appropriate by the Title IX Coordinator or designee, the following Informal Resolution interventions and Remedies may be utilized, including but not limited to:

- a. Increased monitoring, supervision, and/or security at locations or activities where the Prohibited Conduct occurred or is likely to reoccur;
- b. Targeted or broad-based educational programming or training for relevant individuals or groups;
- c. Academic and/or housing modifications for either Party;
- d. Workplace modifications for either Party;
- e. Completion of projects, programs, or requirements designed to help the Respondent manage behavior, refrain from engaging in Prohibited Conduct, and understand why the Prohibited Conduct is prohibited;
- f. Compliance with a No Contact Order;
- g. Compliance with a Denial of Access;
- h. Completion of community service hours over a specific period of time; and
- i. Separation from the University.

The Title IX Coordinator or designee will work with the Offices of Student Conduct and/or, Human Resources as needed to facilitate such negotiated interventions and Remedies.

6. Completion of Informal Resolution

When an Informal Resolution agreement is reached and the terms of the agreement are implemented, the matter is resolved and closed. Appeals by either Party are not permitted. The Title IX Coordinator or designee is responsible for ensuring compliance with the agreement.

In cases where an agreement is not reached and the Title IX Coordinator or designee determines that further action is necessary, or if either Party fails to comply with the terms of the Informal Resolution, the matter may be referred for an investigation and adjudication under these Procedures, as appropriate.

The Parties will be provided with a written copy of the terms of the Informal Resolution agreement. The Title IX Coordinator or designee will maintain all records regarding Informal Resolution.

7. Respondent Acceptance of Responsibility

The Responding Party may accept responsibility for all or part of the alleged Policy violation(s) at any point during the resolution process. If the Respondent wishes to accept responsibility and Informal Resolution is not prohibited per the above, the Title IX Coordinator may initiate the Informal Resolution process, after obtaining both Parties' voluntary, written consent, and after providing the required *Notice of Informal Resolution* if it has not already been provided. Any remaining allegations that are not resolved through the Informal Resolution process may proceed to investigation or Hearing, as appropriate.

VI. Investigation Process

When investigating a Formal Complaint, the below procedures will be utilized.

1. Notice of Rights and Responsibilities

The Reporting Party and Responding Party are required to review and sign *their Notice of Rights and Responsibilities*. The Investigator will verify that the Parties have received, reviewed, and signed their *Notice of Rights and Responsibilities* and have been provided with a copy of this Policy and Procedures to ensure the Parties have adequate information about the investigation and adjudication. The Investigator will also ensure that both Parties have had an opportunity to ask and receive answers to any questions. For staff, faculty, and third parties, the notice will be provided by the Title IX Coordinator or designee. The *Notice of Rights and Responsibilities* will include but is not limited to the following:

- a. Right to be treated with dignity and respect by all University officials;
- b. Right for information to only be shared with others on a need-to-know basis in order to facilitate a resolution;
- c. Right to be informed of available Supportive Measures;
- d. Right to be informed of available community and campus resources and services;
- e. Right to a Support Person and/or an Advisor;
- f. Right to regular updates on the status of the investigation and/or resolution; and
- g. Prohibition against Retaliation and guidance about reporting any retaliatory conduct.

2. Written Notice of Formal Complaint

After a Formal Complaint is filed, the Parties will be provided a *Written Notice of Formal Complaint*, which will include the following:

- a. The University's complete Policy and Procedures as set forth herein;
- b. The allegations of Prohibited Conduct as defined by this Policy;
- c. The identities of the Parties involved, if known;
- d. The date(s), location(s), and time(s) of the alleged incident(s), if known;
- e. A statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the adjudication process;
- f. Information indicating that the Parties may have an Advisor of their choice, who may be an attorney and who may inspect and review evidence;
- g. Notice that if the Parties do not select an Advisor of their choice, the University will provide a trained Advisor prior to the pre-hearing meeting for purposes of performing cross-examination on behalf of that Party at the Hearing;
- h. Information indicating that the Parties may have a Support Person of their choice;
- i. Advisement that knowingly making false statements or knowingly submitting false information during the investigation and adjudication process is prohibited under Section G of the Policy;
- j. Notice that if the University decides to investigate additional allegations about either Party that are not in the original notice, the Parties will receive an amended notice containing the additional allegations; and
- k. The range of potential Sanctions associated with the alleged Prohibited Conduct.

3. Role of the Investigator

The Title IX Coordinator or designee will designate an Investigator(s) and/or an external Investigator to conduct a prompt, thorough, fair, and impartial investigation. The Investigator is responsible for conducting an objective investigation, including objectively evaluating all inculpatory and exculpatory evidence. The Investigator will not make any credibility determinations based on a person's status as a Complainant, Respondent, or witness.

4. Overview of the Investigation

The investigation is an impartial fact-gathering process. It is an important stage of the process in which both Parties have an opportunity to be heard regarding the Formal Complaint. During the investigation, the Investigator will speak separately with both Parties and any other individuals who may have relevant information. No audio or video recording of any kind is permitted during such interviews. The Parties will each have an equal opportunity to present witnesses (including fact and expert witnesses, at their own expense) and any other relevant evidence.

Evidentiary materials, regardless of relevance, may be provided by a Party; however, the Investigator will determine whether and how the evidence and witnesses submitted by the Parties is directly related to the allegations and whether and how that information will be factored into the investigation. Evidence is relevant when a reasonable person would likely accept the information as having probative value about the underlying allegations. An Investigator may exercise discretion in not interviewing a witness or considering a piece of evidence that the

Investigator deems is reasonably likely to lack relevance to the allegations of Sexual Harassment or OSM. The Investigator will also gather any available physical evidence or documents, including prior statements by the Parties or witnesses, communications between the Parties, email messages, text messages, social media materials, and other records, as appropriate and available.

The University does not restrict the ability of Parties to discuss allegations that have been reported or to gather and present evidence. However, the University has a compelling interest in protecting the integrity of the resolution process, protecting the privacy of Parties and witnesses, and protecting Parties and witnesses from harassment, intimidation, or Retaliation during the resolution process. To further these goals, witnesses and Parties are encouraged to limit their sharing of information about a matter (including the allegations, the identities of the Parties and witnesses, and the questions asked in interviews) while the resolution process is ongoing. Parties and witnesses are also cautioned not to discuss the allegations in a manner that constitutes Retaliation or unlawful conduct.

Special Considerations

Information related to the prior sexual history of either Party is generally not relevant to the determination of a Policy violation. However, prior sexual history between the Parties may be relevant in very limited circumstances. For example, where there was a prior or ongoing consensual relationship between the Parties, and where Consent is at issue in the case at hand, evidence as to the Parties' prior sexual history as it relates to Consent may be relevant to assess the manner and nature of communications between the Parties. However, the mere fact of a current or previous dating or sexual relationship, by itself, is not sufficient to show Consent as defined the Policy. Sexual history will never be used for purposes of illustrating either Party's individual character or reputation. The Investigator will determine the relevance of prior sexual history and inform the Parties if information about the Parties' sexual history with each other is deemed relevant.

The University cannot access, consider, disclose, or otherwise use a Party's record(s) that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the capacity thereof or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the Party. However, a Party can provide voluntary, written consent to use the abovementioned material for the investigation and adjudication. Such consent shall be specifically limited to the information provided. At no time shall consent be construed as consent to access any other information in the Party's records. If a Party provides consent to use such material during the investigation stage, and the evidence is directly related to the Formal Complaint, the material will be shared with the other Party as part of the evidence made available for their inspection and review.

The Investigator will not require, allow, rely upon, or otherwise use questions or evidence that constitute or seek disclosure of information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

5. Draft Investigation Report

At the conclusion of the investigation, the Investigator will provide a written investigation report (the *Draft Investigation Report*) that provides a case timeline, appropriately summarizes the information gathered (including, but not limited to, the names of witnesses and summaries of their statements), and outlines evidence that is directly related to the Formal Complaint.

6. Notice of Opportunity to Review the Draft Investigation Report

Before the investigation report is finalized, the Parties will be given an equal opportunity to review and meaningfully respond to the *Draft Investigation Report*. The Investigator will also send to the Party, and the Party's Advisor, if any, all evidence obtained that is directly related to the Formal Complaint, including evidence upon which the University does not intend to rely in reaching a determination regarding responsibility, and inculpatory or exculpatory evidence, whether obtained from a Party or other source, for inspection and review. This evidence may be provided using electronic means that precludes downloading, forwarding, or otherwise sharing. Parties will have ten (10) Days to review the *Draft Investigation Report* and submit a written response, including comments, information, and/or questions to the Investigator.

If there is any new or additional information to be provided by either Party, it must be presented to the Investigator at this time. Any and all information for consideration by the Hearing Officer must be provided to the Investigator during the investigation phase of the process and otherwise will not be allowed during the Hearing. If a Party requests that additional information be considered during the Hearing, the Party must clearly demonstrate that such information was not reasonably available to the Parties at the time of the investigation, or that the evidence has significant relevance to a material fact at issue in the investigation. If a Party provides or identifies evidence after the *Final Investigation Report* is issued, and the Hearing Officer determines that it was reasonably available to them during the investigation process, the Hearing Officer has the discretion to choose to consider such information, and may draw a negative inference from the Party's delay in providing or identifying the evidence. The Hearing Officer may, at their discretion, instruct that the investigation be re-opened to consider the evidence. In such cases, the evidence will be made available to the Parties for their review and comment prior to the Hearing. If further investigation is warranted based on the Parties' written responses, the Investigator will continue the investigation, as needed. The Investigator will consider the Parties' written responses prior to completing the *Final Investigation Report*.

7. Final Investigation Report

Upon timely receipt of the Parties' written responses, or after the ten (10) Day review period has lapsed with no written responses, the investigation ends. The Investigator will complete the *Final Investigation Report*. The *Final Investigation Report* will contain summaries of all relevant information obtained throughout the course of the investigation and may contain an analysis of fact. The *Final Investigation Report* will be submitted to the Hearing Officer.

VII. Participation

Throughout the process, the Title IX Coordinator, Investigator(s), and other University representatives will communicate and correspond directly with the Parties. The Parties are responsible for ensuring that their Advisor and/or Support Person acts consistent with the

definition of an Advisor and Support Person set forth in the Policy and the rules and expectations provided below. Parties are also responsible for making sure appropriate authorization exists (e.g., authorization related to the Family Educational Rights and Privacy Act (“FERPA”)) for the University to communicate the non-party participation requirements below to any Advisor or Support Person.

Advisors and Support Persons

Both a Reporting Party and a Responding Party are given the opportunity to have support or advice through the process. Both parties may have up to two individuals accompany them to any meetings, interviews, or hearings related to the matter – one (1) Advisor and one (1) Support Person. A party must provide the Title IX Coordinator with full name and contact information (physical and email address) of their Advisor and/or Support Person in advance of any meeting or proceeding. All Advisors and Support Persons must closely review the University’s Policy on Sexual Harassment and Other Sexual Misconduct and these Procedures. The Policy prohibits retaliation against any individuals filing a complaint or participating in the investigation of the complaint. Advisors and Support Persons are also protected by and subject to this retaliation prohibition. This means an Advisor or Support Person may not retaliate against any person participating in this process, nor can anyone retaliate against an Advisor or Support Person. To report possible retaliation, please contact the Title IX Coordinator at TitleIX@ndm.edu.

Notwithstanding the limit of one Advisor and one Support Person, nothing herein precludes a party from seeking reasonable accommodations, including, but not limited to, the presence of sign-language interpreters at all meetings and proceedings during the grievance process. In such cases, individuals serving in such capacity are not counted as an Advisor or Support Person.

Rules and expectations regarding the role of the Advisor:

- a. The Advisor is a person chosen by either the Reporting Party or Responding Party who may be, but is not required to be, an attorney, who provides support, guidance, assistance, and/or advice to the individual, and who may inspect and review evidence directly related to the allegations in the Formal Complaint.
- b. The Advisor may not be someone who is otherwise involved in the situation which gave rise to the complaint, such as someone who could become a witness. Similarly, in cases involving multiple parties, the Advisor cannot be another party.
- c. It is the responsibility of the Reporting Party and Responding Party to present oral and written information in all meetings and proceedings on their own behalf. An Advisor may be present during any meeting or proceeding, and may consult with their advisee quietly or in writing, or during breaks, but may not speak on behalf of the advisee to the Investigator or Hearing Officer. An Advisor may not submit any written requests (including appeals) on behalf of a party. An Advisor may ask process-related questions of an Investigator or Hearing Officer, but may never ask questions of their advisee on the record during a meeting or proceeding, and may not offer facts or submit argument on behalf of their advisee.
- d. During the live hearing only, a party’s Advisor is permitted to ask the other party

and any witnesses all relevant questions and follow-up questions, including those challenging credibility. An Advisor is a party's proxy during the hearing; the Advisor is not "representing" the party. The role of the Advisor is to relay their advisee's desired questions to the other party and witnesses.

- e. Advisors are expected to handle themselves in a respectful and non-abusive manner during all proceedings. Examples of questioning that may be harassing or abusive include, but are not limited to, (a) yelling or screaming at the other party or a witness; (b) standing and leaning into the other party's or a witness' personal space; or (c) asking argumentative questions designed to berate or belittle the other party or a witness.
- f. Advisors are not permitted to raise any objections, argue in support of a party's position, or otherwise "represent" a party. Any questions posed by the Advisor to their advisee, or factual assertions or argument provided by the Advisor to an Investigator or Hearing Officer will not be considered and will be redacted from the record.
- g. The University's communication during the process will be primarily with the parties, not with the Advisor directly. The University will copy an Advisor on communications if requested by the party. A complainant or respondent may use different Advisor(s) at various stages in the process, especially if their chosen individual cannot be available for a scheduled meeting, interview, or hearing. The University will work to reasonably accommodate the Advisors' schedules, but will not unnecessarily delay the process due to the Advisors' conflicts.
- h. This procedural process involves an alleged violation of University policy and is not a criminal or legal proceeding. Formal legal rules, including, but not limited to, any rules of evidence and procedure, are not applicable.
- i. An Advisor may be removed or replaced if they unreasonably delay the process, and/or their presence is disruptive, obstructive, or otherwise interferes with the University's handling of the matter. In such a case, the Reporting Party or Responding Party may seek another Advisor.

Rules and expectations regarding the role of a Support Person:

- a. The Support Person is someone other than an Advisor whose presence provides support to a party, and who is permitted to accompany a party in meetings and proceedings. Examples include, but are not limited to, a family member, friend, faculty member or staff member.
- b. The Support Person may not speak on behalf of the individual, directly participate in the proceedings, or submit any written requests (including appeals) on behalf of the individual.
- c. The Support Person may not be someone who is otherwise involved in the situation which gave rise to the complaint, such as someone who could become a witness. Similarly, in cases involving multiple parties, the Support person cannot be a party.
- d. A Support Person may be removed or replaced if they unreasonably delay the process, and/or their presence is disruptive, obstructive, or otherwise interferes with the University's handling of the matter. In such a case, the Reporting Party or Responding Party may seek another Support Person.

Witnesses

Witnesses are individuals who have factual information about an alleged violation of Policy. The University expects witnesses to provide true and accurate information. Anyone can be a witness if they have relevant information. All witnesses, including the Reporting Party and Responding Party, are expected to respond to questions during any meeting or proceeding on their own behalf. Witnesses should understand that some evidence may not be deemed relevant to an alleged Policy violation and therefore excluded from consideration. Witnesses are also protected from retaliation.

VIII. Adjudication Process

1. Review of the Final Investigation Report

Following completion of the Final Investigation Report, the Title IX Coordinator or designee will provide each Party and each Party's Advisor, if any, with a confidential copy of the Final Investigation Report, including all attachments, and explain the next steps in the process.

The Final Investigation Report may be provided using electronic means that precludes downloading, forwarding, or otherwise sharing. If a Party does not identify their Advisor at this time, the University will provide an Advisor for purposes of the pre-hearing meeting and Hearing and a confidential copy of the Final Investigation Report will be provided to the Party's Advisor prior to the pre-hearing meeting.

In order to protect the privacy of all individuals involved, all materials shared with the Parties are considered confidential and should not be publicly disclosed or released.

2. Hearing Case File

Before the pre-hearing meeting and Hearing, the Title IX Coordinator or designee will provide the Parties, their Advisors, and the Hearing Officer with access to the complete hearing case file. The hearing case file will include:

- a. The complete *Final Investigation Report*; and
- b. All directly related evidence subject to the Parties' inspection and review as explained in these Procedures.

3. Role of the Hearing Officer

The Hearing Officer (or Chair of the Hearing Panel if there is more than one Hearing Officer) is responsible for maintaining an orderly, fair, and respectful Hearing. The Hearing Officer has broad authority to respond to disruptive behaviors, including adjourning the Hearing or excluding disruptive persons, and will ensure efficient administration of the Hearing. The Hearing Officer will have discretion to determine the structure of the Hearing and how questioning is conducted, including but not limited to the order of witnesses to be questioned, if any, consistent with these Procedures.

The Hearing Officer will objectively evaluate all relevant evidence, including both inculpatory and exculpatory evidence, and will not make any credibility determinations based on a person's status as a Complainant, Respondent, or witness.

The Hearing Officer is the decision maker responsible for determining whether or not the Policy was violated. The Hearing Officer is also the decision maker responsible for determining any appropriate Sanctions and other responsive actions imposed on the Respondent, if any, upon a finding of responsibility.

4. Pre-Hearing Meeting

The Title IX Coordinator or designee may, in their discretion, convene joint or separate pre-hearing meetings that includes the Hearing Officer (or Chair of the Hearing Panel if there is more than one Hearing Officer) with each Party and their Advisor, if applicable, to:

- j. Plan for the Hearing;
- k. Identify their Advisor and, if applicable, Support Person;
- l. Review the Procedures to be followed at the Hearing;
- m. Discuss the process of raising a concern that the Hearing Officer has an impermissible bias or conflict of interest as set forth in the Policy.
- n. Review the complete list of witnesses that will be asked to appear in accordance with the below exceptions;
- o. Discuss any technology that will be used at the Hearing and how to operate such technology;
- p. Discuss the time allotted for the Hearing and any time limitations; and
- q. Answer any other questions or remaining concerns prior to the Hearing.

Attendance at the pre-hearing meeting is strongly encouraged for each Party. A Party's decision not to participate may result in decisions regarding witnesses and procedural matters being made without their input. If neither Party attends the pre-hearing meeting, the Hearing Officer will determine all procedural matters in advance of the Hearing.

Generally, the University will request that all witnesses interviewed during the investigation attend the Hearing for questioning. However, the Hearing Officer, only with full agreement of the Parties, may decide through the prehearing meeting(s) that certain witnesses do not need to be invited to the Hearing if their testimony can be adequately summarized by the Investigator(s) in the Final Investigation Report or during the Hearing. Any such agreement will be confirmed in writing by both Parties. The Hearing Officer has the discretion to request the attendance of other witnesses in accordance with these Procedures.

5. Written Notice of Hearing

- a. The Title IX Coordinator or designee will use reasonable efforts to consult with all involved individuals, including the Reporting Party, Responding Party, Support Persons, Advisors, and witnesses, in order to schedule the Hearing.
- b. Parties will receive a Written Notice of Hearing at least ten (10) Days in advance

of the Hearing. The Notice will include pertinent information about the Hearing, its procedures, and the rights and responsibilities of the Parties, and will include the information below.

- i. The Notice will include a description of the charges of Policy violation(s), a copy of the applicable Hearing procedures, and a statement of the potential Sanctions/responsive actions that could result.
- ii. The Hearing date, time, location, purpose, and the list of participants, including the complete list of witnesses requested to attend the Hearing for questioning, will be provided.
- iii. The Hearing Officer may reschedule the Hearing if necessary to facilitate the participation of Parties and witnesses, or for other reasons that they deem to be compelling.
- iv. Each Party must have an Advisor present at the Hearing, without exception. If a Party does not have an Advisor present at the Hearing, the University will provide one free of charge for the purpose of conducting cross-examination on behalf of that Party at the Hearing.
- v. The Parties may object to the Hearing Officer(s) on the basis of demonstrated bias or conflict of interest for or against Reporting Party or Responding Party, generally, or for or against the individual against Reporting Party or Responding Party. Objections must be raised with the Title IX Coordinator or designee at least two (2) Days prior to the Hearing.
- vi. A Party's participation is voluntary and a Party may choose not to appear at the Hearing. However, if any Party does not appear at the scheduled Hearing after receiving appropriate notice, the Hearing will be held in their absence, unless there are extenuating circumstances as determined by the Hearing Officer. Any statements given by the Party prior to the Hearing will not be considered by the Hearing Officer (though the Hearing Officer may continue to consider and rely on alleged verbal conduct that constitutes all or part of the underlying alleged Prohibited Conduct itself).¹ The Hearing Officer will make a

¹ In light of *Victim Rights Law Center et al. v. Cardona (2021)* and *USDE OCR's August 24, 2021 Guidance*, any party or witness may choose not to offer evidence and/or answer questions at the hearing, either because they do not attend the hearing, or because they attend but refuse to participate in some or all questioning. The Hearing Officer(s) can only rely on whatever relevant evidence is available through the investigation and hearing in making the ultimate determination of responsibility. The Decision-maker(s) may not draw any inference solely from a party's or witness's absence from the hearing or refusal to submit to cross-examination or answer other questions.

determination regarding responsibility and any sanctions, if appropriate, without the participation of the absent Party.

- vii. The hearing case file, including all directly related evidence subject to the Parties' inspection and review as explained in these Procedures, will be available at the Hearing to give each Party equal opportunity to refer to evidence during the Hearing, including for purposes of cross-examination.
- viii. A copy of all the materials provided to the Hearing Officer about the matter will be shared with the Parties, unless they have been provided already.
- ix. The Parties may contact the Title IX Coordinator or designee to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the Hearing. Such accommodations must be requested at least seven (7) Days prior to the Hearing.
- x. The Notice will indicate whether the Parties may bring mobile phones or other devices into the Hearing, and any related restrictions.
- xi. The Hearing Officer may conduct the Hearing with all Parties and witnesses physically present in the same geographic location or with any or all Parties, witnesses, and other participants virtually present at the Hearing. Technology enabling virtual participation must allow participants simultaneously to see and hear each other. xii. At either Party's request, the University will provide the Parties with separate rooms or separate virtual rooms. The University will use technology enabling the Hearing Officer and Parties to simultaneously see and hear the Party or the witness who is answering a question.
- xii. The Hearing is closed to the public.
- xiii. The Hearing will be recorded by the University (either audio or audiovisual). No other recordings are permitted. Recordings are maintained by the University. Parties may submit a written request to the Title IX Coordinator to inspect and review the recording after the Hearing.

6. Hearing Procedures

- a. The Hearing does not take place within a court of law and is not bound by formal

rules of evidence that apply to court proceedings.

- b. The Hearing Officer (or Chair of the Hearing Panel if there is more than one Hearing Officer) will preside over the Hearing.
- c. The Investigator will summarize the Final Investigation Report and clarify any information in the Final Investigation Report.
- d. Each Party may provide a brief opening statement.
- e. Each Party's Advisor will be provided an opportunity to cross-examine the other Party and any witnesses. Questioning will be conducted directly, orally, and in real time by the Party's Advisor only. Parties may not question each other or witnesses directly.
- f. The hearing case file and all directly related evidence subject to the Parties' inspection and review as explained in these Procedures will be available at the Hearing to give each Party equal opportunity to refer to evidence during the Hearing, including for purposes of cross-examination.
- g. Any and all information for consideration by the Hearing Officer must be provided to the Investigator during the investigation phase of the process and otherwise will not be allowed during the Hearing.
 - i. If a Party requests that additional information be considered during the Hearing, the Party must clearly demonstrate that such information was not reasonably available to the Parties at the time of the investigation, or that the evidence has significant relevance to a material fact at issue in the investigation.
 - ii. If a Party provides or identifies evidence after the Final Investigation Report is issued, and the Hearing Officer determines that it was reasonably available to them during the investigation process, the Hearing Officer has the discretion to choose to consider such information, and may draw a negative inference from the Party's delay in providing or identifying the evidence.
 - iii. The Hearing Officer may, at their discretion, instruct that the investigation be re-opened to consider the evidence. In such cases, the evidence will be made available to the Parties for their review and comment prior to the Hearing.
- h. The Hearing Officer will generally exclude from the Hearing any witnesses who were not previously identified during the investigation and requested to attend by the University.
 - i. If a Party wishes to present another witness, they must clearly

demonstrate that the witness was not reasonably available or not reasonably known to the Parties at the time of the investigation, or that the witness is likely to have information that has significant relevance to a material fact at issue in the investigation.

- ii. The Hearing Officer may, at their discretion, choose to consider information from such witnesses and may draw a negative inference from the Party's delay in identifying the witness.
 - iii. The Hearing Officer may, at their discretion, instruct that the investigation be re-opened to allow that witness to be interviewed. In such cases, the interview will generally be conducted by the Investigator and a summary of information provided by the witness will be made available to the Parties for their review and comment prior to the Hearing.
- i. Before a Complainant, Respondent, or witness answers a cross-examination or other question, the Hearing Officer must first determine whether the question is relevant and explain any decision to exclude a question as not relevant. All relevant questions and follow-up questions, including those challenging the credibility of Parties and witnesses, will be allowed. Consistent with the foregoing, the Hearing Officer may also exercise their discretion to exclude any questions they deem to be harassing or unnecessarily repetitive, and will explain any decision to exclude a question on these grounds.
 - j. Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence:
 - i. Are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant; or
 - ii. Concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove whether Consent was present.
 - k. Questions and evidence about the Respondent's prior sexual history with an individual other than a Party to the proceedings may only be considered if the evidence:
 - i. Proves prior sexual misconduct;
 - ii. Supports a claim that a Party has an ulterior motive; or
 - iii. Impeaches a Party's credibility after that Party has put their own prior sexual conduct in issue.
 - l. The Hearing Officer may not consider a Party's records that are made or

maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the Party, unless the University obtains that Party's voluntary, written consent to provide that information for consideration.

- m. The Hearing Officer may not consider any questions or evidence about a student's history of mental health counseling, treatment, or diagnosis, unless the student consents to providing that information for consideration.
- n. The Hearing Officer may not consider questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.
- o. If a Party or witness does not answer the cross-examination questions that are deemed relevant by the Hearing Officer, if any, then the Hearing Officer must not rely on any statement by that Party or witness in reaching a determination regarding responsibility.²
 - i. This prohibition applies to statements made by the Party or witness at the Hearing, in the investigative report, and in evidence, such as in a police report, medical report, or other record.
 - ii. The Hearing Officer may continue to consider and rely on alleged verbal conduct that constitutes all or part of the underlying alleged Prohibited Conduct itself.
 - iii. The Party or witness's reason for refusing to answer a relevant question does not matter.
- p. A Party's or witness's failure to answer a question posed by the Hearing Officer does not trigger a prohibition against relying on that Party's or witness's other statements. However, the Hearing Officer cannot draw an inference about the determination regarding responsibility based solely on a Party's or witness's absence from the Hearing or refusal to answer cross

² In light of *Victim Rights Law Center et al. v. Cardona (2021)* and *USDE OCR's August 24, 2021 Guidance*, any party or witness may choose not to offer evidence and/or answer questions at the hearing, either because they do not attend the hearing, or because they attend but refuse to participate in some or all questioning. The Hearing Officer(s) can only rely on whatever relevant evidence is available through the investigation and hearing in making the ultimate determination of responsibility. The Decision-maker(s) may not draw any inference solely from a party's or witness's absence from the hearing or refusal to submit to cross-examination or answer other questions.

examination or other questions.

- q. During the Hearing, the Hearing Officer may call for or grant requests for recesses as needed, and the Hearing Officer retains the discretion to balance recesses with the need to conduct the Hearing in an orderly and timely fashion. Each Party may request recesses if needed to speak privately with an Advisor or Support Person, or for other reasons. The Hearing Officer may suggest recesses if they feel it may be helpful to a Party, particularly during cross-examination.
- r. Each Party will have the opportunity to make a brief closing statement.
- s. The Hearing Officer may determine that multiple sessions or a pause in the continuation of the Hearing until a later date or time is needed to complete the Hearing. If so, the Hearing Officer or Title IX Coordinator or designee will notify all participants and will endeavor to accommodate all participants' schedules to complete the Hearing as promptly as practicable.

7. Written Notice of Determination

Upon completion of the hearing, the Hearing Officer shall objectively evaluate and weigh the relevant evidence to determine the outcome based on a preponderance of the evidence and will issue a written determination that includes the finding and rationale. If applicable, a majority vote is required for a finding on each allegation of Sexual Harassment or OSM.

Where credibility of the parties is an issue in determining preponderance of evidence, the rationale will include an explanation of how the Hearing Officer resolved questions of credibility.

If the Hearing Officer finds a Responding Party responsible for a violation of the Policy, prior to the issuance of the *Written Notice of Determination*, the Hearing Officer will share the finding with the Offices of Student Life and/or Human Resources to determine the appropriate sanction to be included in the written determination.

The Hearing Officer will provide the Parties with a *Written Notice of Determination* at the same time. The *Written Notice of Determination* will include:

- a. Identification of the allegations at issue;
- b. A description of the procedural steps taken throughout the case;
- c. Findings of fact supporting the determination;
- d. Conclusions regarding application of the Policy to the facts;
- e. A statement of, and rationale for, the determination of responsibility for each allegation; any disciplinary sanction imposed on the Respondent, and any

Remedies designed to restore or preserve equal access to the Reporting Party.

- f. A description of the procedures and permissible grounds for appeal.

The Title IX Coordinator or designee will distribute the Hearing Officer's written determination to the parties simultaneously no later than fifteen (15) business days after conclusion of the hearing, unless good cause exists for an extension of time. The University will provide written notice of any extension and the reasons justifying good cause for the extension to both parties.

8. Sanctions and Remedies

The University has discretion to tailor disciplinary sanctions to address specific situations and may use the disciplinary process as an educational tool rather than a punitive tool due to wide discretion to utilize informal resolution processes.

In determining the appropriate sanction(s), the University will examine a number of factors, including, but not limited to: 1) level of risk of harm to the community; 2) the nature and seriousness of the offense; 3) use of drugs or alcohol in the perpetration of the violation; 4) motivation underlying the Responding Party's behavior; and/or 5) the Responding Party's record of past misconduct, including prior violations of the same or similar type.

The range of possible disciplinary sanctions that the University may implement following any determination of responsibility for Student, Staff, and Faculty Responding Parties may be found in the Policy.

IX. Appeals

Grounds for Appeal

Either party may appeal the dismissal of a Formal Complaint or any allegations therein, and from a written determination regarding responsibility on the following grounds only:

1. A procedural error or irregularity that affected the outcome;
2. New evidence that was not reasonably available at the time the determination of responsibility or dismissal was made, that could affect the outcome of the matter; and/or
3. The Title IX Coordinator, Investigator(s), or Hearing Officer(s) had a conflict of interest or bias for or against Reporting Parties or Responding Parties generally or individual Reporting Party or Respondent that affected the outcome.
4. Substantially disproportionate sanction

Mere dissatisfaction with a dismissal, determination regarding responsibility, or sanction is not a valid basis for appeal.

Appeal Timeline

A party must submit their own appeal in writing within five (5) business days of the date of the written determination is sent by the Title IX Coordinator. Failure of a party to submit their own appeal within the allotted time will render the written determination final and conclusive.

If an appeal is received from one party, the Title IX Coordinator will notify the other party in writing of the appeal submitted. The other party will be permitted to review the written appeal and any supporting documentation submitted by the other party, and will have an opportunity to submit a written response to the appeal within five (5) business days of the date the Title IX Coordinator sent the notification of an appeal. Any written response and supporting documentation to an appeal will be shared with the appealing party. No replies are permitted.

Upon receipt of a written response, or expiration of the time to provide a written response if no response is submitted, the Title IX Coordinator will appoint a trained Appellate Hearing Officer to decide the appeal. The Appellate Hearing Officer will not be the same person as the decision-makers that reached the determination being appealed, the Investigator(s), or the Title IX Coordinator.

The Title IX Coordinator will promptly provide written notice of the name of the Hearing Officer to both parties simultaneously. Within 24 hours of receipt of the notice, either party (not an Advisor or Support Person) may assert to the Title IX Coordinator, in writing, that the Appellate Hearing Officer has a conflict of interest or bias. The written objection must be filed with the Title IX Coordinator, who has the sole and final authority to determine whether good cause exists to replace the Appellate Hearing Officer. When the selection of the Appellate Hearing Officer is final, the Title IX Coordinator will provide the appeal and all related documents to the Hearing Officer.

The Appellate Hearing Officer will review the appeal documents along with the relevant written and audio/audio visual record. The Appellate Officer will defer to the original finding and sanction(s) of the Hearing Officer, remanding a matter on a specific issue(s), or modifying a finding or sanction(s) only when there is compelling justification to do so. An Appellate Officer may take one of the following actions on appeal:

1. Dismiss the appeal for failure to articulate a valid ground or grounds for appeal as set forth in this Section., upholding the initial outcome and sanction(s), if any;
2. Deny the appeal and uphold the initial outcome and sanction(s) with a rationale supporting the denial of the appeal;
3. Where there is a procedural error or new evidence that could have affected the outcome, remand the matter to the hearing officer with specific instructions on the remanded issue(s); or
4. Modify the finding and/or sanction with a rationale supporting the modification.

Upon completion of their review, the Appellate Hearing Officer will issue a written decision and rationale for the result. The Title IX Coordinator will distribute the written decision to all parties simultaneously within ten (10) business days after the Appellate Hearing Officer receipt

of the appeal from the Title IX Coordinator, unless good cause exists for an extension of time. The University will provide written notice of any extension and the reasons justifying good cause for the extension to the parties.

Appeal Format

All appeals and responses to appeals must be submitted by the Party on their own behalf (appeals and responses signed by a Party's Advisor or Support Person will not be accepted) in writing to the Title IX Coordinator via hard-copy or email to:

Title IX Coordinator
4701 N. Charles Street
Baltimore, MD 21210
TitleIX@ndm.edu

The appeal must specifically state the basis for appeal and include relevant supporting documentation. The party appealing should address the central issue of the appeal directly, as irrelevant information will not be considered. Any response to the appeal should address the central issues of the other party's appeal. An appeal is not a review of the entire matter. It is an objective review of the written documentation related to the investigatory and hearing process, and record of the hearing along with appeal-related submissions as permissible herein.

Accordingly, the Appellate Hearing Officer will not interview, question, or meet with witnesses, parties or a party's Advisor or Support Person.

The written decision by the Appellate Hearing Officer is final and is not subject to further appeal.

XIII. Final Outcome

After the appeal process has concluded (or when the time for an appeal has passed with no appeal submitted, whichever is later), the Title IX Coordinator will promptly notify the appropriate University officials as well as the Reporting and Responding Parties, in writing, of the final outcome of the Formal Complaint.