

# **POLICY PROHIBITING TITLE IX MISCONDUCT AND OTHER SEXUAL AND GENDER-BASED DISCRIMINATION, HARASSMENT, AND RELATED MISCONDUCT**

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## **I. Values Statement**

Ursinus College (“Ursinus” or “the College”) seeks to foster a diverse community in which all members are respected, included, supported, and treated equitably. Community members are expected to act ethically and responsibly. The Ursinus College Values Statement articulates these principles: <https://www.ursinus.edu/about/uncommonly-ursinus/what-matters-to-us/our-values/>

Our values, which guide the policies and practices of our institution, include a commitment to cultivating a healthy and safe campus community free from sexual and gender-based discrimination, harassment, and related misconduct. Sexual and gender-based discrimination, harassment, and related misconduct are an affront to one’s very personhood.

The College’s Policy Prohibiting Title IX Misconduct and Other Sex and Gender-Based Discrimination, Harassment, and Related Misconduct (the “Policy”) is informed and guided by this Values Statement consistent with Title IX and related state and federal laws.

## **II. Policy Statement**

The College is committed to creating and maintaining a safe and non-discriminatory learning and work environment that is free from sexual and gender-based discrimination, harassment, and related misconduct.<sup>1</sup> The College does not discriminate on the basis of sex, gender, or gender identity in any of its Programs or Activities.<sup>2</sup>

The Policy prohibits the types of conduct listed below and defined in [Section IV](#) (also referred to collectively as “Prohibited Conduct”):

- 1) **Sexual and Gender-Based Misconduct** (i.e., Sexual Assault; Sexual Exploitation, Non-Title IX Sexual Harassment; Gender-Based Harassment; Sex and/or Gender-Based Stalking; Dating Violence; Domestic Violence; and Sex- and Gender-Based Discrimination);
- 2) **Title IX Misconduct** (i.e., Quid Pro Quo Sexual Harassment; Severe, Pervasive and Objectively Offensive Sexual Harassment; Sexual Assault; and Sex-Based Dating Violence, Domestic Violence, and Stalking, as each is defined by and specifically articulated to be within the scope of Title IX);
- 3) **Intimidation**; and
- 4) **Retaliation**.

The College must define and respond to Title IX Misconduct as required by regulations issued in May 2020 by the U.S. Department of Education to implement Title IX of the Education Amendments of 1972, codified at 34 C.F.R. Part 106 (the “Title IX Regulations”). The Title IX Regulations allow the College to define and regulate Prohibited Conduct that falls outside the

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<sup>1</sup> The types of conduct prohibited by the Policy are defined in [Section IV](#) below.

<sup>2</sup> Terms defined in [Section IV](#) below are capitalized throughout the Policy.

definition of Title IX Misconduct, but that which the College is committed to addressing as a matter of College policy and/or as required by other applicable law. Accordingly, the Policy is consistent with the Title IX Regulations, as well as the College's mission and commitment to ensuring a safe and non-discriminatory campus community.

The College adopts this Policy with a commitment to: (1) deter, eliminate, and address the effects of Prohibited Conduct; (2) foster an environment where all individuals are well-informed and supported in reporting Prohibited Conduct; and (3) provide a prompt, fair, and impartial process pursuant to which alleged violations of this Policy will be evaluated.

This Policy is intended to meet the College's obligations under Title IX of the Education Amendments of 1972 (Title IX); the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act ("Clery Act"), as amended by the Violence Against Women Reauthorization Act of 2013 (VAWA), with respect to its application to sex and gender-based misconduct; Title VII of the Civil Rights Act of 1964 (Title VII) with respect to its application to sex and gender-based misconduct; and other related and applicable law, including Pennsylvania's Act 16 of 2019.

The requirements and protections of the Policy apply equally regardless of sex, sexual orientation, gender identity, gender expression, or other protected classes covered by federal or state law. All requirements and protections are equitably provided to individuals regardless of protected class status or status as a Complainant, Respondent, or Witness.

This Policy shall be applied in a way that is consistent with the College's principles of academic freedom. The College is committed to the free and vigorous discussion of ideas and issues, which the College believes will be protected by this Policy. Academic freedom and the related freedom of expression include, but are not limited to, the civil expressions of ideas – however controversial – in the classroom, residence halls, and other teaching and student living environments.

The College encourages students, faculty and staff to familiarize themselves with the Policy and the related grievance procedures for addressing reports of Prohibited Conduct. We invite you to ask questions, make recommendations, and do your part to foster an environment free of Prohibited Conduct.

The College's Title IX Coordinator is responsible for administering the Policy, including the procedures for resolving Formal Complaints.<sup>3</sup> The College's Title IX Coordinator is Lauren Stroud. Ms. Stroud may be contacted at:

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<sup>3</sup> All references in the Policy to the Title IX Coordinator should be understood to also include any individual acting as a designee of the Title IX Coordinator.

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### **III. Policy Scope and Jurisdiction**

The Policy applies to all members of the College community (students, faculty, and staff), as well as to certain third parties (e.g., individuals who are neither students nor employees, including but not limited to guests, contractors and consultants).

The Policy covers acts of **Sexual and Gender-Based Misconduct** (as defined in [Section IV](#) below) committed by or against students, employees, and third parties when the Prohibited Conduct occurs:

- On the College’s campus or other property owned or controlled by the College;
- In the context of a College Program or Activity, including, but not limited to, research, internship programs, or employment; or
- Outside of a College Program or Activity but poses a serious threat of harm; has a continuing adverse effect on; or creates a hostile environment for College students, employees, or third parties while on the College’s campus or other property owned or controlled by the College, or in any College Program or Activity. In determining whether College has jurisdiction over off-campus or online conduct that did not occur in a College Program or Activity, the College will consider the severity of the alleged conduct; the risk of ongoing harm; whether both parties are members of the College community; the impact on College Programs or Activities; and whether the off-campus conduct is part of a series of actions that occurred both on and off campus.

The Policy also covers acts of **Title IX Misconduct** (as defined in [Section IV](#) below) committed (1) on or after August 14, 2020<sup>4</sup>; (2) in the United States; (3) by or against College students or employees participating or seeking to participate in a College Program or Activity.

College students and employees who violate this Policy may face, as appropriate, disciplinary action up to and including termination and expulsion; third parties who violate this Policy also face responsive action as appropriate and available.

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<sup>4</sup> Title IX Misconduct that occurred before August 14, 2020 is prohibited by College policy, including but not limited to, the Student Handbook in effect when the alleged Title IX Misconduct occurred.

This Policy supersedes any conflicting information in any other College policy with respect to the definitions or procedures relating to Prohibited Conduct. The elements established in the Policy for resolution of reports and Formal Complaints of Prohibited Conduct have no effect on and are not transferable to any other policy of the College and will not apply to any alleged violation of the Code of Conduct, employment policies, or to any alleged civil rights violation except as narrowly defined in this Policy. This Policy does not set a precedent for other policies or processes of the College and may not be cited for or against any right or aspect of any other policy or process.

## **IV. Definitions**

### **A. Key Policy Definitions**

Key terms used in the Policy are defined as follows. Additional terms are defined within the text of the Policy.

- 1) **College Program or Activity**: Includes: (1) the College’s campus and any other property owned the College; (2) any location, event, or circumstance where the College exercises substantial control over both the Respondent and the context in which the conduct occurs, including all education programs/activities offered by the College; and (3) any building owned or controlled by a student organization recognized by the College.
- 2) **Complainant**: The student, employee, or third party who is reported to have experienced Prohibited Conduct in violation of this Policy.
- 3) **Formal Complaint**: A document signed by a Complainant or by the Title IX Coordinator alleging that a Respondent engaged in Prohibited Conduct and requesting initiation of the College’s grievance process (compare with “Report”).
- 4) **Mandated Reporter**: College employees who are required by the College to report to the Title IX Coordinator information about alleged Prohibited Conduct. For a full list of College officials that meet this definition, see [Section VIII.A.4](#) Policy.
- 5) **Official With Authority (OWA)**: an individual with the authority to institute corrective action on behalf of the College and notice to whom causes the College to respond to Title IX Misconduct. For a full list of College officials that meet this definition, see [Section VIII.A.3](#) Policy.
- 6) **Prohibited Conduct**: An umbrella term referring to both Sexual and Gender-Based Misconduct and Title IX Misconduct, as those terms are defined below.
- 7) **Protected Activity**: Includes most elements of participation in the College’s processes related to this Policy, including but not limited to reporting Prohibited Conduct, pursuing resolution of a report of Prohibited Conduct, providing evidence in any investigation or hearing, or intervening to protect others who may have suffered Prohibited Conduct.

- 8) **Reasonable Person**: A person using average care, intelligence, and judgment in the known circumstances.
- 9) **Relevant Evidence and Questions**: Any evidence and questions that tend to make an allegation of Prohibited Conduct more or less likely to be true. Relevant evidence and questions do not include the following, which are deemed “irrelevant” for purposes of the Title IX/Sexual Misconduct Grievance Process:
  - Evidence and questions about the Complainant’s sexual predisposition;
  - Evidence and questions about the Complainant’s prior sexual behavior unless:
    - The solicited information is offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or
    - Such information concerns specific incidents of the Complainant’s prior sexual behavior with respect to Respondent and are offered to prove consent. 34 C.F.R. § 106.45(6)(i).
  - Evidence questions that constitute, or seek disclosure of, information protected under a legally-recognized privilege, *unless such privilege is waived*.
  - A party’s medical, psychological, and similar records unless the party gives voluntary, written consent. 85 Fed. Reg. 30026, 30294 (May 19, 2020).
- 10) **Report**: Disclosure of alleged Prohibited Conduct without the expectation of initiating the College’s grievance process (compare with “Formal Complaint”).
- 11) **Respondent(s)**: The individual(s) who is reported to have engaged in conduct that could constitute Prohibited Conduct in violation of this Policy.
- 12) **Witness**: A person who has factual information about alleged violation(s) of this Policy.

## B. Prohibited Conduct & Related Definitions

**Prohibited Conduct** under this Policy includes **Sexual and Gender-Based Misconduct** (i.e., Sexual Assault; Sexual Exploitation, Non-Title IX Sexual Harassment; Gender-Based Harassment; Sex and/or Gender-Based Stalking; Dating Violence; Domestic Violence; and Sex- and Gender-Based Discrimination) and **Title IX Misconduct** (i.e., Quid Pro Quo Sexual Harassment; Severe, Pervasive and Objectively Offensive Sexual Harassment; Sexual Assault; and Sex-Based Dating Violence, Domestic Violence, and Stalking, each as defined by and within the scope of Title IX), as defined below.

Whether someone engaged in Prohibited Conduct under this Policy will be assessed under a Reasonable Person standard, as defined above.

- 1) **Consent**: Some forms of Prohibited Conduct involve the issue of Consent. For purposes of this Policy, *consent* to engage in sexual activity must be informed, knowing, and voluntary; consent must exist throughout and continually during each instance of sexual activity and for each form of sexual contact. Consent is demonstrated through mutually understandable words and/or actions that clearly indicate a willingness to engage freely in



sexual activity. Consent is active, not passive. An individual who is incapacitated (as defined below) due to alcohol, drugs, sleep, or unconsciousness, or otherwise lacks the capacity to provide consent due to an intellectual or other disability, cannot consent to engage in Sexual Activity.

Sexual Activity for purposes of this section refers to any conduct of a sexual nature for which Consent is required under this Policy (e.g. Sexual Assault). A person who initiates Sexual Activity is responsible for obtaining Consent for that conduct.

**Guidance for Identifying Consent:**

- Prior to initiating a sexual encounter, one is expected to obtain consent to each act of sexual activity prior to initiating such activity. Consent to one form of Sexual Activity does not constitute consent to engage in all forms of Sexual Activity.
- Either party may withdraw consent at any time. Withdrawal of consent should be outwardly demonstrated by words or actions that clearly indicate a desire to end Sexual Activity. Once withdrawal of consent has been expressed, sexual activity must cease.
- Consent consists of an outward demonstration indicating that an individual has freely chosen to engage in sexual activity. Relying on non-verbal communication can lead to misunderstandings. Consent may not be inferred from silence, passivity, lack of resistance, or lack of an active response alone. A person who does not physically resist or verbally refuse sexual activity is not necessarily giving consent.
- When consent is requested verbally, absence of any explicit verbal response constitutes lack of consent. A verbal “no” constitutes lack of consent, even if it sounds insincere or indecisive.
- If at any time during the sexual activity, any confusion or ambiguity arises as to the willingness of the other individual to proceed, both parties should stop and clarify verbally the other’s willingness to continue before continuing such activity.
- Individuals with a previous or current intimate relationship do not automatically give either initial or continued consent to sexual activity. Even in the context of a relationship, there must be mutually understandable communication that clearly indicates a willingness to engage in each sexual activity.
- Consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another person.
- Consent is not effective if it results from the use or threat of physical force, intimidation, or coercion, or any other factor that would eliminate an individual’s ability to exercise their own free will to choose whether or not to have sexual contact.
- In the Commonwealth of Pennsylvania, the age of majority is 18. Under state law, consent cannot be given by minors under the age of 13 and can only be given by a minor under the age of 16, if the other party is less than four (4) years older than the minor.

- 2) **Coercion**: The use of pressure to compel another individual to initiate or continue Sexual Activity against an individual's will. Coercion can include a wide range of behaviors, including intimidation, manipulation, threats, and blackmail. A person's words or conduct are sufficient to constitute coercion if they wrongfully impair another individual's freedom of will and ability to choose whether or not to engage in sexual activity. Examples of coercion include threatening to "out" someone based on sexual orientation, gender identity, or gender expression and threatening to harm oneself if the other party does not engage in the Sexual Activity.
- 3) **Force**: The use or threat of physical violence or intimidation to overcome an individual's freedom to choose whether or not to participate in sexual activity. There is no requirement that a party resists the sexual advance or request, but resistance will be viewed as a clear demonstration of non-consent.
- 4) **Incapacitation**: Occurs when an individual temporarily or permanently lacks the ability to make informed, rational judgments and cannot consent to sexual activity. An individual who is incapacitated due to alcohol, drugs, sleep or unconsciousness, or otherwise lacks the capacity to provide consent due to an intellectual or other disability, cannot consent to engage in sexual activity.

**Guidance for Identifying Incapacitation:**

- Incapacitation may result from the use of alcohol and/or drugs. Incapacitation is a state beyond drunkenness or intoxication. The impact of alcohol and other drugs varies from person to person; however, warning signs that a person may be approaching incapacitation may include slurred speech, vomiting, unsteady gait, odor of alcohol, combativeness, and/or emotional volatility. Witnessing or knowing the person consumed alcohol and/or other drugs should be considered a warning sign of possible incapacitation.
- Someone is incapacitated when any of the following are diminished:
  - decision-making ability;
  - awareness of consequences;
  - ability to make informed judgments;
  - capacity to appreciate the nature and the quality of an action.
- Evaluating incapacitation also requires an assessment of whether a respondent should have been aware of the complainant's incapacitation based on objectively and reasonably apparent indications of impairment when viewed from the perspective of a sober, reasonable person in the respondent's position.
- The College considers sexual contact while under the influence of alcohol or other drugs to be risky behavior. Alcohol and drugs impair a person's decision-making capacity, awareness of consequences, and ability to make informed judgments. It is especially important, therefore, that anyone engaging in sexual activity be aware of the other person's level of intoxication. If there is any doubt as to the

level or extent of the other individual's intoxication or impairment, the prudent course of action is to forgo or cease any sexual contact or activity.

- Being intoxicated or impaired by drugs and/or alcohol is never an excuse for Prohibited Conduct and does not diminish one's responsibility to obtain informed and freely given consent.

5) **Intimidation**: Implied threats or acts that frighten someone.

6) **Sexual and Gender-Based Misconduct**: Sexual and Gender-Based Misconduct is an umbrella term that includes each of the following types of misconduct.

a) **Sexual Assault**: Sexual Assault is Sexual Contact that occurs without Consent.

Sexual Contact includes:

- Intentional sexual touching of another person's breasts, buttocks, or genitals, whether clothed or unclothed (including intentional touching with ejaculate);
- Intentional sexual touching with one's breast, buttocks, or genitals (including touching with ejaculate);
- Making a person touch another person or themselves with or on any of these body parts; and/or
- Vaginal, oral, or anal penetration or contact by a penis, tongue, finger, or other object.

b) **Sexual Exploitation**: Taking sexual advantage of another person or violating the sexual privacy of another when consent is not present. Sexual exploitation includes, but is not limited to, the following actions (including when they are done via electronic means, methods, or devices):

- Sexual voyeurism or permitting others to witness or observe the sexual or intimate activity of another person without that person's consent;
- Indecent exposure or inducing others to expose themselves when consent is not present;
- Recording or distributing information, images, or recordings of any person engaged in sexual or intimate activity or in the nude without that person's consent;
- Prostituting another individual;
- Knowingly exposing another individual to a sexually transmitted disease or virus without that individual's knowledge; and
- Inducing incapacitation for the purpose of making another person vulnerable to non-consensual sexual activity.

c) **Non-Title IX Sexual Harassment**: Non-Title IX Sexual Harassment, sometimes referred to as "Sexual Harassment" herein, is unwelcome conduct of a sexual nature, whether verbal, graphic (e.g. pictures, videos), physical or otherwise, when:

- Submission to such conduct is made, either explicitly or implicitly, a term or condition of a person's employment, education, living environment, or participation in any College Program or Activity;
  - Submission to or rejection of such conduct by an individual is used as the basis for or a factor in decisions affecting that individual's employment, education, living environment, or participation in a College Program or Activity; and/or
  - Such conduct creates a hostile environment. A hostile environment exists when the conduct of a sexual nature is sufficiently severe, persistent, or pervasive that it unreasonably interferes with an individual's participation in a College Program or Activity. Conduct must be deemed severe, persistent, or pervasive from both a subjective and an objective perspective. In evaluating whether a hostile environment exists, the College will consider the totality of known circumstances, including the nature, frequency, intensity, location, context, and duration of the behavior. Although a hostile environment is generally created through a series of incidents, for purposes of this Policy, a severe incident, even if isolated, can be sufficient.
- d) **Gender-Based Harassment**: Gender-Based Harassment includes harassment based on actual or perceived sex, sexual orientation, gender identity, gender expression, or pregnancy. Such harassment may include acts of aggression, intimidation, or hostility, whether verbal, graphic, physical, or otherwise, even if the acts do not involve conduct of a sexual nature, when the behavior:
- Adversely affects a term or condition of an individual's employment, education, living environment, or participation in a College Program or Activity;
  - Is used as the basis for or a factor in decisions affecting that individual's employment, education, living environment, or participation in a College Program or Activity; and/or
  - Creates a hostile environment for that individual's participation in a College Program or Activity. A hostile environment exists when the conduct is sufficiently severe, persistent, or pervasive that it unreasonably interferes with an individual's participation in a College Program or Activity, or creates an intimidating, hostile, offensive, or abusive environment for that individual's employment, education, living, or participation in a College Program or Activity. Conduct must be deemed severe, persistent, or pervasive from both a subjective and objective standard. In evaluating whether a hostile environment exists, the College will consider the totality of known circumstances, including the nature, frequency, intensity, location, context, and duration of the behavior.

Although a harassing hostile environment is generally created through a series of incidents, for purposes of this Policy, a severe incident, even if isolated, can be sufficient to constitute a hostile environment.

In some cases, harassment may be based on multiple protected class bases included in the College's [Nondiscrimination Statement](#). In general, harassment involving protected class bases other than actual or perceived gender, sexual orientation, gender identity, or gender expression might fall under other College policies. For matters involving Student Respondents, this would include the [Student Code of Conduct](#) and [Policy on Discriminatory Acts](#). For matters involving Employee or Third-Party Respondents, this could include, but is not limited to the College's [Nondiscrimination and Equal Employment Opportunity Policy](#) and [Policy on Discriminatory Acts](#).

Where reported harassment may be based on both sex or gender (including actual or perceived sex, sexual orientation, gender identity, gender expression or pregnancy) and another protected class basis (e.g., race, color, national origin, age, marital status, disability, religion, height, weight, or veteran status), the Title IX Coordinator will consult with other College officials, as needed, to determine whether the matter is most appropriately addressed under this Policy or another College policy, or whether different aspects of the matter should be addressed separately under different policies.

e) **Dating Violence**: Violence committed by a person:

- Who is or has been in a social relationship of a romantic or intimate nature with the alleged victim; noting that,
- The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of the following factors: a) the length of the relationship; b) the type of relationship; and c) the frequency of interaction between the persons involved in the relationship.

Dating Violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence, for purposes of this Policy, does not include emotional abuse.

f) **Domestic Violence**: A felony or misdemeanor crime of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the alleged victim shares a child in common, by a person who is cohabitating with or who has cohabitated with the alleged victim as a spouse, by a person similarly situated to a spouse of the alleged victim under the domestic or family laws of the Commonwealth of Pennsylvania, or by any other person against an adult or youth

victim who is protected from that person's acts under the domestic or family violence laws of the Commonwealth of Pennsylvania.<sup>5</sup>

g) **Sex or Gender-Based Stalking**: Engaging in a course of conduct directed at a specific person under circumstances that would cause a Reasonable Person<sup>6</sup> to (1) fear for his or her safety or the safety of others; or (2) suffer substantial emotional distress.

- Course of conduct means two or more acts including, but not limited to, acts in which a person directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person in a way prohibited as described above, or interferes with a person's property.

h) **Sex and Gender-Based Discrimination**: Sex and Gender-Based Discrimination is conduct that is based upon an individual's sex, sexual orientation, gender identity, gender expression, or pregnancy that:

- Adversely affects a term or condition of an individual's employment, education, living environment, or participation in a College Program or Activity; and/or
- Is used as the basis for or a factor in decisions affecting that individual's employment, education, living environment, or participation in a College Program or Activity.

7) **Title IX Misconduct**: While this may seem similar to definitions above, Title IX Misconduct is a very specific concept under federal law. Title IX Misconduct, or Title IX-defined "Sexual Harassment", is conduct that occurs (1) in the United States; (2) in a College Program or Activity or to a Complainant who is seeking to engage in such a Program or Activity; and (3) on the basis of sex, in which:

- A College employee conditions the provision of a College aid, benefit, or service on an individual's participation in unwelcome sexual conduct (sometimes called quid pro quo sexual harassment);
- A College student, employee, or third party engages in unwelcome conduct determined by a Reasonable Person to be so severe, pervasive, and objectively offensive that it effectively denies another person equal access to a College

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<sup>5</sup> While there is no distinct definition of "Domestic Violence" under the Pennsylvania Crimes Code, under the criminal laws of Pennsylvania certain offenses, including but not limited to, rape, aggravated assault, and stalking, can be deemed domestic violence depending on the relationship of the parties involved. If a criminal complaint is made to law enforcement outside of the College, the probable cause standard will apply to the complaint (this is a different standard than applies to campus disciplinary matters, as set forth later in the Policy).

<sup>6</sup> For purposes of this definition of Sex and/or Gender-Based Stalking only, the definition of "Reasonable Person" is a Reasonable Person under similar circumstances and with similar identities to the Complainant.

Program or Activity (sometimes called severe, pervasive, and objectively offensive sexual harassment); or

- A College student, employee, or third party in the United States engages in: Sex or Gender-Based Stalking (defined above); Dating Violence (defined above); Domestic Violence (defined above); or Sexual Assault as defined for purposes of the FBI’s Uniform Crime Reporting (NIBRS) program, as below:
    - **Rape:**
      - The carnal knowledge of a person (i.e., penile-vaginal penetration), without the Consent of that person, including instances where the person is incapable of giving Consent because of their age or because of their temporary or permanent mental or physical incapacity (it should be noted that either females or males could be Complainants under this definition);
      - Oral or anal sexual intercourse (i.e., penile penetration) with another person, without the consent of that person, including instances where the person is incapable of giving Consent because of their age or because of their temporary or permanent mental or physical incapacity;
      - To use an object or instrument (e.g., an inanimate object or body part other than a penis) to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the Consent of that person, including instances where the person is incapable of giving Consent because of their age or because of their temporary or permanent mental or physical incapacity;
    - **Fondling:** The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of that person, including instances where the person is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity (for purposes of this definition, “private body parts” includes breasts, buttocks, or genitals, whether clothed or unclothed);
    - **Incest:** Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law; or
    - **Statutory Rape:** Sexual intercourse with a person who is under the statutory age of Consent.
- 8) **Retaliation:** Any adverse action, directly or through others, taken against a person for engaging in Protected Activity. Retaliation may include intimidation, threats, coercion, or discrimination including adverse employment or educational actions that would discourage a Reasonable Person from engaging in activity protected under this Policy. Any individual or group of individuals, not just a Complainant or Respondent, can

engage in Retaliation. A finding of Retaliation under this Policy is not dependent on a finding that the underlying Prohibited Conduct occurred.

- The exercise of rights protected under the First Amendment does not constitute Retaliation. Pursuit of civil, criminal, or other legal action, internal or external to the College does not constitute Retaliation.
- Initiating disciplinary proceedings against an individual for making a materially false statement in bad faith in the course of a proceeding under the Policy does not constitute Retaliation under this Policy; however, a determination regarding responsibility, alone, is insufficient to conclude that any party made a materially false statement in bad faith.

## **V. Disability Accommodations**

This Policy does not alter any institutional obligations under federal disability laws including the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973.

Parties may request reasonable accommodations for disclosed disabilities to the Title IX Coordinator at any point before or during the grievance process that do not fundamentally alter the Process. The Title IX Coordinator will not affirmatively provide disability accommodations that have not been specifically requested by the Parties, even where the Parties may be receiving accommodations in other institutional programs and activities. The burden is on the Parties to make any such request.

## **VI. Privacy vs. Confidentiality**

Consistent with the College's Code of Conduct, references made to *confidentiality* refer to the ability of identified confidential resources to not report crimes and violations to law enforcement or College officials without permission of the Complainant, except for extreme circumstances, such as a health and/or safety emergency or child abuse.

References made to *privacy* mean offices at Ursinus and those employees who cannot guarantee confidentiality but will maintain privacy to the greatest extent possible, and information disclosed will be relayed only as necessary to investigate and/or seek a resolution and to notify the Title IX Coordinator or designee, who is responsible for tracking patterns and spotting systemic issues. Ursinus will limit the disclosure as much as practicable, even if the Title IX Coordinator determines that the request for confidentiality cannot be honored.

## **VII. Resources**

### **A. Confidential Resources**

The following are Confidential Resources that are not required to, and will not, share information with law enforcement or College officers without permission, except for in very limited circumstances (e.g. health/safety emergencies; alleged/suspected child abuse).

On Campus:



- Wellness Center Professional Counselors and Medical Providers: Wellness Center; 610-409-3100
- Rev. Terri Ofori: [tofori@ursinus.edu](mailto:tofori@ursinus.edu)

**Off Campus:**

- Victims Services Center of Montgomery County:  
888-521-0983  
[www.victimservicescenter.org](http://www.victimservicescenter.org)
- The Crime Victims' Center of Chester County:  
610-692-7273  
[www.cvcfcc.org](http://www.cvcfcc.org)
- Delaware County Women Against Rape:  
610-566-4342  
[www.delcowar.org](http://www.delcowar.org)
- Network of Victim Assistance (Bucks County):  
1-800-675-6900  
[www.novabucks.org](http://www.novabucks.org)
- Berks Women in Crisis (Berks County):  
610-372-9540  
[www.berkswomenincrisis.org](http://www.berkswomenincrisis.org)
- WOAR (Philadelphia):  
215-985-3333  
[www.woar.org](http://www.woar.org)

**B. Medical Attention**

Students can contact Wellness at [wellness@ursinus.edu](mailto:wellness@ursinus.edu) for a medical appointment to discuss options for emergency contraception, pregnancy testing, and STI testing.

To receive a rape kit to collect forensic evidence, students are encouraged to visit one of the following hospitals that the Victim Advocates from Victim Services Center of Montgomery County works with - this includes [Einstein \(Montgomery\)](#), [Lankenau](#), [Bryn Mawr](#), or [Pottstown](#) Hospitals.

Campus Safety can assist with providing transportation to a hospital if needed. If students are thinking about going to the hospital but have questions, please call the Victim Services Center hotline at 1-888-521-0983 for more information.

## **VIII. Reporting Prohibited Conduct**

The College encourages all members of the College community to make a report of suspected Prohibited Misconduct directly to the Title IX Coordinator through any of the reporting methods outlined below. Reports can also be made to Officials with Authority, but the College strongly encourages direct reports to the Title IX Coordinator so that the Title IX Coordinator can promptly discuss the availability of Supportive Measures and available resolution processes with the Complainant, including by contacting the Complainant when another person makes a report.

Recognizing that some forms of Prohibited Conduct may also constitute crimes, the College also strongly encourages any individual who experiences, witnesses, or learns of possible criminal conduct to report to Ursinus College Campus Safety or local law enforcement. Prompt reporting allows law enforcement to collect and preserve evidence. Victims of crime also have certain rights under Pennsylvania Crime Victims' Bill of Rights.

### **A. Reporting to the College**

Any individual may report Prohibited Conduct. It is not necessary for a reporting party or Complainant to determine in advance whether the behavior at issue meets the definition of Prohibited Conduct. Upon receipt of a report, the Title IX Coordinator will undertake an assessment to determine the form of Prohibited Conduct at issue.<sup>7</sup>

When the Title IX Coordinator receives a report of Prohibited Conduct, the Title IX Coordinator will in all cases where the Complainant is identified, contact the Complainant to: (1) discuss the availability of Supportive Measures; (2) ask about the Complainant's wishes with respect to Supportive Measures; (3) inform the Complainant of the availability of Supportive Measures with or without the filing of a Formal Complaint, and (4) explain to the Complainant the process for filing a Formal Complaint. (See [Section IX](#) for more information on Supportive Measures). If appropriate, the Title IX Coordinator will also contact a known Respondent at this time.

The process for filing a Formal Complaint is described in greater detail in [Section XI](#), but a Formal Complaint may be filed by a Complainant when a report is made or at another time thereafter, and may be filed with respect to conduct that constitutes Sexual and Gender-Based Misconduct or Title IX Misconduct. In some cases, as explained in further detail in [Section XI](#), the Title IX Coordinator may decide to sign a Formal Complaint even where the Complainant has not decided to do so.

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<sup>7</sup> All references in the Policy to obligations of or steps to be taken by the Title IX Coordinator should be understood to also include any individual acting as a designee of the Title IX Coordinator.

Reports made to the Title IX Coordinator, an OWA, or through the Online Reporting Link can be accessed only by senior members of the Student Affairs Office and/or Human Resources, as appropriate.

Options for making a report to the College are as follows. These reporting options are not mutually exclusive.

### **1. Contact the Title IX Coordinator**

Reports of Prohibited Conduct, whether Sexual and Gender-Based Misconduct or Title IX Misconduct, should when at all possible be made to the Title IX Coordinator.<sup>8</sup>

Individuals may also contact the Title IX Coordinator to ask about this Policy or to otherwise inquire about the College's responses to Prohibited Conduct in its Programs and Activities.

The Title IX Coordinator can be contacted by telephone or in person by appointment during regular office hours, or by email 24 hours a day, 7 days a week. Online reporting is also available on a 24/7 basis as explained below.

Contact information for the Title IX Coordinator is as follows:

**Lauren Stroud**  
Title IX Office  
Student Affairs Suite, Wismer Center  
Ursinus College  
601 E Main St., Collegeville, PA 19426  
610-409-3590  
[lstroud@ursinus.edu](mailto:lstroud@ursinus.edu)

### **2. Make an Online or Anonymous Report**

Reports may be made to the Title IX Coordinator using the following link: [Online Reporting Link](#).

Individuals reporting through the Online Reporting Link have the **option** of disclosing their identity or remaining anonymous. While anonymous reports are accepted and reviewed carefully, the College's ability to investigate and or address Prohibited Conduct that is reported anonymously may be limited, and in some cases must be limited as a matter of Title IX law.

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<sup>8</sup> To make a report of Prohibited Conduct about the Title IX Coordinator, individuals should report to Dean of Students (Missy Bryant) at 610-409-3590 or the Director of Human Resources (Kelley Williams) at 610-409-3589.

Individuals who report Prohibited Conduct through the Online Reporting Link, and who disclose their identity, will receive a response acknowledging receipt as well as the opportunity to speak with the Title IX Coordinator.

### **3. Report to an Official With Authority (OWA)**

In addition to the Title IX Coordinator, the following College employees are Officials With Authority: Student Affairs Deans, Academic Deans, and Associate Deans, the Director of Residence Life, and the Director of Human Resources.

An Official with Authority has internal reporting obligations. Specifically, Officials with Authority are required to report to the Title IX Coordinator all information about Prohibited Conduct that they receive, regardless of how and when they learned of the information; e.g. whether the information was shared with them in the scope of their employment or in some other capacity.

Only a report to the Title IX Coordinator (either directly or from a Mandated Reporter) or an OWA triggers the College's obligation to respond to an allegation of Prohibited Conduct. In the case of a report of Prohibited Conduct to an OWA, the Title IX Coordinator will contact the Complainant.

### **4. Report to a Mandated Reporter**

Unless explicitly designated as a Confidential resource, all College officials, employees (including Resident Advisors and Peer Advocates) are Mandated Reporters under this Policy.

Mandated Reporters must report to the Title IX Coordinator as soon as possible, but in no case no more than 48 hours after observing or receiving information about Prohibited Conduct. The report must include all relevant known details about alleged/possible Prohibited Conduct including the names of the Complainant, Respondent, and any witnesses, and the date, time, and location of the alleged incident, to the extent such details are known by the Mandated Reporter. Failure by a Mandated Reporter to promptly share (within 48 hours) with the Title IX Coordinator all details they receive about Prohibited Conduct may subject them to appropriate discipline, up to and including termination of employment, in accordance with an applicable process.

Mandated Reporters are not required to report information about Prohibited Conduct disclosed at sexual misconduct public awareness events (e.g., Take Back the Night, candlelight vigils, protests, or survivor speak-outs in which participants may disclose incidents of Prohibited Conduct).

Reminder: only a report to the Title IX Coordinator (directly or through a Mandated Reporter) or an OWA will trigger the College's obligation to respond to an allegation of Prohibited Conduct,

including by contacting the Complainant to discuss Supportive Measures; please consider making a report directly to the Title IX Coordinator to ensure a prompt response.

## **B. External Reporting Options**

Reports of Prohibited Conduct that might also constitute a crime may be made to the Collegeville Police Department: 610-489-9332. Or dial 911 in the case of an emergency.

A person may also file a complaint with the U.S. Department of Education's Office for Civil Rights regarding an alleged violation of Title IX by emailing [OCR.Philadelphia@ed.gov](mailto:OCR.Philadelphia@ed.gov) or visiting <https://www2.ed.gov/about/offices/list/ocr/complaintintro.html> or calling 1-800-421-3481.

A person may also file a complaint with the Pennsylvania Human Relations Commission by calling 717-787-9780 for the Harrisburg Regional Office; 412-565- 5395 for the Pittsburgh Regional Office; or 215-560-2496 for the Philadelphia Regional Office or visiting <https://www.phrc.pa.gov/Pages/default.aspx>.

Employees may also file a charge with the Equal Employment Opportunity Commission regarding an alleged violation of Title VII by calling 1-800-669-4000 or visiting <https://www.eeoc.gov/employees/howtofile.cfm>.

## **C. Related Considerations about Reporting**

### **1. No Time Limit for Reporting**

Reporters are encouraged to report Prohibited Conduct as soon as possible in order to maximize the College's ability to respond promptly and effectively. The College does not, however, limit the timeframe for reporting. If the Respondent is no longer a student or employee, the College may not be able to take action against the Respondent, but it will still endeavor to take steps to end the Prohibited Conduct, prevent its recurrence, and address its effects, and it will also provide Supportive Measures to a Complainant to the best of its ability. The College is unlikely to be able to pursue disciplinary action against an individual who is no longer affiliated with the institution. Under those circumstances, when appropriate and permitted by applicable law and regulations, the College will still conduct an investigation.

### **2. Limited Amnesty for Students who Report Prohibited Conduct**

The College seeks to remove any barriers to reporting. The College recognizes, however, that a student who has been drinking or using drugs at the time of the incident may be hesitant to make a report because of potential consequences for their own conduct. A student who reports conduct in violation of this Policy will not be subject to disciplinary action by the College related to the personal ingestion of alcohol or other drugs at or near the time of the incident, provided that any such violations did not and do not place the health or safety of any other person at risk. The

College may, however, initiate an educational discussion or pursue other educational remedies regarding alcohol or other drugs.

### **3. False Reporting**

No person shall make an allegation that they know to be untrue or knowingly provide false information during the course of an investigation or hearing. Making a false report or giving false information is a violation of this Policy and may be a basis for discipline, including expulsion or termination.

## **IX. Supportive Measures**

When the Title IX Coordinator receives a Report of possible Prohibited Conduct—regardless of whether that Report is made by the Complainant, a witness, or other party, or is provided to the Title IX Coordinator by a Mandated Reporter or an Official With Authority—they will contact the Complainant to (1) discuss the availability of Supportive Measures and (2) explain that Supportive Measures are available with or without filing a Formal Complaint. The Title IX Coordinator also may contact a known Respondent, as appropriate.

Supportive Measures are individualized services, accommodations, and other assistance that the College offers and may put in place, without fee or charge. Supportive Measures are designed to restore or preserve equal access to the College's Programs and Activities, protect the safety of all parties and the College's educational environment, and/or deter Prohibited Conduct, without being punitive or disciplinary in nature or unreasonably burdening the other party.

Supportive Measures are available regardless of whether the matter is reported to the College for the purpose of initiating a proceeding under this Policy and before, after, and regardless of whether a Formal Complaint is filed. A Complainant who requests Supportive Measures has the right to file a Formal Complaint, either at the time the Supportive Measure is requested or at a later date. Any Complainant who requests Supportive Measures will be informed in writing of their right to simultaneously or subsequently file a Formal Complaint under this Policy.

Supportive Measures may also be requested by and made available to Respondents, witnesses, and other affected members of the College community.

To determine the appropriate Supportive Measure(s) to be implemented, the Title IX Coordinator, working in conjunction with other College administrators/officials as necessary, conducts an individualized assessment based on the facts and circumstances of a situation. Supportive Measures will not be disciplinary or punitive in nature, will be provided without fee or charge, and will not unreasonably burden, or unreasonably interfere with, the College Program or Activity pursuits of the other party. Whether a possible Supportive Measure would unreasonably burden the other party is a fact-specific determination that takes into account the

nature of the programs, activities, opportunities, and benefits in which an individual is participating.

Examples of Supportive Measures include:

- Assistance from College support staff in completing a room or office relocation;
- Arranging to dissolve a housing contract and pro-rating a refund;
- Assistance with or rescheduling an academic assignment (paper, exams, etc.) or otherwise implementing academic assistance;
- Changes to work schedules;
- Changes to reporting structure (for employees);
- Taking an incomplete in a class;
- Assistance with transferring class sections;
- Temporary withdrawal;
- Restrictions on contact between parties (“no contact” orders)
- Assistance with alternative course completion options;
- Escorts to and from campus locations;
- On or off-campus counseling assistance;
- Other accommodations for safety as necessary; and
- Any combination of these measures.

The College will maintain the confidentiality of Supportive Measures provided to the Complainant or Respondent to the extent that doing so would not impair the College’s ability to provide the Supportive Measures.

## **X. Emergency Removal and Administrative Leave**

### **A. Emergency Removal of a Student Respondent**

Ursinus retains the authority to remove a Respondent from the College’s Program or Activity on an emergency basis, where the College: (1) undertakes an individualized safety and risk analysis and (2) determines that an immediate threat to the physical health or safety of any student

(including the Respondent him/herself) or other individual arising from the allegations of covered sexual harassment justifies a removal.

Prior to removing a student Respondent on an emergency basis, the College will form a committee in order to make a specific safety and risk determination that the Respondent poses an immediate threat to the physical safety and or health of a student or students. This committee will include, at a minimum, the Title IX Coordinator, a representative from Campus Safety, a representative from Student Affairs, and a representative from Residence Life, and may include others.

If Ursinus determines such removal is necessary, the Respondent will be provided notice and an opportunity to challenge the decision immediately following the removal.

### **B. Administrative Leave of an Employee Respondent**

Consistent with the Employee Handbook and Student Code of Conduct, the College may place an employee Respondent on administrative leave during the pendency of the grievance process as outlined below. An employee alleged to have committed Prohibited Conduct will not be placed on administrative leave unless and until a Formal Complaint has been filed with the College.

## **XI. Formal Complaints**

Before the College's grievance process can begin, a Formal Complaint must be filed by a Complainant or signed by the Title IX Coordinator as explained below.

A Formal Complaint must be submitted by the Complainant to the Title IX Coordinator in person, by mail, or by email. The Formal Complaint must contain the Complainant's physical or digital signature or otherwise indicate that the Complainant is the person filing the Formal Complaint.

When a Formal Complaint is filed, the Title IX Coordinator will evaluate it for a number of things, including whether the complained-of conduct occurred in the United States and whether the Complainant, at the moment of submission of the Formal Complaint, is participating in a College Program or Activity or attempting to participate in a College Program or Activity (e.g. a job applicant, an applicant for admission to an academic program, a recent graduate who is applying to a different academic program at the College, etc.).

The Title IX Coordinator also has discretion to sign a Formal Complaint even if the Complainant chooses not to, and even if the Complainant chooses not to participate in a College resolution process at all. In general, the Title IX Coordinator will seek to respect the Complainant's wishes not to file a Formal Complaint; however, when the Respondent is an employee, when a significant safety concern is presented, or when the Title IX Coordinator concludes that failure to



pursue a Formal Complaint may fail to meet the College’s duties under the law, the Title IX Coordinator will usually sign a Formal Complaint.”

After a Formal Complaint has been filed by the Complainant or signed by the Title IX Coordinator, the College will commence the grievance process outlined below.

Where the Title IX Coordinator signs a Formal Complaint, the Title IX Coordinator is not a Complainant or otherwise a party to the grievance process (formal or informal resolution).

## **XII. Grievance Process for Addressing Reports and Formal Complaints under this Policy**

The College uses the following Procedures to address allegations of Prohibited Conduct and to impose sanctions, as appropriate, for violations of the Policy.

At all times, it is within the College’s discretion to determine which policies and procedures apply and under which policy or policies action may be taken. Some Prohibited Conduct may result in separate and additional proceedings under multiple College policies.

### **A. Coordination**

The Title IX Coordinator has primary responsibility for coordinating efforts for investigation, resolution, implementation of sanctions, and monitoring the educational environment and workplace related to violations of this Policy. The Title IX Coordinator may coordinate with other College administrators to investigate certain Formal Complaints and to implement and monitor sanctions.

### **B. Initial Assessment & Intake of Reports and Formal Complaints**

**Initial Assessment:** When alleged Prohibited Conduct is first reported to the Title IX Coordinator, the Title IX Coordinator will:

- 1) Assess the nature and circumstances of the Report—including whether the names and/or other personally identifying information for the Complainant, Respondent, any witnesses, and/or any other individual with knowledge was provided—to facilitate appropriate follow-up; and
- 2) Assess the nature of the allegations to identify the grievance process or resolution options that might be available.

Where the Title IX Coordinator determines that this Policy does not apply, such as when the Report does not describe possible Prohibited Conduct, the Title IX Coordinator may refer the Report to another College office or process for resolution, including referral to Student Affairs and/or Human Resources, as appropriate, for review under other potentially applicable College

policies and procedures, including, for example the College's [Student Code of Conduct](#) and [Human Resources policies](#).

**Intake:** After receiving a Report of possible Prohibited Conduct, the Title IX Coordinator will promptly contact the Complainant, if one is identified or identifiable, to (1) discuss the availability of Supportive Measures; (2) ask about the Complainant's wishes with respect to Supportive Measures; (3) explain that Supportive Measures are available with or without the filing of a Formal Complaint; and (4) explain how to file a Formal Complaint.

The Title IX Coordinator will also provide the Complainant with a written explanation of available resources, options, and other important Policy information, including the following:

- 1) Support and assistance available through College and community resources, including the Complainant's option to seek Supportive Measures regardless of whether they choose to participate in a College or law enforcement investigation;
- 2) The Complainant's option to seek medical treatment and information on preserving potentially key forensic evidence and/or other potential evidence;
- 3) The process for filing a Formal Complaint;
- 4) The College's procedural and grievance options, including formal investigative resolution and informal resolution, if available;
- 5) The Complainant's right to an advisor of the Complainant's choosing who may be, but is not required to be, an attorney;
- 6) The College's prohibition of Retaliation against the Complainant, the Respondent, the witnesses, and the reporting parties; how to report acts of Retaliation; and confirmation that the College will take prompt action when Retaliation is reported;
- 7) The opportunity to discuss with the Title IX Coordinator or designee the Complainant's resources, rights, and options;
- 8) A copy of or a link to this Policy; and
- 9) An explanation that parties and witnesses are prohibited from knowingly making false statements or knowingly submitting false information during the grievance process.

**If a Formal Complaint is filed**, the Title IX Coordinator will provide the Respondent with Notice of Allegations that will include a written explanation of available resources, options, and other Policy information. The Notice of Allegations will include:

- 1) Notice of the allegations potentially constituting Prohibited Conduct, including the identities of the parties (if known), the date and location of the alleged incident (if known), and potential Policy violations;
- 2) Notice that a determination regarding responsibility is made at the conclusion of the proceeding and the Respondent is presumed not responsible for the alleged Prohibited Conduct prior to the determination;

- 3) Support and assistance available through the College and community resources (as described above);
- 4) The Respondent's right to an advisor of the Respondent's choosing who may be, but is not required to be, an attorney;
- 5) The College's prohibition of Retaliation against the Complainant, the Respondent, the witnesses, and the reporting parties, how to report acts of Retaliation, and that the College will take prompt action when Retaliation is reported;
- 6) The opportunity to discuss with the Title IX Coordinator the Respondent's resources, rights, and options.
- 7) A copy of or link to this Policy; and
- 8) An explanation that parties and witnesses are prohibited from knowingly making false statements or knowingly submitting false information during the grievance process.

The Complainant will also receive a copy of the Notice of Allegations.

The Title IX Coordinator will send the Notice of Allegations to the parties as soon as practicable, and usually within 10 business days<sup>9</sup> of receipt of the Formal Complaint. The Notice will be sent to a party's institutional email account if they are a student or employee, and by other reasonable means if they are neither.

If, in the course of an investigation, the College becomes aware of and decides to investigate allegations that were not included in Notice, the College will notify the parties of the additional allegations in an amended Notice.

### **C. Resolution Options Following an Initial Assessment**

Upon completion of an initial assessment of a matter, the Title IX Coordinator will undertake one of the following actions, with the understanding that as a matter progresses, the action warranted can change, as described in these Procedures.

#### **1. Matters Involving a Formal Complaint**

If a Formal Complaint alleging behavior that could constitute Prohibited Conduct is filed, the Title IX Coordinator will initiate the grievance process, which includes both the formal resolution and informal resolution options, as described at a high level here:

- 1) **Formal Resolution Process**: This process generally results in a written investigative report containing a summary of the relevant evidence, a hearing that results in a finding and, if appropriate, sanctions and remedies, and an appeal process. The College will strive to complete the formal resolution process expeditiously, but at a minimum within 180 days of the filing of the Formal Complaint. The parties will be provided with updates

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<sup>9</sup> The phrase "business days" refers to those days when the College is open.

on the progress of the formal resolution process, as needed, and will be alerted, in writing, if the process will go beyond that timeframe.

- 2) **Informal Resolution**: Informal resolution includes a spectrum of facilitated, structured, and adaptable processes that seek to identify and meet the needs of the Complainant while providing an opportunity for the Respondent to acknowledge harm and seek to repair the harm (to the extent possible) experienced by the Complainant and/or the College community. Informal resolution does not include an investigation, hearing, or formal disciplinary action against a Respondent. However, remedies may include any appropriate and reasonable educational, restorative, and accountability-focused measures as agreed to by the parties and approved by the Title IX Coordinator. The College will strive to complete the informal resolution process within 90 days of when it is commenced. Informal resolution may only be commenced for those matters where a Formal Complaint has been filed.

Though distinct from Supportive Measures under the Policy, an individual engaged in either resolution option under these Procedures may also request reasonable accommodations related to a disability at any phase in the applicable resolution process through the College's normal [disability accommodation process](#).

## 2. Matters Involving Third Parties or Non-Participating Complainants

There are some matters in which a Formal Complaint involves a Respondent unaffiliated with the College, or the Complainant does not wish to file a Formal Complaint after a report is made. These matters will be addressed as outlined below.

- 1) **Formal Complaints Against Unaffiliated Third Parties**: Generally, if a Formal Complaint is made against someone who has no affiliation with the College, the College's ability to take direct action against such a person may be limited. The College will, however, still take steps to inform the Complainant of support and assistance available through College resources and resources available from entities outside of the College (including law enforcement).
- 2) **Complainant Request for No Investigation or to Not Participate in an Investigation**: In some instances, the Complainant may not wish to file a Formal Complaint or participate in any process (Complainants are encouraged, but not required, to participate in this process). The College will consider the Complainant's wishes, though the College retains the discretion to determine whether to proceed without the Complainant's participation. The College generally will proceed when the Respondent is an Employee.

In all cases, including those in which the Title IX Coordinator decides to sign a Formal Complaint, the Title IX Coordinator shall remain impartial and is not a Complainant or otherwise a party to the matter.

In cases where the College investigates without a participating Complainant, the Title IX Coordinator will notify the Complainant that the College intends to initiate the grievance process, and that the Complainant is encouraged, but not required, to participate.

Generally, a decision not to participate as a Complainant means that the Complainant waives the rights generally afforded to a participating Complainant when Sexual and Gender-Based Misconduct, but not Title IX Misconduct, is at issue. However, under limited circumstances, the College may provide some or all of the rights of a Complainant as defined in the Policy, as deemed appropriate by the Title IX Coordinator, or as otherwise required by law.

Where Title IX Misconduct is at issue, a Complainant who is not participating will be treated like a party to the process; this means that the Complainant is entitled to the same rights afforded to them under the Policy as if they were participating (e.g. a right to a copy of evidence).

If a Complainant declines to participate in an investigation, the College's ability to fully investigate and respond to a report of Prohibited Conduct may be limited. Even so, the College may pursue other steps to limit the effects of the Prohibited Conduct and prevent its recurrence.

#### **D. Ongoing Assessment & Dismissals**

Throughout the handling of a report or Formal Complaint of Prohibited Conduct, the Title IX Coordinator will continue to assess the most appropriate procedures for addressing the allegations.

##### **1. Consolidation or Severance of Proceedings**

The Title IX Coordinator has the discretion to consolidate or sever claims of Title IX Misconduct and Sexual and Gender-Based Misconduct. Specifically, the Title IX Coordinator may consolidate multiple Formal Complaints of Title IX Misconduct and Sexual and Gender-Based Misconduct into a single investigation if where the allegations of Prohibited Conduct arise out of the same facts or circumstances.

Consolidation might involve a single or multiple Complainants, a single or multiple Respondents, and/or when the conduct is temporally or logically connected. If investigations involving multiple Complainants and/or multiple Respondents are consolidated, each party will have access to all of the information that is directly related to the allegations; including information as provided by all involved Complainants, all involved Respondents, and all involved witnesses.

The Title IX Coordinator also has the discretion to sever multiple Formal Complaints of Title IX Misconduct and Sexual and Gender-Based Misconduct into separate investigations, hearings, or appeals. In every circumstance, however, grievance proceedings shall proceed consistent with the Title IX Regulations.

If the misconduct alleged in a Formal Complaint includes Prohibited Conduct under this Policy and conduct that would constitute a violation of another College policy/Code of Conduct, the grievance process provided in this Policy may, in the College's, discretion be applied to the investigation and adjudication of all of the allegations.

## **2. Concurrent Legal Proceedings**

At the request of law enforcement, and subject to the provisions in these Procedures pertaining to notifying the Respondent of a Formal Complaint, the College may agree to temporarily defer proceeding with part or all of its processes until after some or all of the law enforcement investigation is complete (e.g., deferring until the initial law enforcement evidence gathering phase is complete).

## **3. Required Dismissal of Allegations of Title IX Misconduct**

If at any time before or during the grievance process involving an allegation of Title IX Misconduct the Title IX Coordinator determines that:

- The conduct alleged in the Formal Complaint would not constitute Title IX Misconduct if proved;
- The conduct alleged in the Formal Complaint did not occur in a College Program or Activity or to a Complainant who was participating or endeavoring to participate in such a Program or Activity; or
- The conduct alleged in the Formal Complaint did not occur against a person in the United States,

the parties will be notified in writing that the allegations of Title IX Misconduct are being dismissed, with an explanation of the reason for dismissal.

In the case of such a dismissal, The Title IX Coordinator will determine whether the alleged conduct would still, as alleged, constitute Sexual or Gender-Based Misconduct and, if so, the College will proceed to address the Formal Complaint regarding that other Sexual or Gender-Based Misconduct under this grievance process. Where the Title IX Coordinator determines that the alleged conduct, as alleged, would not constitute other Sexual or Gender-Based Misconduct, but might constitute a violation of other College policies or procedures, the Title IX Coordinator may refer the report to another College office or process for resolution, including referral to Student Affairs and/or Human Resources, as appropriate, for review under other potentially applicable College policies and procedures, including, for example the College's [Student Code of Conduct](#) and [Human Resources policies](#).

If allegations of Title IX Misconduct are dismissed for one of the above reasons, the parties may appeal that dismissal using the process described below.

#### **4. Other Dismissal and Closure.**

In addition to the reasons stated above for the mandatory dismissal of allegations of Title IX Misconduct, the Title IX Coordinator may dismiss a Formal Complaint of Sexual or Gender-Based Misconduct and/or Title IX Misconduct, if at any time during the investigation or hearing:

- The Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw their Formal Complaint, or any allegations therein;
- The Respondent is no longer enrolled as a student or employed by the College; or
- Specific circumstances prevent the College from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.

If Title IX Misconduct is dismissed pursuant to this provision, the parties may appeal that dismissal using the process described below.

**Appeal of Dismissal of Title IX Misconduct.** If allegations of Title IX Misconduct are dismissed for a reason set forth above (whether mandatory or discretionary), either party may appeal that dismissal on the following bases only:

- Procedural irregularity that materially affected the dismissal determination;
- New evidence that was not reasonably available at the time the determination regarding dismissal was made, that could materially affect the determination; and/or
- The Title IX Coordinator or designee making the dismissal decision had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that materially affected the dismissal decision.

An appeal of the dismissal of a Formal Complaint must be filed no later than 5 business days after the date on which the College transmitted the written determination of dismissal to the parties. The appeal shall consist of a plain, concise, and complete written statement of no more than 3,000 words, outlining the basis for appeal and all relevant information to substantiate the appeal.

The College will notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties. The other party may then have a period of 5 business days from the date of notice to submit a statement in support of the written determination and/or in

opposition to the appeal. This statement will be limited to 3,000 words. Any such statement will be shared with the party who filed the appeal and their advisor.

The appeal review will be conducted by the Dean of Students (or designee), the Director of Human Resources (or other designee), or other appeal decision-maker (see [Section XIII.G](#)). The parties may object to the appellate decision-maker's service by providing a written statement within their appeal or response to the appeal as to why the party believes that the appellate decision-maker has a conflict of interest or bias. The Title IX Coordinator or designee will make decisions regarding such objections and the appointment of an alternate appellate decision-maker, as necessary.

The appellate decision-maker will review the matter based on the issues identified in the appeal(s) materials. The appellate decision-maker may consult with or request additional information from the Title IX Coordinator and other College administrators or agents as necessary.

The appellate decision-maker will strive to complete the appeal review within 10 business days of receipt of all documents. The appellate decision-maker will issue a written decision describing the result of the appeal and the rationale for the result, and the Title IX Coordinator will provide the written decision simultaneously to both parties.

#### **5. Acceptance of Responsibility.**

The Respondent may, at any time during the grievance process, elect to accept responsibility for the Prohibited Conduct. In such circumstances, and with the written consent of both the Respondent and Complainant, the matter will be removed from the formal grievance process and will be finalized instead as a form of informal resolution. The investigator(s) will issue a brief investigation report and/or the Hearing Officer will issue a brief outcome notice summarizing the allegations and stating that the Respondent has accepted responsibility. The matter will then be referred to the appropriate College official to determine sanctions.

If the parties both do not consent to this informal resolution process, the formal resolution process will continue.

#### **E. Timelines**

The Title IX Coordinator has authority to extend the timelines/timeframes identified in this Policy for good cause. Good cause may include, but is not limited to, considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; travel and unavailability; a pandemic or other emergency; or the need for language assistance or accommodation of disability. In the case of such an extension, the Title IX Coordinator will notify the affected parties of the extension, including the reason(s) for the extension.



## **F. Core Principles for Resolution**

The following core principles apply to all procedural options under the Policy.

**Impartiality.** As applicable, the Title IX Coordinator, investigator, Hearing Officer, facilitator of informal resolution, and the appellate decision-maker each must be impartial and free of any actual conflict of interest or bias.

A Complainant or a Respondent who has concerns that the Title IX Coordinator, investigator, Hearing Officer, facilitator of informal resolution, and the appellate decision-maker cannot conduct a fair and unbiased review (e.g., has a personal connection with one of the parties or witnesses, etc.) may report those concerns to the Title IX Coordinator.<sup>10</sup> The Title IX Coordinator will assess the circumstances and determine whether a different investigator, Hearing Officer, facilitator of informal resolution, or appellate decision-maker should be assigned to the matter. Allegations of bias must be made in good faith and may not be made with the intent of delaying or derailing the proceedings.

**Presumption of Good Faith Reporting.** The College presumes that reports of Prohibited Conduct are made in good faith. As a reminder, making a false report or giving false information is a violation of this Policy and may be a basis for discipline.

**Presumption of Non-Violation and Standard of Proof – Preponderance of the Evidence.** The Respondent is presumed not to have violated the Policy unless it is determined through applicable procedures that a preponderance of the evidence supports a finding of a Policy violation.

**Expectations of Complainant, Respondent, and Witnesses.** The Complainant, the Respondent, the Witnesses, and others sharing information with the investigator are expected to provide all relevant information at the time of their interview, or as soon as otherwise possible, and to be truthful and complete in their responses throughout the process. A party or Witness who participates in the process is expected to participate in a live interview if requested. Similarly, a person who elects to participate is expected to participate in all aspects of the process (e.g., a witness who participates in a live interview is expected to make themselves available for a hearing if requested to do so).

**Advisors.** Throughout the process, a Complainant or a Respondent may have an advisor of their choice. An advisor is an individual chosen by a party to provide support and guidance to them during the investigation process. An advisor may, but is not required to be, be an attorney. The choice of an advisor is up to the party (except when the College must appoint an advisor for purposes of

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<sup>10</sup> To the extent a party would like to raise a concern about the Title IX Coordinator themselves, this report may be made to the Deputy Title IX Coordinator instead, who will perform the same assessment.

a hearing, see below) and the College is not responsible for ensuring the skill, qualification, or competence of any advisor.

A party may request to consult with their advisor at any point. However, the advisor may not represent or otherwise speak for the party they are supporting, except when a hearing occurs as part of the formal resolution process. In such hearings, the advisor may ask the other party and witnesses relevant questions. The party may never directly ask questions of any other witness; questions, if any, must always be posed by the party's advisor. If a party does not have an advisor available at the hearing, the College will provide for an advisor to ask questions on behalf of that party, as described in the formal resolution process in [Section XIII](#) of this Policy.

Investigators, decision-makers, and the Title IX Coordinator have the right at all times to determine what constitutes acceptable behavior on the part of an advisor and to take appropriate steps to ensure compliance with the Policy.

**Prior Sexual Conduct of the Complainant.** Questions and evidence about the Complainant's prior sexual behavior are not relevant, unless offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove Consent. For example, if the question being determined is whether consent was given through mutually understandable words or actions, information about the manner in which Consent has previously been communicated between the parties may be relevant in determining whether Consent was sought and given during the incident in question. The decision-maker (e.g., the Hearing Officer or the investigator, as applicable) will determine the relevance of such information. Prior sexual contact between a Complainant and a Respondent is not relevant to prove character or reputation and will never be used for those purposes.

**Prior or Subsequent Conduct of the Respondent.** Prior or subsequent conduct of the Respondent is not relevant to prove character or reputation and will never be used for these purposes, but may be considered for other purposes, such as determining pattern, knowledge, intent, or the Respondent's reasons for taking the alleged action. For example, evidence of a pattern of Prohibited Conduct by the Respondent, either before or after the incident in question, may be deemed relevant to the determination of whether the Respondent violated the Policy or engaged in inappropriate behavior. A finding in a previous investigation that the Respondent violated the Policy by engaging in similar conduct may be relevant evidence of a pattern of behavior. Likewise, evidence in a previous investigation that the Respondent engaged in similar behavior, but the behavior was not at that time determined to be at a sufficient level to constitute a Policy violation, may be relevant to assessing severity, persistence and/or pervasiveness, as applicable, or relevant evidence of a pattern, in a subsequent investigation.

The relevance of pattern evidence will generally be determined based on an assessment of whether the previous or subsequent conduct was similar to the conduct under investigation or

indicates a pattern of Prohibited Conduct. The decision-maker (e.g., the Hearing Officer or the investigator, as applicable) will determine the relevance of such information.

### **XIII. The Formal Resolution Process**

In the Formal Resolution Process, after an investigation, a live hearing occurs in which the parties' advisors have the opportunity to ask questions of the other party and the witnesses. A written determination regarding responsibility will be reached, which may be appealed.

#### **A. The Investigation**

An investigation affords both the Complainant and the Respondent an opportunity to submit information and other evidence and to identify witnesses. To be clear, although the parties have the option to submit evidence and suggest witnesses to be interviewed, the burden of gathering information in the investigation ultimately lies with the College. There is a presumption in every investigation that the Respondent is not responsible for the alleged conduct unless and until a determination regarding responsibility is made at the conclusion of the grievance process.

When the formal resolution process is initiated, the Title IX Coordinator will designate an external or internal investigator(s) who will be responsible for gathering evidence directly related to the allegations raised in a Formal Complaint. The investigator must be impartial, free of any actual conflict of interest, and have specific and relevant training and experience. Specifically, the investigator will be trained on (1) issues of relevance; (2) the definitions in the Policy; (3) the scope of the College's Education Program or Activity; (4) how to conduct an investigation; and (4) how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.

#### **B. Investigation Timeframe**

The investigation of a Formal Complaint will be usually concluded within 60 to 90 days of the filing of the Formal Complaint. The parties will be provided with updates on the progress of the investigation, as needed, and will be alerted, in writing, if the process will go beyond that timeframe.

Additional time beyond 60 to 90 days may be necessary to ensure the integrity and completeness of the investigation to: (1) comply with a request by law enforcement for a temporary delay to gather evidence; (2) accommodate the availability of parties and/or witnesses; (3) address the need for language assistance or accommodation of disabilities; (4) account for College breaks or vacations; (5) account for case complexities including the number of witnesses and volume of information provided by the parties; or (6) for other legitimate reasons.

#### **C. Interviews and Gathering Evidence**

**Interviews.** The investigator will interview the Complainant and Respondent in order to review the disciplinary process and to hear an overview of each party's account of the allegations. Each party may have an advisor present. Before any interview, the individual being interviewed will be informed in writing of the date, time, location, participants, and purpose of the interview. Such notice will be provided with sufficient time for the individual to prepare for the interview. The Respondent will be informed in writing if, during the investigation, additional information is disclosed that may constitute additional Prohibited Conduct under the Policy.

Following the interview, each party will be provided with a draft summary of their statement so that they have the opportunity to comment on the summary and ensure its accuracy and completeness. The parties' feedback may be attached or otherwise incorporated into the final investigative report to the extent deemed relevant by the investigator.

**Evidence.** During the interview, and as the investigator is gathering evidence, each party will be given the opportunity to identify witnesses and to provide other information, such as documents, communications, photographs, and other evidence. Although the College has the burden of gathering evidence sufficient to reach a determination regarding responsibility, all parties are expected to share any relevant information and/or any information that is requested by the investigator. Such information shared by the parties with the investigator may include both inculpatory and exculpatory evidence.

The investigator will review all information identified or provided by the parties, as well as any other evidence they obtain. Evidence obtained as part of the investigation that is directly related to the allegations in the Formal Complaint will be shared with the parties for their review and comment, as described below.

#### **D. Opportunity to Inspect and Review Evidence**

After all the evidence is gathered and the investigator has completed witness interviews, the investigator will provide the parties, and their advisors, if any, with copies of all evidence directly related to the allegations of the Formal Complaint that was gathered during the investigation. This must include all directly related evidence, even evidence upon which the College does not intend to rely in reaching a determination regarding responsibility and must include directly related inculpatory and exculpatory evidence whether obtained from a party another source.

The evidence may be provided in either an electronic format or a hard copy. Before providing the evidence to the parties, the investigator may redact information in the evidence that is not directly related to the allegations of the Formal Complaint; information prohibited from disclosure pursuant to a recognized legal privilege; and/or a party's medical or mental health information/records unless the party consents in writing to the disclosure of that information.

The parties and their advisors must sign an agreement not to disseminate any of the evidence subject to inspection and review or use such evidence for any purpose unrelated to the Title IX grievance process. The parties and their advisors may not photograph or otherwise copy the evidence.

The parties will have ten (10) days to review the evidence and to submit a written response. The parties' written responses must include any comments, feedback, additional documents, evidence, requests for additional investigation, names of additional witnesses, or any other information they deem relevant to the investigation. Any party providing new evidence in their written response should identify whether that evidence was previously available to them, and if so, why it was not previously provided. The parties' feedback will be attached to the final investigation report so that the other party may review it before any hearing.

The investigator will review the feedback, collect additional evidence based on that feedback (as the investigator deems appropriate), and interview additional relevant witnesses (as the investigator deems appropriate). This additional activity may require extensions of the anticipated timelines for the investigation.

#### **E. Final Investigative Report**

After the time has run for both parties to provide any written response to the evidence, and after the investigator completes any additional investigation, the investigator will prepare a final investigative report. The investigator may exclude and/or redact information or evidence from the final investigative report as follows:

- Information that is not relevant to the allegations raised in the Formal Complaint;
- Information about a Complainant's prior or subsequent sexual activity, unless such information falls into one of the exceptions described above; and
- Medical or mental health information, treatment and/or diagnosis, unless the treated party consents.

The final investigative report will be shared with the Complainant, Respondent, and their advisors. The parties will have ten (10) business days to respond in writing to the final investigative report. After the Title IX Coordinator receives the responses, copies will be simultaneously shared with the parties; no replies will be accepted. The responses will also be appended to the final investigative report.

The Complainant and Respondent must also submit in writing to the Title IX Coordinator, before the end of that ten (10) business-day review period, the names of any witnesses the Complainant/Respondent wishes to testify at the hearing and a summary of information each

witness would provide through their testimony. Names of witnesses provided by the Complainant/Respondent will be shared with the other party.

After the ten-business-day deadline, the Complainant and Respondent may not provide any additional written information for the hearing, unless that information was not reasonably available prior to the closing of the ten-business-day window. The Hearing Officer determines whether to grant exceptions to this ten-business-day deadline.

Generally, only information that is provided to, or otherwise obtained by, the investigator during the course of the investigation will be considered in the determination of whether a Policy violation occurred. Any and all information for consideration by the Hearing Officer must be provided to the investigator prior to the final investigation report and will not be allowed to be introduced for the first time during the hearing unless it can be clearly demonstrated 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, after the final investigation report is issued, a party provides or identifies evidence that they did not previously provide or identify despite that evidence being reasonably available to them during the investigation process, the Hearing Officer may, at their discretion, draw a negative inference from the party's delay in providing or identifying the evidence.

## **F. Hearing Procedure**

Following issuance of the final investigation report, a live hearing will be provided. If at any point the Title IX Misconduct allegations are dismissed, as provided for in [Section XI.E](#), the matter will continue to be addressed as appropriate if Sexual and Gender-Based Misconduct allegations remain.

### **1. The Hearing Officer**

Hearings will be facilitated by one or more Hearing Officer, at the College's discretion, who will make the decision as to whether or not the Respondent violated the Policy using a preponderance of the evidence standard. The Hearing Officer has broad authority to determine the process, timing, and conduct of a hearing. This includes the order of presentation, timing, and overall duration of the hearing, what information and questions are relevant to the determination of the matter, and what cross-examination questions will or will not be permitted. The Hearing Officer is responsible for maintaining an orderly, fair, and respectful hearing and has broad authority to respond to disruptive or harassing behaviors, including adjourning the hearing or excluding the offending person(s).

### **2. Notice**

The Hearing Officer will be informed of the identities of the parties so they can identify any conflict of interest or bias. The parties will be notified of the identity of the selected Hearing

Officer in advance of the hearing; and parties may, within three (3) calendar days of such notice, object to the Hearing Officer by providing a written statement (which may be transmitted electronically) as to why the party believes that the Hearing Officer has a conflict of interest or bias. The Title IX Coordinator (or designee) will make decisions regarding such objections and the appointment of an alternate Hearing Officer, as appropriate. If a potential conflict of interest is discovered outside of the three days, the Title IX Coordinator (or designee) has discretion to appoint an alternate Hearing Officer.

### **3. Pre-Hearing Procedures and Ground Rules**

The Hearing Officer and/or the Title IX Coordinator may establish pre-hearing procedures relating to issues such as scheduling, hearing structure and process, and witness and advisor participation and identification. The Hearing Officer will communicate with the parties prior to the hearing with respect to these issues and establish reasonable, equitable deadlines for party participation/input.

The Hearing Officer also has wide discretion over matters of decorum at the hearing, including the authority to excuse from the hearing process participants who are unwilling to observe rules of decorum.

### **4. Participation of Advisors**

Both parties must be accompanied by an advisor to the hearing. If a party does not have an advisor for the hearing, the College will provide an advisor of the College's choice for that party.

Each party's advisor must conduct any cross-examination of the other party and any witnesses. Apart from conducting cross-examination, the parties' advisors do not have a speaking role at the hearing; an advisors' participation is limited to conferring with the party at intervals set by the Hearing Officer.

### **5. Participation of Parties and Witnesses**

As explained above, a party or witness who elects to participate in a College process is expected, although not compelled, to participate in all aspects of the process.

If a party or witness elects to not participate in the live Title IX Misconduct hearing or participates in the hearing but refuses to answer questions posed by the other party through their advisor, the Hearing Officer will not rely on any statement of the non-participating party or witness in reaching a determination regarding responsibility. The Hearing Officer will never draw any inferences based solely on a party's or witness's absence or refusal to answer questions.

“**Statements**” for purposes of the hearing means factual assertions made by a party or witness. Statements might include factual assertions made during an interview or conversation, written by

the individual making the assertions (including those found in a Formal Complaint), and memorialized in the writing of another (e.g. in an investigative report, police report, or medical record). Where evidence involves intertwined statements of both parties (e.g. a text message exchange or an email thread) and one party refuses to participate in the hearing or submit to questioning about the evidence while the other does participate and answer questions, the statements of only the participating party may be relied on by the Hearing Officer.

If a party does not appear for the hearing, their advisor may still appear for the purpose of asking questions of the other party and witnesses. If a non-participating party's advisor also does not appear for the hearing, the College will appoint an advisor to participate in the hearing for the purpose of asking questions of the other party on behalf of the non-participating party.

Parties are reminded that, consistent with the prohibition on Retaliation, Intimidation, threats of violence, and other conduct intended to cause a party or witness to not appear for a hearing are expressly prohibited.

## **6. Witnesses**

The Hearing Officer may, at their discretion, exclude witnesses or witness testimony the Hearing Officer considers irrelevant or duplicative. The Hearing Officer will explain any decision to exclude a witness or testimony as not relevant.

## **7. Electronic Devices and Record the Hearing**

A Respondent, Complainant, advisor, and/or witness may not bring electronic devices that capture or facilitate communication (e.g., computer, cell phone, audio/video recorder, etc.) into a hearing room, unless authorized by the Hearing Officer.

The Title IX Coordinator will arrange (at the College's discretion) for there to be an audio recording, or audiovisual recording, or transcript (or combination) of the hearing, which will be made available to the parties for review and kept on file by the College for seven years.

## **8. Hearing Location and Use of Technology**

The hearing will be live, with all questioning conducted in real time. Upon request, the parties may be located in separate rooms (or at separate locations) with technology enabling the Hearing Officer and the parties to simultaneously see and hear the party or witness answering questions. A hearing may be conducted entirely virtually through the use of remote technology so long as the parties and Hearing Officer are able to hear and see one another in real time and any cross-examination can be conducted in real time.



## 9. Hearing Structure

The Hearing Officer has general authority and wide discretion over the conduct of the hearing. Although the Hearing Officer has discretion to modify the hearing structure, the general course of procedure for a hearing is as follows:

- Introductions;
- The Hearing Officer establishes rules and expectations for the hearing;
- Brief opening statement from the Complainant;
- Brief opening statement from the Respondent;
- Questioning of the Complainant by the Hearing Officer;
- Cross-examination of the Complainant by the Respondent's advisor (the Hearing Officer may pause cross-examination at any time for the purpose of asking follow-up questions or to enforce the established rules of decorum, which are provided in Addendum A);
- Questioning of the Respondent by the Hearing Officer;
- Cross-examination of the Respondent by the Complainant's advisor (the Hearing Officer may pause cross-examination at any time for the purpose of asking follow-up questions or to enforce the established rules of decorum, which are provided in Addendum A);
- Hearing Officer questioning of other witnesses (if applicable);
- Cross-examination of other witnesses by the parties' advisors;
- Closing comments from the Complainant; and,
- Closing comments from the Respondent.

A Complainant or Respondent may not question each other or other witnesses directly; they must conduct the cross-examination through their advisors. Before a party or witness answers a cross-examination or other question, the Hearing Officer will first determine whether the question is relevant. The Hearing Officer may exclude irrelevant information and/or questions. The Hearing Officer will explain any decision to exclude a question or information as not relevant. That decision and the related explanation will be noted in the transcript of the hearing.

All evidence collected as part of the investigative process will be made available at the hearing to give each party an equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.

## **10. Determination Regarding Responsibility**

Following the hearing, the Hearing Officer will consider all relevant evidence and make a determination, by a preponderance of the information/evidence, whether the Respondent has violated the Policy.

A preponderance of the evidence standard means that, based on the information acquired during the investigation and the hearing, it is more likely than not the Respondent engaged in the alleged conduct.

## **11. General Considerations for Evaluating Testimony and Evidence**

The Hearing Officer shall not draw inferences regarding a party or witness' credibility based on the party or witness' status as a Complainant, Respondent, or witness, nor shall the Hearing Officer base their judgments in stereotypes about how a party or witness would or should act under the circumstances.

Generally, credibility judgments should rest on the demeanor of the party or witness, the plausibility of their testimony, the consistency of their testimony, and its reliability in light of corroborating or conflicting testimony or evidence. Still, credibility judgments should not rest on whether a party or witness' testimony is non-linear or incomplete, or if the party or witness is displaying stress or anxiety.

The Hearing Officer will afford the highest weight relative to other testimony to first-hand testimony by parties and witnesses regarding their own memory of specific facts that occurred. Both inculpatory and exculpatory (i.e. tending to prove and disprove the allegations) evidence will be weighed in equal fashion.

Except where a party/witness does not submit to cross-examination, a witness' testimony regarding third-party knowledge of the facts at issue will be allowed but will generally be accorded lower weight than testimony regarding direct knowledge of specific facts that occurred.

Subject to the rule that only relevant information will be permitted at the hearing and considered by the Hearing Officer, expert witnesses will be allowed to testify and be crossed as required by the Title IX regulations. The Hearing Officer may afford lower weight to non-factual testimony of the expert relative to fact witnesses, and any expert testimony that is not directed to the specific facts that occurred in the case may be afforded lower weight relative to fact witnesses, regardless of whether the expert witness testimony is the subject of cross examination and regardless of whether all parties present experts as witnesses.

Subject to the rule that only relevant information will be permitted at the hearing and considered by the Hearing Officer, character witnesses will be allowed to testify and be crossed on relevant

topics as required by the Title IX regulations, the Hearing Officer may afford very low weight to any non-factual character testimony of any witness.

Where a party or witness' conduct or statements demonstrate that the party or witness is engaging in retaliatory conduct, including but not limited to witness tampering and intimidation, the Hearing Officer may draw an adverse inference as to that party or witness's credibility.

## **12. Remedies and Sanctions**

In the event the Hearing Officer finds the Respondent responsible for a violation of the College's policies, appropriate remedies and sanctions will be determined by the Hearing Officer. Remedies are designed to restore or preserve the Complainant's equal access to the College's Education Program or Activity.

Upon a finding of responsibility, the Complainant will be provided with remedies designed to restore access to the College's Programs and Activities.

Sanctions for a finding of responsibility for student Respondents include, but are not limited to, warning, suspension, and expulsion. In determining (a) sanction(s), the Hearing Officer will consider any previous disciplinary violations, among other factors

Sanctions for findings of responsibility for employee Respondents include, but are not limited to, warning, suspension and dismissal from employment. In determining (a) sanction(s), the Hearing Officer will consider any previous disciplinary violations, among other factors\*The Hearing Officer may broaden or lessen any range of recommended sanctions in the case of serious mitigating circumstances or egregiously offensive behavior. Neither the Hearing Officer nor any appellate decision-maker will deviate from the range of recommended sanctions unless compelling justification exists to do so.

## **13. Written Notice Regarding Outcome and, if applicable, Sanctions/Remedies**

After a determination regarding responsibility and, if applicable, a determination regarding appropriate remedies and/or sanctions has been made, the Complainant and Respondent will receive a simultaneous written notification including the decision regarding responsibility and, as applicable, any remedies and sanctions. The written notification of this determination, which will be prepared by the Hearing Officer, will include the following:

- Identification of the allegations potentially constituting Title IX Sexual Harassment or other Prohibited Conduct;
- A description of the procedural steps taken from the receipt of the Formal Complaint with parties and witnesses, interviews, site visits, methods used to gather other evidence, and hearings held;

- Findings of fact supporting the determination;
- Conclusions regarding the application of the Policy to the facts;
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the College imposes on the Respondent, and whether remedies designed to restore or preserve equal access to the College's Program or Activity will be provided by the College to the Complainant; and
- The College's procedures and permissible bases for the Complainant and Respondent to appeal.

Absent extenuating circumstances, the written notification of outcome will be issued by the Hearing Officer as soon as practicable after the completion of the hearing, but no longer than twenty business days after the completion of the hearing.

The written notification of outcome becomes final five business days after it is sent to the Parties, unless an appeal is filed on or before that day.

### **G. Appeals**

A Respondent and Complainant both have the right to appeal the Hearing Officer's decision regarding responsibility.

A party wishing to appeal must file a written appeal statement with the Title IX Coordinator within five business days of the date the written decision is sent to the parties. Appeal statements are limited to 3,000 words. Appeal statements should be submitted in electronic form using ARIAL or TIMES NEW ROMAN, 12-point font, and single-spaced. Appeals should use footnotes, not endnotes. Appeal statements that do not meet these standards may be returned to the party for correction, but the time for appeal will not be extended unless there is evidence that technical malfunction caused the appeal statement not to meet these standards.

The written appeal statement must identify the ground(s) upon which the appeal is being made. The only grounds for appeal are:

- New evidence not reasonably available at the time of the decision/hearing that could affect the outcome of the matter;
- The Title IX Coordinator, investigator, or Hearing Officer had a conflict of interest or bias for or against complainants or respondents generally or the individual Complainant or Respondent specifically that affected the outcome of the matter; and/or
- Procedural irregularity that affected the outcome of the matter.

An appeal is not a re-hearing of the case. The College may summarily deny an appeal if it is not based on one of the enumerated grounds for appeal.

**Appellate decision-maker.** If the College does not summarily deny the appeal, the College will appoint an appellate decision-maker. Generally, the Dean of Students (or designee) or the Director of Human Resources (or designee) will serve in the role of the appellate decision-maker. The appellate decision-maker's role is limited to reviewing the underlying record of the investigation and hearing, the appealing party's ("Appellant") written appeal statement, any response to that statement by the other party ("Appellee"), and information presented at a meeting of the appellate decision-maker, if convened.

**Conflict of interest.** The College will notify the Appellant and Appellee of the name of the appellate decision-maker. The Appellant and/or Appellee may challenge the participation of an appellate decision-maker because of an actual conflict of interest, bias, or prejudice. Such challenges, including rationale, must be submitted in writing to the Title IX Coordinator no later than 48 hours after notification of the name of the appellate decision-maker. The College will determine whether such a conflict of interest exists and whether an appellate decision-maker should be replaced.

**Response to Appeal.** The appellate decision-maker will provide written notice to the Appellee that an appeal has been submitted and will give the Appellee an opportunity to review the appeal statement. The Appellee may submit a written response to the appeal ("response"). The response is due five business days from the date the College provides written notice of the appeal to the Appellee and must be limited to no more than 3,000 words. The response should be submitted in electronic form using ARIAL or TIMES NEW ROMAN, 12-point font, and single-spaced. Responses should use footnotes, not endnotes. Responses that do not meet these standards may be returned to the party for correction, but the time for a response will not be extended unless there is evidence that technical malfunction caused the response to not meet these standards.

The College will provide the Appellant an opportunity to review the response. No "reply" or further submission may be provided.

**Written Decision.** The appellate decision-maker will provide written notification of the final decision to the Appellant and Appellee simultaneously. The written decision shall describe the result of the appeal and the rationale for the result. The appellate decision-maker will typically notify the parties of its decision regarding an appeal in writing within 10 business days from receipt of the appeal statement. If the decision will take longer, the parties will be informed. The decision of the appellate decision-maker will be final, and no subsequent appeals are permitted.

#### **XIV. Informal Resolution**

Informal resolution is an alternative resolution process that does not include an investigation or hearing. Informal resolution is typically a spectrum of facilitated, or structured, and adaptable processes between the Complainant, the Respondent, and/or other affected community members that seeks to identify and meet the needs of the Complainant while providing an opportunity for the Respondent to acknowledge harm and seek to repair the harm (to the extent possible) experienced by the Complainant and/or the College community.

Informal resolution options include but are not limited to mediation,<sup>11</sup> referral of the parties to counseling programs, targeted or broad-based educational and training programs, direct communication with the Respondent by the Complainant, communication with the Respondent by the Title IX Coordinator or a College administrator, or other forms of restorative justice.

Informal Resolution is not available in cases involving a Student-Complainant and Employee-Respondent. Additionally, the informal resolution process may not commence unless and until a Formal Complaint is filed. Informal resolution may be available, under appropriate circumstances, at any time prior to reaching a determination regarding responsibility.

Some alleged violations of this Policy may not be appropriate for informal resolution. The Title IX Coordinator reserves the right to determine whether informal resolution is appropriate in a specific case. Before the Title IX Coordinator commences the informal resolution process, both parties must provide informed consent to the informal resolution process in writing. In addition, where both parties and the College determine that informal resolution is worth exploring, the College will provide the parties with a written notice disclosing:

- the allegations of the Formal Complaint,
- the requirements of the Informal Resolution process, and
- any consequences resulting from participating or withdrawing from the process, including the records that may be maintained by the College.

At any time prior to reaching a resolution, either party may withdraw from the informal resolution process and proceed with the formal grievance process for resolving the Formal Complaint.

Once an informal resolution outcome is agreed to by all parties, the resolution is binding, and the parties generally are precluded from resuming or starting the formal grievance process related to that Formal Complaint. Any breach of the terms of an informal resolution agreement may result in disciplinary action.

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<sup>11</sup> Mediation, even if voluntary, may not be used in cases involving Sexual Assault.

Remedies-based resolution will typically be completed within 90 business days after the informal resolution process commences. Situations that are resolved through informal resolution are usually subject to follow-up after a period of time to assure that resolution has been implemented effectively.

## **XV. Retaliation**

Except as permitted by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of the Title IX Regulations, including to conduct of any investigation, hearing, or judicial proceeding under this Policy, Ursinus will keep confidential the identity of (1) any individual who makes a Report or Formal Complaint, (2) any complainant, (3) any Respondent, and (4) any Witness.

No person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or the Title IX Regulations.

No person may intimidate, threaten, coerce, or discriminate against any individual because the individual has made a Report or Formal Complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding or hearing under this Sexual Misconduct/ Title IX Policy.

Any intimidation, threats, coercion, or discrimination, for the purpose of interfering with any right or privilege secured by Title IX or its implementing regulations constitutes retaliation. This includes any charges filed against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but that arise from the same facts or circumstances as a report or Complaint of sex discrimination or a report or Complaint of sexual harassment.

Retaliation should be reported promptly to the Title IX Coordinator and may result in disciplinary action independent of the sanction imposed in response to the underlying allegations of discrimination.

## **XVI. Record Retention**

The College will retain for a period of seven years after the date of case closure: the official file relating to a formal resolution (including any investigation hearing, sanctioning, and/or appeals processes) or informal resolution involving allegations of Title IX Misconduct. In cases in which a Respondent was found to have violated the Policy and was expelled or terminated, the College may retain such official case files indefinitely.

## **ADDENDUM A: DECORUM POLICY**

### **Purpose of the Rules of Decorum**

The grievance hearings set forth in Ursinus's Policy are not civil or criminal proceedings and are not designed to mimic formal trial proceedings. They are primarily educational in nature, and the U.S. Department of Education, writing about Title IX in the Final Rule "purposefully designed these final regulations to allow recipients to retain flexibility to adopt rules of decorum that prohibit any party advisor or decision-maker from questioning witnesses in an abusive, intimidating, or disrespectful manner." 85 Fed. Reg. 30026, 30319 (May 19, 2020). The Department has determined that institutions "are in a better position than the Department to craft rules of decorum best suited to their educational environment" and build a hearing process that will reassure the parties that the institution "is not throwing a party to the proverbial wolves." Id.

To achieve this purpose, institutions may provide for reasonable rules of order and decorum, which may be enforced through the removal of an advisor who refuses to comply with the rules. Id., at 30320. As the Department explains, the removal process "incentivizes a party to work with an advisor of choice in a manner that complies with a recipient's rules that govern the conduct of a hearing and incentivizes colleges and universities to appoint advisors who also will comply with such rules, so that hearings are conducted with respect for all participants." Id.

At base, these Rules of Decorum require that all parties, advisors of choice, and institutional staff treat others who are engaged in the process with respect.

The rules and standards apply equally to all Parties and their Advisors regardless of sex, gender, or other protected class, and regardless of whether they are in the role of Complainant or Respondent.

### **Rules of Decorum**

The following Rules of Decorum are to be observed in the hearing and applied equally to all parties (meaning the complainant and respondent) and advisors:

1. Questions must be conveyed in a neutral tone.
2. Parties and advisors will refer to other parties, witnesses, advisors, and institutional staff using the name and gender used by the person and shall not intentionally mis-name or mis-gender that person in communication or questioning.
3. No party may act abusively or disrespectfully during the hearing toward any other party or to witnesses, advisors, or decision-makers.
4. While an advisor may be an attorney, no duty of zealous advocacy should be inferred or enforced within this forum.



5. The advisor may not yell, scream, badger, or physically “lean in” to a party or witness’s personal space. Advisors may not approach the other party or witnesses without obtaining permission from a decision-maker.
6. The advisor may not use profanity or make irrelevant *ad hominem* attacks upon a party or witness. Questions are meant to be interrogative statements used to test knowledge or understand a fact; they may not include accusations within the text of the question.
7. The advisor may not ask repetitive questions. This includes questions that have already been asked by a decision maker, the advisor in cross-examination, or the party or advisor in direct testimony. When a decision- maker determines a question has been “asked and answered” or is otherwise not relevant, the advisor must move on.
8. Parties and advisors may take no action at the hearing that a reasonable person in the shoes of the affected party would see as intended to intimidate that person (whether party, witness, or official) into not participating in the process or meaningfully modifying their participation in the process.

### **Warning and Removal Process**

The Hearing Officer shall have sole discretion to determine if the Rules of Decorum have been violated. The decision- maker will notify the offending person of any violation of the Rules.

Upon a second or further violation of the Rules, the Hearing Officer shall have discretion to remove the offending person or allow them to continue participating in the hearing or other part of the process.

Where the Hearing Officer removes a party’s advisor, the party may select a different advisor of choice, or accept an advisor provided by the institution for the limited purpose of cross-examination at the hearing. Reasonable delays, including the temporary adjournment of the hearing, may be anticipated should an advisor be removed. A party cannot serve as their own advisor in this circumstance.

The Hearing Officer shall document any decision to remove an advisor in the written determination regarding responsibility.

For flagrant, multiple, or continual violations of this Rule, in one or more proceedings, advisors may be prohibited from participating in future proceedings at the institution in the advisor role on a temporary or permanent basis. Evidence of violation(s) of this Rule will be gathered by the Title IX Coordinator and presented to the Dean of Students for cases involving students or the Director of Human Resources for cases involving employees.

The Advisor accused may provide an explanation or alternative evidence in writing for consideration by the Dean of Students for cases involving students or the Director of Human Resources for cases involving employees. Such evidence or explanation is due within fifteen (15) calendar days of receipt of a notice of a charge of re-disclosure or improper access to records.

There shall be no right to a live hearing, oral testimony, or cross-examination. The Dean of Students for cases involving students/Director of Human Resources for cases involving employees/Other Appropriate Staff Member shall consider the evidence under a preponderance of the evidence standard and issue a finding in writing and, if the finding is Responsible, shall include a Sanction. The finding shall be issued in writing to all Parties and Advisors (if there is a current case pending) within thirty (30) days unless extended for good cause. There is no appeal of this finding. Sanctions shall be higher for intentional re-disclosure of records than for negligent re-discourse. In the event that an Advisor is barred permanently or for a term from serving in the role as Advisor in the future, they may request a review of that bar from the Dean of Students for cases involving students/Director of Human Resources for cases involving employees/Other Appropriate Staff Member no earlier than three-hundred and sixty-five (365) days after the date of the findings letter.

### **Relevant Questions Asked in Violation of the Rules of Decorum**

Where an advisor asks a relevant question in a manner that violates the Rules, such as yelling, screaming, badgering, or leaning-in to the witness or party's personal space, the question may not be deemed irrelevant by the decision-maker simply because of the manner it was delivered. Under that circumstance, the decision-maker will notify the advisor of the violation of the Rules, and, if the question is relevant, will allow the question to be re-asked in a respectful, non-abusive manner by the advisor (or a replacement advisor, should the advisor be removed for violation of the Rules). *See*, 85 Fed. Reg. 30331.

## **ADDENDUM B: GUIDE FOR DETERMINING RELEVANCE**

### **What is the purpose of this Guide?**

On May 19, 2020, the U.S. Department of Education issued Final Rules governing the Title IX grievance process, effective August 14, 2020. The Final Rule requires that all colleges and universities hold a live hearing before making any determination regarding responsibility for covered reports of Title IX sexual harassment, including sexual violence. This hearing must provide for live cross-examination by the parties' advisors.

Any question posed by the advisors must be evaluated for "relevance" in real time by the hearing officer. According to Final Rule §106.45(b)(6)(i):

Only relevant cross-examination and other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a cross-examination or other question, the decision-maker(s) must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.

### **What is a relevant question?**

The Department of Education encourages institutions to apply the "plain and ordinary meaning" of relevance in their determinations. 85 Fed. Reg. 30026, 30304 (May 19, 2020). Basically, a relevant question will ask whether the facts material to the allegations under investigation are more or less likely to be true. *Id.* at 30294. A question not directly related to the allegations will generally be irrelevant.

Officials should use common sense in this understanding. Things may be interesting or surprising but not be relevant.

Relevance decisions should be made on a question-by-question basis, looking narrowly at whether the question seeks information that will aid the decision-maker in making the underlying determination. The relevance decision should not be based on who asked the question, their possible (or clearly stated) motives, who the question is directed to, or the tone or style used to ask about the fact. Relevance decisions should not be based in whole or in part upon the sex or gender of the party for whom it is asked or to whom it is asked, nor based upon their status as complainant or respondent, past status as complainant or respondent, any organizations of which they are a member, or any other protected class covered by federal or state law (e.g. race, sexual orientation, disability).

If a question is relevant but offered in an abusive or argumentative manner, the decision-maker has the discretion to ask the advisor to rephrase the question in an appropriate manner, consistent with the institution's decorum policy for hearings.

## **What if the question is “prejudicial” and concerns sensitive or embarrassing issues?**

Much of the content within these hearings may be considered sensitive and/or embarrassing by parties or advisors. However, relevant questions need to be considered *even if* a party or advisor believes the danger of unfair prejudice substantially outweighs their probative value.<sup>12</sup> Only irrelevant questions (detailed below), including about the complainant’s prior sexual history, may be excluded.

## **What is an irrelevant question?**

### *Questions about Complainant’s Prior Sexual Behavior or Sexual Predisposition*

Questions about Complainant’s sexual predisposition are not relevant.

Questions and evidence about the complainant’s prior sexual behavior are not relevant, unless:

1. such questions and evidence about the complainant’s prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or
2. if the questions and evidence concern specific incidents of the complainant’s prior sexual behavior with respect to the respondent and are offered to prove consent. 34 C.F.R. § 106.45(6)(i).

### *Question regarding Privileged Information*

Questions that constitute, or seek disclosure of, information protected under a legally-recognized privilege are irrelevant. 34 C.F.R. § 106.45(1)(x). Depending on your state, individuals with legal privilege may include medical providers (physician, dentist, podiatrist, chiropractor, nurse), psychologists, clergy, rape crisis counselors, and social workers. (for instance, New York's "laws of privilege" are listed within [CPLR Article 45](#); Each state has its own rules around privilege).

### *Questions about Undisclosed Medical Records*

Questions that call for information about any party’s medical, psychological, and similar records are irrelevant unless the party has given voluntary, written consent. 85 Fed. Reg. 30026, 30294 (May 19, 2020).

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<sup>12</sup> 85 Fed. Reg. 30026, 30294 (May 19, 2020).

### *Duplicative Questions*

Questions that repeat, in sum or substance, questions already asked by the decision-maker prior to cross-examination, or by a party's advisor during cross-examination (and if part of your process, during direct examination), may be ruled duplicative, and therefore irrelevant.<sup>13</sup>

#### **How should the Hearing Officer reach a relevance determination?**

Hearing Officer will be solely responsible for determining the relevance of the question before it is asked.

#### **What should the relevance determination consist of?**

The Department of Education explains that the Final Rule “does not require a decision-maker to give a lengthy or complicated explanation” in support of a relevance determination. Rather, “it is sufficient, for example, for a decisionmaker to explain that a question is irrelevant because the question calls for prior sexual behavior information without meeting one of the two exceptions, or because the question asks about a detail that is not probative of any material fact concerning the allegations.” *Id.* at 30343.

As such, the decision-maker need only provide a brief explanation of the determination, which will ordinarily consist of one of the following statements depending on the situation.

#### **May the parties and/or their advisors ask the Hearing Officer to reconsider their relevance decision?**

Any party or their advisor may request that the Hearing Officer reconsider their relevance determination.

The Hearing Officer may deny or grant the request to reconsider. This determination is final but may be subject to appeal under the grievance process.

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<sup>13</sup> See 85 Fed. Reg. 30026, 30331 (May 19, 2020) (“nothing in the final regulations precludes a recipient from adopting and enforcing (so long as it is applied clearly, consistently, and equally to the parties) a rule that deems duplicative questions to be irrelevant”).