

# **MidAmerica Nazarene University**

## **Sexual Misconduct Policy & Complaint Resolution Procedures**

# **SEXUAL MISCONDUCT POLICY**

## **I. POLICY STATEMENT**

MidAmerica Nazarene University (the “University”) is committed to providing a learning, working, and living environment that promotes personal integrity, civility, and mutual respect in an environment free of discrimination on the basis of sex. The University considers sex discrimination in all its forms to be a serious offense. Sex discrimination constitutes a violation of this policy, is unacceptable, and will not be tolerated. Sex discrimination includes discrimination on the basis of pregnancy, gender identity, and failure to conform to stereotypical notions of femininity and masculinity.

Sexual harassment, whether verbal, physical, visual, or digital, is a form of prohibited sex discrimination, and sexual violence is a particularly severe form of sexual harassment. The specific definitions of sexual harassment and sexual violence, including examples of such conduct, are set forth below.

## **II. SCOPE**

This policy applies to all University employees, including staff, faculty, and administrators; students; applicants for employment; customers; third-party contractors; and all other persons that participate in the University’s educational programs and activities, including third-party visitors on campus (the “University Community”). This policy prohibits sex discrimination, sexual harassment, and sexual violence when the complainant and alleged perpetrator are members of the same or opposite sex, and it applies regardless of national origin, immigration status, or citizenship status. The University’s prohibition on sex discrimination, sexual harassment, and sexual violence extends to all aspects of its educational programs and activities, including, but not limited to, admissions, employment, academics, athletics, housing, and student services.

The University has jurisdiction over conduct covered by this policy that occurred on campus, during or at an official University program or activity (regardless of location), or off campus when the conduct could create a hostile environment on campus. The University will investigate all complaints made under this policy and, if necessary, take action to prevent the recurrence of sex discrimination and remedy its effects.

## **III. TITLE IX STATEMENT**

It is the policy of the University to comply with Title IX of the Education Amendments of 1972 and its implementing regulations, which prohibit discrimination based on sex in the University’s educational programs and activities. Title IX and its implementing regulations also prohibit retaliation for asserting claims of sex discrimination. The University has designated the following Title IX Coordinator to coordinate its compliance with Title IX and to receive inquiries regarding Title IX, including complaints of sex discrimination:

Kristi Keeton  
Vice President for Student Development  
2030 E. College Way  
Olathe, KS 66062  
Campus Center Building  
913-971-3544  
[kkeeton@mnu.edu](mailto:kkeeton@mnu.edu)

A person may also file a complaint of sex discrimination with the United States Department of Education's Office for Civil Rights regarding an alleged violation of Title IX by visiting [www2.ed.gov/about/offices/list/ocr/complaintintro.html](http://www2.ed.gov/about/offices/list/ocr/complaintintro.html) or by calling 1-800-421-3481.

#### IV. **SEXUAL MISCONDUCT**

##### A. **Sexual Misconduct**

“Sexual misconduct” is an umbrella term covering sex discrimination, sexual harassment, sexual violence, domestic violence, dating violence, and stalking. This term will be used throughout the remainder of this policy and the Complaint Resolution Procedures when collectively referring to these types of conduct.

##### B. **Sexual Harassment**

###### 1. **Definition of Sexual Harassment**

Sexual harassment is unwelcome conduct of a sexual nature and includes sexual advances, requests for sexual favors, and other verbal, physical, visual, or digital conduct of a sexual nature when:

- Submission to such conduct is made or threatened to be made, either explicitly or implicitly, a term or condition of an individual's employment or education
- Submission to or rejection of such conduct by an individual is used or threatened to be used as the basis for academic or employment decisions affecting that individual, or
- Such conduct has the purpose or effect of substantially interfering with an individual's academic or professional performance or creating what a reasonable person would perceive as an intimidating, hostile, or offensive employment, education, or living environment

###### 2. **Examples of Sexual Harassment**

Some examples of sexual harassment include:

- Pressure for a dating, romantic, or intimate relationship
- Unwelcome touching, kissing, hugging, rubbing, or massaging
- Pressure for sexual activity

- Unnecessary references to parts of the body
- Sexual innuendos, jokes, humor, or gestures
- Displaying sexual graffiti, pictures, videos or posters
- Using sexually explicit profanity
- Asking about, or telling about, sexual fantasies, sexual preferences, or sexual activities
- Social media use that violates this policy
- Leering or staring at someone in a sexual way, such as staring at a person's breasts or groin
- Sending sexually explicit emails or text messages
- Commenting on a person's dress in a sexual manner
- Giving unwelcome personal gifts such as flowers, chocolates, or lingerie that suggest the desire for a romantic relationship
- Commenting on a person's body, gender, sexual relationships, or sexual activities
- Sexual violence (as defined below)

C. **Sexual Violence**

1. **Definition of Sexual Violence**

Sexual violence is a particularly severe form of prohibited sexual harassment. Sexual violence includes physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent because of his or her temporary or permanent mental or physical incapacity, because he or she is below the minimum age of consent in the applicable jurisdiction, or because of his or her incapacitation due to the use of drugs and/or alcohol. Other types of conduct may also constitute sexual violence.

**Examples of Sexual Violence**

Some examples of sexual violence include:

- Rape or sexual assault: sexual intercourse (anal, oral, or vaginal) by a man or woman upon a man or woman without consent
- The use of force or coercion to effect sexual intercourse or some other form of sexual contact with a person who has not given consent
- Unwilling sexual penetration (anal, vaginal, or oral) or other sexual touching with any object or body part that is committed by force, threat, intimidation, or otherwise without consent
- Having sexual intercourse with a person who is unconscious because of drug or alcohol use
- Hazing that involves penetrating a person's vagina or anus with an object
- Sexual exploitation, which includes, but is not limited to, the following:
  - Sexual voyeurism

- Use of the “date rape drug” to effect sexual intercourse or some other form of sexual contact with a person
- Knowingly transmitting a sexually transmitted disease such as HIV to another person through sexual activity
- Secretly videotaping or photographing sexual activity where the other party has not consented
- Disseminating sexual pictures or videos of another person without consent regardless if the pictures or videos were obtained with consent
- Prostituting another person

## 2. Consent

Lack of consent is a critical factor in determining whether sexual violence has occurred. Consent is informed, freely given, and mutually understood. Consent requires an affirmative act or statement by each participant. Consent is not passive.

- If coercion, intimidation, threats, and/or physical force are used, there is no consent
- If a person is mentally or physically incapacitated or impaired by alcohol or drugs such that the person cannot understand the fact, nature, or extent of the sexual situation, there is no consent
  - Warning signs of when a person may be incapacitated due to drug and/or alcohol use include: slurred speech, falling down, passing out, and vomiting
- If a person is asleep or unconscious, there is no consent
- If a person is below the minimum age of consent in the applicable jurisdiction, there cannot be consent
- Consent to one form of sexual activity does not imply consent to other forms of sexual activity
- Consent can be withdrawn. A person who initially consents to sexual activity is deemed not to have consented to any sexual activity that occurs after he or she withdraws consent
- Being in a romantic relationship with someone does not imply consent to any form of sexual activity
- Effective consent may not exist when there is a disparity in power between the parties (e.g., faculty/student, supervisor/employee)

## D. Domestic Violence, Dating Violence, and Stalking

The crimes of domestic violence, dating violence and stalking can also constitute sexual misconduct when motivated by a person’s sex. These crimes, no matter the motivation behind them, are a violation of this policy.

1. Domestic Violence

“Domestic violence” includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of a victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse or the victim under the domestic or family violence laws of the jurisdiction [...], 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 jurisdiction.

- The definition of domestic violence under Kansas law can be found at Kan. Stat. Ann. § 21-511.

2. Dating Violence

“Dating violence” means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on a consideration of the length of the relationship, the type of the relationship, and the frequency of interaction between the persons involved in the relationship.

- Kansas law does not specifically define dating violence, but conduct of this nature is covered by the definition of domestic violence found at Kan. Stat. Ann. § 21-511.

3. Stalking

“Stalking” means engaging in a course of conduct directed at a specific person that would cause a reasonable person to (A) fear for his or her safety or the safety of others; or (B) suffer substantial emotional distress.

- Stalking can include conduct that occurs via social media (i.e., “cyberstalking”)
- The definition of stalking under Kansas law can be found at Kan. Stat. Ann. § 21-5427.

**V. ROLES AND RESPONSIBILITIES**

**A. Title IX Coordinator**

It is the responsibility of the Title IX Coordinator to: (1) ensure the University’s compliance with Title IX; (2) identify and address any patterns or systemic problems of sexual misconduct at the University; (3) coordinate dissemination of information and education and training programs; (4) receive complaints under this policy; (5) assist members of the University Community in understanding that sexual misconduct is prohibited by this policy; (6) answer questions about this policy; (7) ensure that employees

and students are aware of the procedures for reporting and addressing complaints of sexual misconduct; and (8) to implement the Complaint Resolution Procedures or to designate appropriate persons for implementing the Complaint Resolution Procedures.

**B. Administrators, Deans, Department Chairs, and Other Managers**

It is the responsibility of administrators, deans, department chairs, and other managers (i.e., those that formally supervise other employees) to:

- Inform employees under their direction or supervision of this policy
- Work with the Title IX Coordinator to implement education and training programs for employees and students
- Implement any corrective actions that are imposed as a result of findings of a violation of this policy

**C. Employees**

Throughout this policy, the term “employees” includes all faculty, staff, and administrators. It is the responsibility of employees to review this policy and comply with it.

**D. Students**

It is the responsibility of students to review this policy and comply with it.

**E. The University**

When the University is aware that a member of the University Community may have been subjected to or affected by conduct that violates this policy, the University will take prompt action, including a review of the matter and, if necessary, an investigation and appropriate steps to stop and remedy the sexual misconduct. The University will act in accordance with its Complaint Resolution Procedures.

**VI. COMPLAINTS**

**A. Making a Complaint**

1. Employees

All University employees have a duty to report sexual misconduct to the Title IX Coordinator when they receive a report of such conduct, witness such conduct, or otherwise obtain information about such conduct. This includes employees who may have a professional license requiring confidentiality if they are not employed by the University in that professional role. An employee not reporting sexual misconduct as required by this policy may be disciplined accordingly, up to and including termination.

This section does not apply to those identified in Section VI.A.4 of this policy.

## 2. Students

Students who wish to report sexual misconduct should file a complaint with the Title IX Coordinator. Students should be aware that all employees at the University, other than those identified in Section VI.A.4 below, have an obligation to report sexual misconduct that they become aware of or witness.

Students may also file a complaint with the United States Department of Education's Office for Civil Rights, as set forth in Section III above.

## 3. Other Persons

Any other persons who are involved in the University's programs and activities, including visitors on campus, who wish to report sexual misconduct should file a complaint with the Title IX Coordinator. They may also file a complaint with the United States Department of Education's Office for Civil Rights, as set forth in Section III above.

## 4. Confidential Discussions

If a victim desires to talk confidentially about his or her situation, there are resources available. The following resources are available to assist you and will not further disclose the information you provide, unless otherwise required to do so by law (e.g., if the victim is a minor):

- MNU Student Counseling Office  
wellness@mnu.edu
- Rev. Brady Braatz, Director of Spiritual Formation  
[bbraatz@mnu.edu](mailto:bbraatz@mnu.edu)  
913-971-3452

## 5. Content of the Complaint

So that the University has sufficient information to investigate a complaint, the complaint should include: (1) the date(s) and time(s) of the alleged conduct; (2) the names of all person(s) involved in the alleged conduct, including possible witnesses; (3) all details outlining what happened; and (4) contact information for the complainant so that the University may follow up appropriately.

## 6. Information Provided to Complainant and Respondent

A complainant who makes a claim of sexual misconduct to the University will be given a copy of the document titled "Rights and Options After Filing a Complaint Under the University's Sexual Misconduct Policy." This document provides information about this policy and the Complaint Resolution Procedures used to investigate and resolve complaints of sexual misconduct, options for filing complaints with the local police, resources that are available on campus and in the community, etc. A person against whom a complaint has been filed will also be given similar information about the process and resources.

7. Conduct that Constitutes a Crime

Any person who wishes to make a complaint of sexual misconduct that also constitutes a crime—including sexual violence, domestic violence, dating violence, or stalking—is encouraged to make a complaint to local law enforcement. If requested, the University will assist the complainant in notifying the appropriate law enforcement authorities. In the event of an emergency, please contact 911. A victim may decline to notify such authorities.

8. Special Guidance Concerning Complaints of Sexual Violence, Domestic Violence, Dating Violence, or Stalking

If you are the victim of sexual violence, domestic violence, dating violence, or stalking, do not blame yourself. These crimes are never the victim's fault. When physical violence of a sexual nature has been perpetrated against you, the University recommends that you immediately go to the emergency room of a local hospital and contact local law enforcement, in addition to making a prompt complaint under this policy.

Individuals may also contact the Rape Crisis Hotline, 24 hours a day, by dialing (913) 642-0233. Calls are answered immediately during office hours. After hours, leave your name and number and you will be contacted within 15 minutes. Callers can also schedule an appointment to visit an outreach center.

If you are the victim of sexual violence, domestic violence, or dating violence, do everything possible to preserve evidence by making certain that the crime scene is not disturbed. Preservation of evidence may be necessary for proof of the crime or in obtaining a protection order. As necessary to preserve evidence, victims of sexual violence, domestic violence, or dating violence should not bathe, urinate, douche, brush teeth, or drink liquids until after they are examined and, if necessary, a rape examination is completed. Clothes should not be changed. When necessary, seek immediate medical attention at an area hospital and take a full change of clothing, including shoes, for use after a medical examination.

It is also important to take steps to preserve evidence in cases of stalking, to the extent such evidence exists. In cases of stalking, evidence is more likely to be in the form of letters, emails, text messages, etc., rather than evidence of physical contact and violence.

Once a complaint of sexual violence, domestic violence, dating violence, or stalking is made, the complainant has several options such as, but not limited to:

- Contacting parents or a relative
- Seeking legal advice
- Seeking personal counseling (always recommended)
- Pursuing legal action against the perpetrator
- Pursuing disciplinary action through the University
- Requesting that no further action be taken

- Requesting further information about the University’s policy and procedures for addressing sexual misconduct
- Requesting further information about available resources

#### 9. Vendors, Contractors, and Third-Parties

This policy applies to the conduct of vendors, contractors, and third parties. Members of the University Community who believe they have been subject to sexual misconduct in violation of this policy by a vendor, contractor, or other third party can make a complaint in the manner set forth in this section.

#### 10. Retaliation

It is a violation of this policy to retaliate against any member of the University Community who reports or assists in making a complaint of sexual misconduct or who participates in the investigation of a complaint in any way. Persons who believe they have been retaliated against in violation of this policy should make a complaint in the manner set forth in this section.

#### 11. Protecting the Complainant

Pending final outcome of an investigation in accordance with the Complaint Resolution Procedures, the University will take steps to protect the complainant from further discrimination or harassment. This may include assisting and allowing the complainant to change his or her academic, living, transportation, or work situation, to the extent that the University has control over these environments, if options to do so are reasonably available and upon request of the complainant. Such changes may be available regardless of whether the victim chooses to report the crime to Campus Safety or local law enforcement. Requests to change an academic, living, transportation, or work situation, or for any other protective measure, should be made to the Title IX Coordinator.

If a complainant has obtained an ex parte order of protection, full order of protection, or any other temporary restraining order or no contact order against the alleged perpetrator from a criminal, civil, or tribal court, the complainant should provide such information to the Title IX Coordinator. The University, in conjunction with Campus Safety, will take all reasonable and legal action to implement the order.

#### 12. Amnesty

The University recognizes that an individual who has been drinking alcohol or using drugs may be hesitant to report sexual misconduct. To encourage reporting, the University will not take disciplinary action for drug or alcohol use against an individual making a good faith report of sexual misconduct, either as the complainant or as a witness, provided that these conduct violations did not and do not place the health or safety of any other person at risk. The University may, however, require the reporting individual to enter into an accountability contract and/or attend a course or pursue other educational interventions related to alcohol and drugs.

The University's commitment to amnesty in these situations does not prevent action by police or other legal authorities against an individual who has illegally consumed alcohol or drugs.

**B. Timing of Complaints**

The University encourages persons to make complaints of sexual misconduct as soon as possible because late reporting may limit the University's ability to investigate and respond to the conduct complained of.

**C. Investigation and Confidentiality**

All complaints of sexual misconduct will be promptly and thoroughly investigated in accordance with the Complaint Resolution Procedures, and the University will take disciplinary action where appropriate. The University will make reasonable and appropriate efforts to preserve an individual's privacy and protect the confidentiality of information when investigating and resolving a complaint. However, because of laws relating to reporting and other state and federal laws, the University cannot guarantee confidentiality to those who make complaints.

In the event a complainant requests confidentiality or asks that a complaint not be investigated, the University will take all reasonable steps to investigate and respond to the complaint consistent with the request for confidentiality or request not to pursue an investigation. If a complainant insists that his or her name not be disclosed to the alleged perpetrator, the University's ability to respond may be limited. The University reserves the right to initiate an investigation despite a complainant's request for confidentiality in limited circumstances involving serious or repeated conduct or where the alleged perpetrator may pose a continuing threat to the University Community.

The Title IX Coordinator is the person responsible for evaluating requests for confidentiality. The Title IX Coordinator may consult with other appropriate University officials and legal counsel as necessary when assessing a confidentiality request.

**D. Resolution**

If a complaint of sexual misconduct is found to be substantiated, the University will take appropriate corrective and remedial action to prevent the recurrence of the conduct and correct its discriminatory effects. Students and employees found to be in violation of this policy will be subject to discipline up to and including written reprimand, probation, suspension, demotion, termination, or expulsion. Affiliates and program participants may be removed from University programs and/or prevented from returning to campus. Remedial steps may also include counseling for the complainant, academic, transportation, work, or living accommodations for the complainant, separation of the parties, and training for the respondent and other persons.

**E. Bad Faith Complaints**

While the University encourages all good faith complaints of sexual misconduct, the University has the responsibility to balance the rights of all parties. Therefore, if the University's investigation reveals that a complaint was knowingly false, the complaint will be dismissed and the person who filed the knowingly false complaint may be subject to discipline.

**VII. ACADEMIC FREEDOM**

While the University is committed to the principles of free inquiry and free expression, sexual misconduct is neither legally protected expression nor the proper exercise of academic freedom.

**VIII. EDUCATION**

Because the University recognizes that the prevention of sexual misconduct is important, it offers educational programming to a variety of groups such as: campus personnel; incoming students and new employees participating in orientation; and members of student organizations. Among other elements, such training will cover relevant definitions, procedures, and sanctions; will provide safe and positive options for bystander intervention; and will provide risk reduction information, including recognizing warning signs of abusive behavior and how to avoid potential attacks. To learn more about education resources, please contact the Title IX Coordinator.

**SEXUAL MISCONDUCT COMPLAINT RESOLUTION  
PROCEDURES**

**I. GENERAL PRINCIPLES**

**A. Applicability**

These Complaint Resolution Procedures apply to the resolution of all reports under the Sexual Misconduct Policy. They apply to the resolution of complaints against students, faculty, administrators, staff, and third parties, and they are the exclusive means of resolving complaints of sexual misconduct.

**B. Administration**

For purposes of these Complaint Resolution Procedures, "Investigating Officer" means the individual(s) designated by the Title IX Coordinator to investigate a particular complaint of sexual misconduct. The Investigating Officer shall have responsibility for administering these Complaint Resolution Procedures.

**C. Promptness, Fairness and Impartiality**

These procedures provide for prompt, fair, and impartial investigations and resolutions. The Investigating Officer and Hearing Panel members shall discharge their obligations under these Complaint Resolution Procedures fairly and impartially. If the Investigating Officer or a Hearing Panel member determines that he or she cannot apply these procedures fairly and impartially because of the identity of a complainant, respondent, or witness, or due to any other conflict of interest, another appropriate person shall be designated to fulfill the role of the conflicted individual.

**D. Training**

These procedures will be implemented by officials who receive annual training on the issues related to sexual misconduct, domestic violence, dating violence, and stalking and how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability.

**II. INVESTIGATION AND RESOLUTION OF THE COMPLAINT**

**A. Preliminary Matters**

1. Timing of the Investigation

The University will respond to complaints in a prompt manner. Both the complainant and the respondent will be given periodic updates regarding the status of the investigation. If either the complainant or respondent needs additional time to prepare or to gather their witnesses or information, they shall notify the Investigating Officer in writing explaining how much additional time is needed and why it is needed.

2. Informal Resolution

Informal means of resolution, such as mediation, may be used in lieu of the formal investigation and determination procedure. The following standards apply to any informal resolution method that is utilized:

- Can only be used with the complainant's voluntary cooperation and the involvement of the Title IX Coordinator
- The complainant will not be required to work out the problem directly with the respondent
- Either party may terminate the informal process at any time and elevate the complaint to the formal investigation procedures described below
- Informal means, even on a voluntary basis, will not be used to resolve complaints alleging any form of sexual violence

3. Interim Measures

At any time during the investigation, the Title IX Coordinator may determine that interim remedies or protections for the parties involved or witnesses are appropriate. These

interim remedies may include separating the parties, placing limitations on contact between the parties, suspension, or making alternative class-placement or workplace arrangements. Failure to comply with the terms of these interim remedies or protections may constitute a separate violation of the Sexual Misconduct Policy.

#### 4. Support Person/Advisor

During the investigation, both a complainant and a respondent may ask a support person/advisor to accompany him or her at all stages of the process, including any meetings with the Investigating Officer and the hearing. In cases involving multiple complainants or respondents, the support person/advisor cannot be another complainant or respondent. The support person/advisor does not serve as an advocate on behalf of the complainant or respondent, may not be actively involved in any proceedings, and must agree to maintain the confidentiality of the process. A support person/advisor may be removed if he or she becomes disruptive or does not abide by the limitations discussed in the previous sentence. A support person/advisor will be asked to sign an affirmation that he or she understands his or her role in the process.

#### 5. Pending Criminal Investigation

Some instances of sexual misconduct may also constitute criminal conduct. In such instances, the complainant is also encouraged to file a report with the appropriate law enforcement authorities and, if requested, the University will assist the complainant in doing so. The pendency of a criminal investigation, however, does not relieve the University of its responsibilities under Title IX. Therefore, to the extent doing so does not interfere with any criminal investigation, the University will proceed with its own investigation and resolution of the complaint.

#### 6. Rights of the Parties

During the investigation and resolution of a complaint, the complainant and respondent shall have equal rights. They include:

- Equal opportunity to identify and have considered witnesses and other relevant evidence
- Similar and timely access to all information considered by the Investigating Officer and Hearing Panel
- Equal opportunity to review any statements or evidence provided by the other party
- Equal access to review and comment upon any information independently developed by the Investigating Officer and/or Hearing Panel should the Investigating Officer and/or Hearing Panel share such information with the other party
- Equal opportunity to appeal determinations pursuant to Section III, below

**B. Commencement of the Investigation Phase**

Once a complaint is made, the Investigating Officer will commence an investigation of it as soon as practicable. The purpose of the investigation is to determine whether it is more likely than not that the alleged behavior occurred and, if so, whether it constitutes sexual misconduct. During the course of the investigation, the Investigating Officer may receive counsel from University administrators, the University's attorneys, or other parties as needed.

In certain narrow circumstances, the University may commence an investigation even if the complainant requests that the matter not be pursued. In such a circumstance, the Investigating Officer will take all reasonable steps to investigate and respond to the matter in a manner that is informed by the complainant's articulated concerns.

**C. Content of the Investigation**

During the investigation, the complainant will have the opportunity to describe his or her allegations and present supporting witnesses or other evidence. The respondent will have the opportunity to respond to the allegations and present supporting witnesses or other evidence. The Investigating Officer will review the statements and evidence presented and may, depending on the circumstances, interview others with relevant knowledge, review documentary materials, and take any other appropriate action to gather and consider information relevant to the complaint. All parties and witnesses involved in the investigation are expected to cooperate and provide complete and truthful information.

**D. Conclusion of the Investigation Phase**

At the conclusion of the investigation, the Investigating Officer will prepare a written report. The written report will explain the scope of the investigation and evidence considered and give a recommendation (1) as to whether, by a preponderance of the evidence, sexual misconduct occurred and (2) regarding sanctions and remedial measures, if any. The report will be provided to the Hearing Panel.

**E. Hearing Panel**

The Hearing Panel will consist of 3 faculty and/or staff members appointed by the Title IX Coordinator. These panel members will be chosen from a pool of faculty and staff members who have received training on issues related to sexual misconduct and the hearing process. When appointing a Hearing Panel, possible conflicts will be considered. One panel member will be appointed as the Chair, and the Chair is responsible for directing the Hearing.

The make-up of the panel will be different depending on the status of the parties.

**F. Hearing Phase**

The Hearing Panel is tasked with making the ultimate determination as to whether, by a preponderance of the evidence, sexual misconduct occurred. The Hearing Panel will

review the written report prepared by the Investigating Officer and allow each party to provide an oral or written statement. The Hearing Panel may ask questions of the parties and may request additional information from others with knowledge of the circumstances surrounding the complaint.

When requested, the Hearing Panel will make arrangements so that the complainant and respondent are not present in the same room at the same time during the hearing.

**G. Resolution**

At the conclusion of the hearing, the Hearing Panel will deliberate in private. The Chair of the Hearing Panel is responsible for creating a written report with the Hearing Panel's determination. The written report will explain the scope of the hearing, identify findings of fact, and state whether any allegations in the complaint were found to be substantiated by a preponderance of the evidence.

If the written report determines that sexual misconduct occurred, the Chair shall set forth in an addendum to the written report those steps necessary to maintain an environment free from discrimination and harassment and to protect the safety and well-being of the complainant and other members of the University Community. Such actions will also include reasonable steps to correct the effects of such conduct on the complainant and others and to prevent the recurrence of discrimination, harassment, and retaliation. Examples of such action include: no-contact orders, classroom reassignment, the provision of counseling or other support services, training, and discipline for the perpetrator, including up to termination, expulsion, or other appropriate institutional sanctions. The finalized report and any addendum will be delivered to the Title IX Coordinator.

The complainant and the respondent will receive a copy of the Hearing Panel's written report and any addendum within three (3) days of its completion. The report will be sent via institutional email or hand-delivered by the Title IX Coordinator. If necessary, the version of the addendum provided to the complainant and/or respondent will be redacted to ensure that information concerning any remedial and/or disciplinary measures is disclosed in a manner consistent with Title IX, the Family Educational Rights and Privacy Act ("FERPA"), and the Clery Act.

The written report of the Hearing Panel, and the addendum if applicable, shall be final subject only to the right of appeal set forth in Section III, below.

**H. Special Procedure Concerning Complaints Against the President, the Title IX Coordinator, or Other Administrators Ranked Higher than the Title IX Coordinator**

If a complaint involves alleged conduct on the part of the University's President, the University's Board of Trustees ("Board") will designate the Investigating Officer. Based on the information gathered by the investigation, the Board will prepare and issue the written report determining the complaint. The determination of the Board is final and not subject to appeal.

If a complaint involves alleged conduct on the part of the Title IX Coordinator or any administrator ranked higher than the Title IX Coordinator, the President will designate the Investigating Officer. Based on the information gathered by the investigation, the President will prepare and issue the written report determining the complaint. The determination of the President is final and not subject to appeal.

### **III. APPEALS**

#### **A. Grounds for Appeal**

The complainant or respondent may appeal the determination of a complaint only on the following grounds:

- There is a substantial likelihood that newly discovered information, not available at the time evidence was presented to the Investigating Officer, would result in a different decision
- There was a procedural error significant enough to call the outcome into question
- There was a clear error in factual findings
- Bias or prejudice on the part of the Investigating Officer or Hearing Panel, or
- The punishment or the corrective action imposed is disproportionate to the offense

#### **B. Method of Appeal**

Faculty members and students should file appeals with the Provost. Staff should file appeals with the Vice President for Finance. For purposes of these appeal procedures, the Provost and Vice President for Finance will be referred to as the “Appellate Officer.”

Appeals must be filed within seven (7) days of receipt of the Hearing Panel’s written report determining the outcome of the complaint. The appeal must be in writing and contain the following:

- Name of the complainant
- Name of the respondent
- A statement of the determination of the complaint, including corrective action if any
- A detailed statement of the basis for the appeal including the specific facts, circumstances, and argument in support of it, and
- Requested action, if any

Upon receipt of an appeal, the Appellate Officer will promptly notify the non-appealing party that an appeal has been filed.

The individual making the appeal may request a meeting with the Appellate Officer, but the decision to grant a meeting is within the Appellate Officer's discretion. However, if a meeting is granted, then the other party will be granted a similar opportunity.

**C. Resolution of the Appeal**

The Appellate Officer will resolve the appeal within ten (10) days of receiving it and may take any and all actions that he/she determines to be in the interest of a fair and just decision. The parties will be notified in writing if the Appellate Officer's decision will take longer than 10 days. The decision of the Appellate Officer is final. The Appellate Officer shall issue a short and plain, written statement of the resolution of the appeal, including any changes made to the Hearing Panel's previous written determination and/or the sanctions and remedial measures imposed. The written statement shall be provided to the complainant, respondent, and the Title IX Coordinator within three (3) days of the resolution.

**IV. DOCUMENTATION**

Throughout all stages of the investigation, resolution, and appeal, the Investigating Officer, Chair of the Hearing Panel, Title IX Coordinator, and Appellate Officer, as the case may be, are responsible for maintaining documentation of the investigation and appeal, including documentation of all proceedings conducted under these Complaint Resolution Procedures, which may include written findings of fact, transcripts, and audio recordings.

**V. INTERSECTION WITH OTHER PROCEDURES**

These complaint resolution procedures are the exclusive means of resolving complaints alleging violations of the Sexual Misconduct Policy. To the extent there are any inconsistencies between these complaint resolution procedures and other University grievance, complaint, or discipline procedures, these complaint resolution procedures will control the resolution of complaints alleging violations of the Sexual Misconduct Policy.