

## Process A: Policy 13.02

### RESOLUTION PROCESS FOR ALLEGED SEXUAL HARASSMENT VIOLATIONS OF POLICY 13.02 DISCRIMINATION, HARASSMENT, AND SEXUAL MISCONDUCT (KNOWN AS “PROCESS A”)

*See Policy 13.02 for Definitions*

#### **1. Overview**

The University of Northern Iowa (referred to as “University” or “UNI”) will act on any report or Formal Complaint alleging violation of UNI Policy 13.02 Discrimination, Harassment, and Sexual Misconduct (“the Policy”) that is received by the Title IX Coordinator<sup>1</sup> or any other Official with Authority (OWA) by applying these procedures, known as “Process A.”

These procedures apply **only** to allegations of sexual harassment that, if true, would meet the definition of Title IX Sexual Harassment as defined in Section 14 of the Policy. Process A applies to University programs and activities within the United States.

See Process B for a description of the procedures applicable to the resolution of other forms of prohibited conduct. Process B can also apply to sexual harassment (including sexual assault, dating violence, domestic violence, and stalking, as defined above) when jurisdiction does not fall within Process A, as determined by the Title IX Coordinator.

#### **2. Initial Assessment**

Following receipt of a report or Formal Complaint of an alleged violation of the Policy, the Title IX Coordinator<sup>2</sup> engages in an initial assessment, typically within one to five business days. The Title IX Coordinator will contact the Complainant to discuss resources and options, to ensure they are aware of the right to have an Advisor, and to offer Supportive Measures.

When a report is received, the Title IX Coordinator seeks to determine if the person impacted chooses to file a Formal Complaint.

- If they do not choose to do so, the Title IX Coordinator determines whether to initiate a Formal Complaint.
- If a Formal Complaint is received, the Title IX Coordinator works with the Complainant to determine next steps.
- If an Informal Resolution option is preferred, the Title IX Coordinator assesses whether the complaint is suitable for Informal Resolution and may seek to determine if the Respondent is also willing to engage in Informal Resolution.

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<sup>1</sup> All references herein to a Title IX Coordinator also include a designee of the Title IX Coordinator.

<sup>2</sup> If circumstances require, the President or Title IX Coordinator will designate another person to oversee the process below should an allegation be made about the Coordinator or the Coordinator be otherwise unavailable or unable to fulfill their duties.

- If a Formal Complaint Process is requested, the Title IX Coordinator determines if the alleged misconduct falls within the scope of the Title IX regulations.<sup>3</sup>
- If it does, the Title IX Coordinator will initiate the investigation.
- If it does not, the Title IX Coordinator will “dismiss” the complaint, and may refer the matter for resolution under Process B. Please note that dismissing a complaint under the Title IX regulations does not limit the University’s authority to address a Formal Complaint with an appropriate process and remedies.

### **3. Dismissal (Mandatory and Discretionary)**<sup>4</sup>

The University must dismiss a Formal Complaint, if it is determined that:

- The conduct alleged in the Formal Complaint would not constitute Title IX Sexual Harassment as defined in Section 14 of the Policy even if proved; or
- The conduct alleged did not occur in an educational program or activity controlled by the University (including buildings or property controlled by recognized student organizations) and/or the University does not have control of the Respondent; or
- The conduct alleged did not occur against a person in the United States; or

The University may dismiss a Formal Complaint or any allegations therein if, at any time during the investigation or hearing:

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

Upon any dismissal, the University will promptly send written notice of the dismissal and the rationale for doing so simultaneously to the parties.

The decision regarding a dismissal of a Formal Complaint may be appealed by either party under the procedures in Section 30 below.<sup>5</sup>

### **4. Right to an Advisor**

The parties may each have an Advisor of their choice present with them for all meetings, interviews, and hearings within the resolution process, if they so choose. The parties may select whoever they wish to serve as their Advisor. Parties also have the right to choose not to have an Advisor in the initial stages of the resolution process, prior to a hearing.

The Advisor may be a friend, mentor, family member, attorney, advocate, or any other individual a party chooses to advise, support, and/or consult with them throughout the resolution process. The parties may choose an Advisor from inside or outside of the University community.

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<sup>3</sup> At the time of filing a Formal Complaint, the Complainant must be participating in or attempting to participate in the education program or activity of the University.

<sup>4</sup> These dismissal requirements are mandated by the 2020 Title IX Regulations, 34 CFR Part 106.45.

<sup>5</sup> A Complainant who decides to withdraw a complaint may later request to reinstate it or refile it.

The University may permit parties to have more than one Advisor upon special request to the Title IX Coordinator. The decision to grant this request is at the sole discretion of the Title IX Coordinator and will be granted equitably to all parties.

The Title IX Coordinator will also offer to assign a trained Advisor for any party if the party so chooses. If the parties choose an Advisor from the pool available from the University, the Advisor will be trained by the University and be familiar with the University's resolution process.

If the parties choose an Advisor from outside the pool of those identified by the University, the Advisor may not have been trained by the University and may not be familiar with University policies and procedures.

The parties are expected to inform the Title IX Coordinator of the identity of their Advisor as soon as possible.

A party may elect to change their Advisor during the process and is not obligated to use the same Advisor throughout. The parties are expected to provide timely notice to the Title IX Coordinator if they change their Advisor at any time. Parties are expected to inform the Title IX Coordinator of the identity of their hearing Advisor at least two (2) business days before the hearing.

As a public entity, the University honors the Weingarten rights of employees. For parties who are entitled to union representation, the University will allow the unionized employee to have their union representative (if requested by the party) as well as an Advisor of their choice present for all meetings. To uphold the principles of equity, the other party will also be permitted to have two Advisors.

#### **a. Advisors in Hearings/University-Appointed Advisor**

Under Title IX regulations, a form of cross examination questioning of the parties and witnesses is required during the hearing, but the questioning must be conducted by the parties' Advisors. The parties are not permitted to directly question each other or any witnesses. If a party does not have an Advisor for a hearing, the University will appoint a trained Advisor for the limited purpose of conducting any questioning of the other party or witnesses.

A party may reject this appointment and choose their own Advisor, but they may not proceed at a hearing without an Advisor. If the party's Advisor will not conduct questioning, the University will appoint an Advisor who will do so, regardless of the participation or non-participation of the advised party in the hearing itself. Questioning of the parties and witnesses will also be conducted by the Decision Maker(s) during the hearing.

#### **b. Advisor Violations of University Policy**

All Advisors are subject to the same University policies and procedures, whether or not they are members of the University community. Advisors are expected to advise their advisees without disrupting proceedings. The Advisor may not make a presentation or speak on behalf of their advisee during any meetings or proceedings except to conduct questioning during the designated portion of a hearing.

The parties are expected to ask and respond to questions on their own behalf throughout the investigation phase of the resolution process. Although the Advisor generally may not speak on behalf of their advisee, the Advisor may consult with their advisee, either privately as needed, or by conferring or passing notes during any meeting or interview. For longer or more involved discussions, the parties and their Advisors should ask for breaks to allow for private consultation.

Any Advisor who oversteps their role as defined by these procedures will be warned only twice. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the proceeding will be ended, and/or other appropriate measures will be implemented. Subsequently, the Title IX Coordinator will determine how to address the Advisor's non-compliance.

### **c. Sharing Information with the Advisor**

The University expects that the parties may wish to have the University share documentation and evidence related to the allegations with their Advisors. Parties may share this information directly with their Advisor or other individuals as they wish.

The University also provides a release form that authorizes the University to share such information directly with a party's Advisor. The parties must either complete and submit this form to the Title IX Coordinator or provide similar documentation demonstrating consent to a release of information to the Advisor before the University is able to share records with an Advisor.

If a party requests that all communication be made through their attorney and/or Advisor, the University will not comply with that request. The University will communicate directly with the party.

### **d. Expectations of an Advisor**

The University generally expects an Advisor to adjust their schedule to allow them to attend University meetings when planned, but may change scheduled meetings to accommodate an Advisor's inability to attend, if doing so does not cause an unreasonable delay.

The University may also make reasonable provisions to allow an Advisor who cannot attend in person to attend a meeting by telephone, video conferencing, or other similar technologies as may be convenient, reasonable, and available.

## **5. Informal Resolution Process**

Prior to implementing Informal Resolution, a Complainant must submit a Formal Complaint. The University will provide the parties with written notice of the specific allegations and any sanctions or measures that may result should the Respondent be found responsible following the conclusion of the Formal Process, including information regarding any records that will be maintained or shared by the University. Further clarification of details provided in the notice is provided in Section 7. If after notice of a Formal Complaint, either party wishes to initiate Informal Resolution they should contact the Title IX Coordinator. The Title IX Coordinator determines if Informal Resolution is appropriate under the circumstances. Informal Resolution is not available to resolve allegations that a University employee sexually harassed a student.

The University will obtain voluntary, written confirmation that all parties wish to resolve the matter through Informal Resolution before proceeding and will not pressure the parties to participate in Informal Resolution.

As part of the Informal Resolution Process, the Respondent may accept responsibility for violating policy, accept a sanction, and end the resolution process.

Any party participating in Informal Resolution can stop the process at any time and begin or resume the Formal Complaint Process.

The Title IX Coordinator maintains records of any Informal Resolution that is agreed upon by the parties, and failure to abide by the resolution agreement may result in appropriate responsive/disciplinary actions.

Results of complaints resolved by Informal Resolution are not subject to appeal.

## **6. Process Team**

The Formal Complaint Process relies on a team of trained professionals, including the Title IX Coordinator, Deputy Coordinators, Facilitators, Investigators, Decision Makers, Appeal Officers, and Advisors, to carry out the process. The list of current team members can be found at [civilrights.uni.edu/about/title-ix-team](https://civilrights.uni.edu/about/title-ix-team).

### **a. Process Team Member Roles**

Members of the Process Team are trained on a regular basis in accordance with Title IX regulations.<sup>6</sup> Members are selected to serve in the following roles corresponding with their training and at the discretion of the Title IX Coordinator:

- Intake of and initial guidance pertaining to complaints;
- Advisor to the parties;
- Facilitator for Informal Resolution;
- Initial assessment;
- Investigator;
- Hearing Facilitator (process administrator, no decision making role);
- Decision Maker regarding the complaint; and/or
- Appeal Officer.

### **b. Process Team Member Appointment**

The Title IX Coordinator, in consultation with the President, appoints the Process Team<sup>7</sup>, which acts with appropriate independence and impartiality. Although members of the Process Team may be trained in a variety of skill sets and rotate amongst the different roles listed above in different cases, the University can also designate permanent roles for individuals in the Team, using others as substitutes or to provide greater depth of experience when necessary. This process of role

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<sup>6</sup> The materials used to train all members of the Process Team are publicly posted here: <https://civilrights.uni.edu/about/title-ix-team>.

<sup>7</sup> This does not preclude the University from having all members of the Process Team go through an application and/or interview/selection process.

assignment may be the result of particular skills, aptitudes, or talents identified in members of the Team that make them best suited to particular roles. The University may also choose to outsource any of the above roles to external consultants as long as such consultants are appropriately trained.

## **7. Formal Complaint Process: Notice of Investigation and Allegations**

The Title IX Coordinator will provide written notice of the investigation and allegations (the “NOIA”) to the Respondent upon commencement of the Formal Complaint Process. This facilitates the Respondent’s ability to prepare for the initial interview and to identify and choose an Advisor to accompany them. The NOIA is also copied to the Complainant.

The NOIA will include:

- A meaningful summary of all of allegations;
- The identity of the involved parties (if known);
- The conduct allegedly constituting Title IX Sexual Harassment;
- The date and location of the alleged incident(s) (if known);
- The specific policy implicated;
- A description of the applicable procedures;
- A statement of the potential sanctions/responsive actions that could result;
- A statement that the University presumes the Respondent is not responsible for the alleged conduct unless and until the evidence supports a different determination;
- A statement that determinations of responsibility are made at the conclusion of the Formal Complaint process;
- A statement that the parties may have an Advisor of their choice, who may be, but is not required to be an attorney;
- A statement that the parties will be given an opportunity to inspect and review all directly related and/or relevant evidence obtained through the investigation;
- A statement informing the parties that the University’s Policy 13.02 prohibits knowingly making false statements, including knowingly submitting false information during the resolution process;
- A statement about the University’s policy on retaliation;
- Detail on how the parties may request disability accommodations during the process;
- A link to the University’s Sexual Misconduct Options and Resources Guide;
- The name(s) of the Investigator(s), along with a process to identify to the Title IX Coordinator, in advance of the interview process, any conflict of interest that the party believes the Investigator(s) may have; and
- An instruction to preserve any evidence that is directly related to the allegations.

If, in the course of an investigation, the University decides to investigate allegations that are not included in the NOIA, the University will provide notice of the additional allegations to the parties whose identities are known.

The NOIA will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address(es) of the parties as indicated in official University records, or emailed to the parties’ University-issued email or designated accounts. Once mailed, emailed, and/or received in person, notice will be presumptively delivered.

## **8. Resolution Timeline**

The University will make a good faith effort to complete the resolution process in a timely manner. The Title IX Coordinator will provide notice and rationale for any extensions or delays to the parties as appropriate, as well as an estimate of how much additional time will be needed to complete the process.

The University may undertake a short delay in its investigation (several days to a few weeks) if law enforcement requests to temporarily delay the investigation.

## **9. Ensuring Impartiality**

No individual materially involved in the administration of the resolution process [including the Title IX Coordinator, Investigator(s), and Decision Maker(s)] may have a conflict of interest or bias for a party generally, or for a specific Complainant or Respondent.

The Title IX Coordinator will vet the assigned Investigator(s) and Decision Maker(s) to ensure impartiality by ensuring there are no actual or apparent conflicts of interest or disqualifying biases. The parties may, at any time during the resolution process, raise a concern regarding bias or conflict of interest, and the Title IX Coordinator will determine whether the concern is reasonable. If so, another person will be assigned to that role. If the bias or conflict relates to the IX Coordinator, concerns should be raised with the University President who will review the concern. If the President finds the assigned Title IX Coordinator to have a bias or conflict of interest, another person will be assigned to the role of the Title IX Coordinator.

The Formal Complaint Process involves an objective evaluation of all relevant evidence obtained through this process. Credibility determinations may not be based solely on an individual's status or participation as a Complainant, Respondent, or witness.

The University operates with the presumption that the Respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of this process.

## **10. Investigation Process**

All investigations are thorough, reliable, impartial, prompt, and fair. Investigations involve interviews with all relevant parties and witnesses; obtaining available, relevant evidence; and identifying sources of expert information, as necessary.

All parties have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence and expert witnesses, and to fully review and respond to all evidence on the record. However, the University, not the parties, has the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility.

The Investigator(s) will:

- Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.
- Make good faith efforts to notify the parties of any meeting or interview involving the other party, in advance when possible.

- When participation of a party is expected, provide that party with written notice of the date, time, and location of the meeting, as well as the expected participants and purpose.
- Allow each party the opportunity to suggest witnesses and questions they wish the Investigator(s) to ask of the other party and witnesses, and document in the report which questions were asked, with a rationale for any changes or omissions.
- Interview all available, relevant witnesses and conduct follow-up interviews as necessary.
- Provide regular status updates to the parties throughout the investigation.
- Write a comprehensive investigation report summarizing the relevant evidence without making any conclusions or recommendations as part of the report.
- At least ten (10) days prior to any hearing, provide the parties and their respective Advisors, if any, an electronic or hard copy of the draft investigation report as well as an opportunity to inspect and review all of the evidence obtained as part of the investigation that is directly related to the reported misconduct, including evidence upon which the University does not intend to rely in reaching a determination, for a ten (10) business day review and comment period. The parties may elect to waive the full ten days.
- Make any necessary revisions and finalize the report. The Investigator(s) should document all rationale for any changes made after the review and comment period.
- Share the report with the Title IX Coordinator and/or legal counsel for their review and feedback.
- Share the final report with all parties and their Advisors through electronic transmission or hard copy at least ten (10) business days prior to a hearing.

### **11. Remote Investigation Interviews**

Although in-person interviews for parties and all potential witnesses are ideal, circumstances (e.g., study abroad, summer break) may require individuals to be interviewed remotely. Zoom or similar technology may be used for interviews if the Investigator(s) determines that timeliness or efficiency dictates a need for remote interviewing. The University will take appropriate steps to reasonably ensure the security/privacy of remote interviews.

### **12. Recording of Interviews**

It is standard practice for Investigators to record all interviews conducted as part of the Formal Complaint Process. The transcript of each interview will be provided to the respective Parties and witnesses for their review after each interview. Transcripts will be considered as evidence.

All involved parties must be made aware of the audio and/or video recording. No unauthorized audio or video recording of any kind is permitted during investigation meetings.

### **13. Evidentiary Considerations in the Investigation**

The investigator(s) will not consider evidence about the Complainant's sexual predisposition or prior sexual behavior, unless 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 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.



The Investigator(s) will not use a party's confidential medical records unless the party has provided a release for such information to be utilized in the investigation and resolution process.

#### **14. Referral for Hearing**

Provided that the complaint is not resolved through Informal Resolution, once the final investigation report is shared with the parties, the Title IX Coordinator will refer the matter for a hearing. The Title IX Coordinator will select an appropriate Decision Maker. The Decision Maker will not have had any previous involvement in the complaint process, including intake, investigation, or any informal process. The Title IX Coordinator may not serve as a Decision Maker.

The hearing will convene at a time determined by the Decision Maker. The hearing cannot be less than ten (10) business days from the conclusion of the investigation--when the final investigation report is transmitted to the parties--unless all parties and the Decision Maker agree to an expedited timeline.

#### **15. Notice of Hearing**

No less than ten (10) business days prior to the hearing, the Title IX Coordinator or the Decision Maker will send notice of the hearing to the parties via email, mail, or hand delivery. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

The notice will contain:

- A description of the alleged violation(s), a description of the applicable procedures, and a statement of the potential sanctions/responsive actions that could result.
- The time, date, and location of the hearing.
- Any technology that will be used to facilitate the hearing.
- Information about the option for the live hearing to occur with the parties located in separate rooms using technology that enables the Decision Maker(s) and parties to see and hear a party or witness answering questions. Such a request must be made to the Title IX Coordinator at least five (5) business days prior to the hearing.
- A list of all those who will attend the hearing, including the identity of the Decision Maker. Any party may object to any Decision Maker on the basis of demonstrated bias. Any objection to the Decision Maker must be made in writing to the Title IX Coordinator at least five (5) business days prior to the hearing. The Title IX Coordinator will determine whether the Decision Maker has an impermissible conflict of interest or bias.
- Information on how the hearing will be recorded and how the parties may access the recording after the hearing.
- A statement that if any party or witness does not appear at the scheduled hearing, the hearing may be held in their absence. For compelling reasons, the Decision Maker may reschedule the hearing.
- Notification that the parties may have the assistance of an Advisor of their choosing at the hearing and will be required to have one present at the hearing to ask any questions the party may desire to ask. The party must notify the Title IX Coordinator if they do not have an Advisor, and the University will appoint an Advisor.
- A copy of all the materials provided to the Decision Maker about the matter, unless they have been provided to the parties already.
- An invitation to each party to submit to the Title IX Coordinator an impact statement pre-

hearing that will be provided to the Decision Maker for the purpose of determining sanctions only upon finding the Respondent(s) responsible for violating the policy.

- An invitation to contact the Title IX Coordinator to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing, at least five (5) business days prior to the hearing.

## **16. Pre-Hearing Meetings**

The Decision Maker may convene a pre-hearing meeting(s) with the parties and their Advisors to invite them to submit the questions or topics they wish to ask or discuss at the hearing, so that the Decision Maker can rule on their relevance ahead of time to avoid any improper evidentiary introduction in the hearing or provide recommendations for more appropriate phrasing. However, this does not preclude the Advisors from asking a question for the first time at the hearing or from asking for a reconsideration based on any new information or testimony offered at the hearing. The Decision Maker must document and share with each party their rationale for any exclusion or inclusion at any pre-hearing meeting.

Any witness scheduled to participate in the hearing must have been first interviewed by the Investigator unless all parties and the Decision Maker assent to the witness's participation in the hearing. The same holds for any evidence that is first offered at the hearing. If the parties and Decision Maker do not assent to the admission of the evidence newly offered at the hearing, the Decision Maker may delay the hearing and instruct that the investigation needs to be re-opened to consider that evidence before the hearing can proceed further.

The Decision Maker, **only** with full agreement of the parties, may decide in advance of the hearing that certain witnesses do not need to be present if their testimony was adequately summarized by the Investigator(s) in the investigation report, their testimony is not material to any disputed question of fact, or their testimony or the credibility of the witness is not disputed by a party or by the testimony of another witness.

At each pre-hearing meeting with a party and their Advisor, the Decision Maker will consider arguments that evidence identified in the final investigation report as relevant is, in fact, not relevant. Similarly, a party may argue that evidence identified in the investigation report as directly related but not relevant by the Investigator(s) may be relevant. The Decision Maker may rule on these arguments pre-hearing and will exchange those rulings with both/all of the parties prior to the hearing to assist in preparation for the hearing.

## **17. Alternative Hearing Participation Options**

If a party or parties prefer not to attend or cannot attend the hearing in person, the party should request alternative arrangements from the Title IX Coordinator at least five (5) business days prior to the hearing.

The Title IX Coordinator can arrange to use technology to allow remote testimony without compromising the fairness of the hearing. Remote options may also be needed for witnesses who cannot appear in person. Any witness who cannot attend in person should let the Title IX Coordinator know at least five (5) business days prior to the hearing so that appropriate arrangements can be made.

## **18. Evidentiary Considerations in the Hearing**

Any evidence that the Decision Maker determines is relevant may be considered with the exception of questions or evidence about the Complainant's sexual predisposition or prior sexual behavior, unless 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 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.

If a party or witness does not submit to questioning at the hearing, the Decision Maker cannot draw an inference regarding responsibility based solely on a party's or witness's absence from the hearing or refusal to answer questions.

Previous disciplinary action of any kind involving the Respondent may be considered in determining an appropriate sanction upon a determination of responsibility. This information is only considered at the sanction stage of the process and is shared with the Decision Maker only if the Respondent is found responsible.

The parties may each submit a written impact statement prior to the hearing for the consideration of the Decision Maker at the sanction stage of the process only if a determination of responsibility is reached.

After the hearing, the Decision Maker renders a determination based on the preponderance of the evidence; whether it is more likely than not that the Respondent violated the Policy as alleged.

## **19. Hearing Procedures**

Participants at the hearing will include the Decision Maker, the hearing Facilitator, the Investigator(s) who conducted the investigation, the parties (or the president or designee, and one additional organizational representative when an organization is the Respondent), Advisors to the parties, any witnesses, anyone providing authorized accommodations or assistive services, and anyone else authorized to be present by the Title IX Coordinator.

The Decision Maker will answer all questions of procedure. Anyone appearing at the hearing to provide information will respond to questions on their own behalf.

The Decision Maker will allow each witness who has relevant information to appear at a portion of the hearing in order to respond to questions from the Decision Maker and the parties (through their Advisor), after which time each witness will then be excused. Witnesses who are not a party or Advisor to a party will not be allowed to observe or participate in other portions of the hearing.

## **20. Joint Hearings**

In hearings involving more than one Respondent or in which two (2) or more Complainants have accused the same individual of substantially similar conduct, the default procedure will be to hear the allegations jointly.

However, the Title IX Coordinator may permit the investigation and/or hearings pertinent to each Complainant and/or Respondent to be conducted separately if there is a compelling reason to do so. In joint hearings, separate determinations of responsibility will be made for each Respondent with respect to each alleged policy violation.

### **21. The Order of the Hearing – Introductions and Explanation of Procedure**

The Decision Maker explains the procedures and introduces the participants. The Decision Maker then conducts the hearing according to the hearing script. At the hearing, recording, witness logistics, party logistics, curation of documents, separation of the parties, and other administrative elements of the hearing process are managed by a hearing Facilitator appointed by the Title IX Coordinator. The hearing Facilitator may attend to: logistics of rooms for various parties/witnesses as they wait; flow of parties/witnesses in and out of the hearing space; ensuring recording and/or virtual conferencing technology is working as intended; copying and distributing materials to participants, as appropriate, etc.

### **22. Investigator Presents the Final Investigation Report**

The Investigator(s) will then present a summary of the final investigation report, by identifying questions of fact that are contested by the parties or witnesses and those that are not, and will be subject to questioning by the Decision Maker and the parties (through their Advisors). The Investigator(s) will be present during the entire hearing. Investigator(s) will refrain from testifying regarding their opinions on whether or not a party should be found responsible for the alleged conduct.

### **23. Testimony and Questioning**

Once the Investigator(s) present(s) the report and responds to questions, the parties and witnesses may provide relevant information in turn, beginning with the Complainant, and then in the order determined by the Decision Maker. Each party and witness will submit to questioning by the Decision Maker(s) and then by the parties through their Advisors (“cross-examination”).

All questions are subject to a relevance determination by the Decision Maker. The Advisor, who will remain seated during questioning, will pose the proposed question orally, electronically, or in writing (orally is the default, but other means of submission may be permitted by the Decision Maker upon request if agreed to by all parties and the Decision Maker), the proceeding will pause to allow the Decision Maker to consider the proposed question, and the Decision Maker will determine whether the question is relevant.

The Decision Maker will then state their decision on the record and advise the party/witness to whom the question was directed, accordingly. The Decision Maker will explain any decision to exclude a question as not relevant.

### **24. Refusal to Submit to Cross-Examination Questioning and Inferences**

Any party or witness may choose not to offer evidence and/or answer questions at the hearing, either because they do not attend the hearing, or because they attend but refuse to participate in some or all of the questioning.

The Decision Maker can only rely on whatever relevant evidence is available through the investigation report and/or hearing in making the ultimate determination of responsibility. The Decision Maker has the discretion to consider and assign weight to any statement or evidence of a party or witness in reaching a determination regarding responsibility. The Decision Maker, considering the totality of the circumstances, also has the discretion to consider and assign weight to any statement appearing in documents such as police reports, Sexual Assault Nurse Examiner (SANE) documents, medical reports, and other documents, even if those documents contain statements of a party or witness who does not submit to questioning during the hearing.

The Decision Maker may not draw any inference solely from a party's or witness's absence from the hearing or refusal to submit to questioning.

## **25. Hearing Recordings**

Hearings are recorded by the University for purpose of review in the event of an appeal. The parties, witnesses, or Advisors may not record the proceedings.

The Decision Maker, the parties, their Advisors, and appropriate administrators of the University will be permitted to listen to the recording in a secure environment determined by the Title IX Coordinator. No person will be given or be allowed to make a copy of the recording without permission of the Title IX Coordinator.

## **26. Decision Making, Standard of Proof, and Notice to Parties**

The Decision Maker will determine whether the Respondent is responsible or not responsible for the policy violation(s) in question using the preponderance of the evidence standard of proof.

When there is a finding of responsibility on one or more of the allegations, the Decision Maker may then consider the previously submitted party impact statements in determining appropriate sanction(s).

The Decision Maker will ensure that each of the parties has an opportunity to review any impact statement submitted by the other party(ies). The Decision Maker may – at their discretion – consider the statements, but they are not binding.

The Title IX Coordinator will provide the Decision Maker with any impact statements received and any pertinent conduct history collected from the appropriate administrators. The Decision Maker will determine the appropriate sanction(s) in consultation with the Title IX Coordinator who will, in turn, consult with appropriate administrators. Appropriate administrators typically include the Provost (for matters pertaining to faculty), the Director of Human Resources (for employees), and the Dean of Students (for students).

The Decision Maker will then prepare a Written Determination and deliver it to the Title IX Coordinator. This Written Determination will include the following:

- Identification of the allegations potentially constituting Title IX Sexual Harassment;
- A description of the procedural steps taken from the receipt of the Formal Complaint through the determination;
- 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 University imposes on the Respondent, and whether remedies designed to restore or preserve equal access to the University's education program or activity will be provided by the University to the Complainant; and
- The University's procedures and permissible bases for the Complainant and Respondent to appeal.

This Written Determination must be submitted to the Title IX Coordinator within five (5) business days of the conclusion of the hearing, unless the Title IX Coordinator grants an extension. If an extension is granted, the Title IX Coordinator will notify the parties. Upon receipt of the Written Determination from the Decision Maker, the Title IX Coordinator will promptly transmit the Written Determination simultaneously to the parties.

Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official University records, or emailed to the parties' University-issued email or otherwise approved account. Once mailed, emailed, and/or received in person, notice will be presumptively delivered.

## **27. Statement of the Rights of the Parties**

- The right to an equitable investigation and resolution of all credible allegations of prohibited discrimination, harassment, or retaliation made in good faith to University officials.
- The right to timely written notice of all alleged violations, including the identity of the parties involved (if known), the misconduct being alleged, the date and location of the alleged misconduct (if known), the implicated policies and procedures, and possible sanctions.
- The right to timely written notice of any material adjustments to the allegations (e.g., additional incidents or allegations, additional Complainants, unsubstantiated allegations) and any adjustments needed to clarify potentially implicated policy violations.
- The right to be informed in advance of any public release of information regarding the allegation(s) or underlying incident(s), whenever possible.
- The right not to have any personally identifiable information released to the public without consent provided, except to the extent permitted by law.
- The right to be treated with respect by University officials.
- The right to have University policies and procedures followed without material deviation.
- The right not to be pressured to mediate or otherwise informally resolve any reported misconduct.
- The right not to be discouraged by University officials from reporting discrimination, harassment, and/or retaliation to both on-campus and off-campus authorities.
- The right to be informed by University officials of options to notify proper law enforcement authorities, including on-campus and local police, and the option(s) to be assisted by University authorities in notifying such authorities, if the party so chooses. This also includes the right not to be pressured to report, as well.
- The right to have allegations of violations of this Policy responded to promptly and with sensitivity by University law enforcement and/or other University officials.

- The right to be informed of available interim actions and Supportive Measures, such as counseling; advocacy; health care; legal, student financial aid, visa, and immigration assistance; or other services, both on campus and in the community.
- The right to a University-implemented no-contact order (or a university no-trespass order against a non-affiliated third party) when a person has engaged in or threatens to engage in stalking, threatening, harassing, or other improper conduct.
- The right to be informed of available Supportive Measures to assist with changing academic, living, and/or working situations after an alleged incident of discrimination, harassment, and/or retaliation, if such changes are reasonably available. No formal report, or investigation, either campus or criminal, needs to occur before this option is available. Such Supportive Measures may include, but are not limited to:
  - Relocating an on-campus student's housing to a different on-campus location;
  - Assistance from University staff in completing the relocation;
  - Changing an employee's work environment (e.g., reporting structure, office/workspace relocation);
  - Visa/immigration assistance;
  - Exam, paper, and/or assignment rescheduling or adjustment;
  - Receiving an incomplete in, or a withdrawal from, a class (may be retroactive);
  - Transferring class sections;
  - Temporary withdrawal/leave of absence (may be retroactive);
  - Campus safety escorts; and
  - Alternative course completion options.
- The right to have the University maintain such actions for as long as necessary and for Supportive Measures to remain private, provided privacy does not impair the University's ability to provide the Supportive Measures.
- The right to receive sufficiently advance written notice of any meeting or interview involving the other party, when possible.
- The right to ask the Investigator and Decision Maker to identify and question relevant witnesses, including expert witnesses.
- The right to provide the Investigator and Decision Maker with a list of questions that, if deemed relevant by the Investigator or Decision Maker, may be asked of any party or witness.
- The right not to have irrelevant prior sexual history or character information admitted as evidence.
- The right to know the relevant and directly related evidence obtained and to respond to that evidence.
- The right to fair opportunity to provide the Investigator with their account of the alleged misconduct and have that account be on the record.
- The right to receive a copy of the investigation report, and all relevant and directly related evidence available and used to produce the investigation report, subject to the privacy limitations imposed by state and federal law, prior to the hearing, and the right to have at least ten (10) business days to review the report prior to the hearing.
- The right to respond to the draft investigation report, including comments providing any additional relevant evidence after the opportunity to review the draft investigation report, and to have that response on the record with the final investigation report.
- The right to be informed of the names of all witnesses whose information will be used to make a finding, in advance of that finding, when relevant.
- The right to regular updates on the status of the investigation and/or resolution.
- The right to have reports of alleged policy violations addressed by Investigators, Title IX Coordinators, and Decision Makers who have received relevant training.

- The right to preservation of privacy, to the extent possible and permitted by law.
- The right to meetings, interviews, and/or hearings that are closed to the public.
- The right to petition that any University representative in the process be recused on the basis of disqualifying bias and/or conflict of interest.
- The right to have an Advisor of their choice to accompany and assist the party in all meetings and/or interviews associated with the resolution process.
- The right to the use of the appropriate standard of evidence (preponderance of the evidence) to make a finding after an objective evaluation of all relevant evidence.
- The right to be present, including presence via remote technology, during all testimony given and evidence presented during any formal grievance hearing.
- The right to have an impact statement considered by the Decision Maker following a determination of responsibility for any allegation, but prior to sanctioning.
- The right to be promptly informed in a written Notice of Outcome letter of the finding(s) and sanction(s) of the resolution process and a detailed rationale of the decision (including an explanation of how credibility was assessed), delivered simultaneously (without undue delay) to the parties.
- The right to be informed in writing of when a decision by the University is considered final and any changes to the sanction(s) that occur before the decision is finalized.
- The right to be informed of the opportunity to appeal the finding(s) and sanction(s) of the resolution process, and the procedures for doing so in accordance with the standards for appeal established by the University.
- The right to a fundamentally fair resolution as defined in these procedures.

## **28. Sanctions**

In the event a Decision Maker finds a Respondent responsible for violating the Policy, the Decision Maker should consider the following factors when determining a sanction:

- The nature, severity of, and circumstances surrounding the violation(s);
- The Respondent's disciplinary history;
- Previous findings involving similar conduct;
- The need for sanctions to bring an end to the discrimination, harassment, and/or retaliation;
- The need for sanctions to prevent the future recurrence of discrimination, harassment, and/or retaliation;
- The need to remedy the effects of the discrimination, harassment, and/or retaliation on the Complainant and the community;
- The impact on the parties; and
- Any other information deemed relevant by the Decision Maker.

The sanctions will be implemented as soon as is feasible, either upon the outcome of any appeal or the expiration of the window to appeal without an appeal being requested. The Title IX Coordinator is responsible for effective implementation of any sanctions determined by a Decision Maker.



### a. Student Sanctions<sup>8</sup>

One or more of the following sanctions may be imposed upon a Respondent for being found responsible for a violation of Policy 13.02. Sanctions determined will be proportionate to the severity of the violation and to the cumulative conduct history of the Respondent. Sanctions may be noted on a Respondent's official academic transcript when the outcome requires the student's separation from the University for any period of time.

- 1.) **University**
  - a.) **Warning:** Official written notice of a violation of the Student Conduct Code, intended to draw attention to the fact that an individual's behavior violated University policy. Further violations may result in further disciplinary action and more severe sanctioning.
  - b.) **Disciplinary Probation:** Official notice of a violation of the Student Conduct Code indicating that the student is no longer within good social or behavioral standing with the university.
  - c.) **Suspension Held in Abeyance:** Separation from the University is paused for the period of the suspension. During this time other assigned sanctions must be completed as outlined. Failure to complete the other assigned sanctions as outlined or allegations of similar misconduct may result in immediate implementation of the suspension.
  - d.) **Disciplinary Suspension:** Separation from the University for a specified period of time. Eligibility to return as a student is contingent upon completion of specific conditions noted at the time of suspension.
  - e.) **Disciplinary Expulsion:** Permanent separation from the University.
- 2.) **Academic**
  - a.) **Registration Adjustment:** A review of a student's registration for current or upcoming semester(s) that may result in changes to their course schedule to address the impact the misconduct had on the health and wellbeing of another university community member.
  - b.) **Rescinding of Admission:** Admission to the University is rescinded for fraud, misrepresentation, or other serious violations committed by a student prior the start of attendance.
  - c.) **Withholding Degree:** Withholding a degree otherwise earned until the completion of the student conduct process, including the completion of sanctions imposed, if any.
  - d.) **Revocation of Degree:** With the agreement of the Provost and Executive Vice President for Academic Affairs, a degree awarded from the University may be revoked for fraud, misrepresentation, or other violations of university standards in obtaining the degree, or for other serious violations committed by a student prior to graduation.
- 3.) **Educational**
  - a.) **Work Service:** Required completion of a specific number of unpaid service hours to the University or an approved external agency.

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<sup>8</sup> The Student Sanctions section is from UNI Policy 3.02 *Student Conduct Code*. Certain decisions will require consultation with the Title IX Coordinator in addition to the respective administrative positions noted in specific sanctions.

- b.) **Alcohol Education:** Required educational activity designed to address the behavior the student was found responsible for with relation to alcohol policies while providing further education, a fee may be associated.
  - c.) **Drug Education:** Required educational activity designed to address the behavior the student was found responsible for with relation to drug policies while providing further education, a fee may be associated.
  - d.) **Other Educational Requirement(s):** Completion of a specific opportunity or activity deemed appropriate to the offense, focused on enhancing personal and/or community development.
  - e.) **Parental Notification:** Notice that a student's parent(s) or guardian(s) will receive communication of their students' involvement in the student conduct process.
- 4.) **Behavioral**
- a.) **Trespass:** Loss of access to a physical space or location.
  - b.) **Loss of Privileges:** Denial of specific privileges related to the violation(s) for a specific period of time. Limitation or exceptions may include but are not limited to (1) ineligibility to hold any office in any student organization by the University, (2) ineligibility to hold an elected or appointed office at the University, or (3) ineligibility to represent the University at an official function, event or intercollegiate competition as a player, manager, or student coach.
  - c.) **No Contact:** Directions to have no contact, by any means, with another university community member.
  - d.) **Deactivation:** Deactivation of a student organization or group associated with the university including a loss of all/any associated privileges for a specified period of time.
  - e.) **Restriction:** Loss of the ability to utilize a service or entity.
  - f.) **Restitution:** Requirement to provide compensation for damage caused to the University or another person's property. This is not a fine, but rather a repayment for labor costs and/or the value of the property destroyed, damaged, or stolen.
  - g.) **Fine:** A cost assessed to the student for reasonable expenses related to the misconduct.
- 5.) **Housing**
- a.) **Housing Reassignment:** Reassignment to another university housing facility.
  - b.) **Housing Suspension:** Separation from the University Housing & Dining for a specified period of time. Eligibility to return as a resident is contingent upon completion of specific conditions noted at the time of suspension.
  - c.) **Housing Expulsion:** Permanent separation from University Housing & Dining, including the privilege of living in or visiting any housing structure.

#### **b. Employee Sanctions/Responsive Actions**

Responsive actions for an employee who has engaged in discrimination, harassment, and/or retaliation include one or more of the following:

- Warning – verbal or written;
- Performance Improvement Plan;
- Enhanced supervision, observation, or review;
- Required counseling;
- Required training or education;

- Reduction in pay/salary decrease;
- Denial of pay increase;
- Loss of oversight or supervisory responsibility;
- Demotion;
- Transfer;
- Reassignment;
- Delay of tenure track progress;
- Assignment to new supervisor;
- Restriction of stipends, research, and/or professional development resources;
- Suspension with pay;
- Suspension without pay;
- Termination; and
- Other Actions: In addition to or in place of the above sanctions/responsive actions, the University may assign any other responsive actions as deemed appropriate.

## **29. Withdrawal or Resignation While Charges Pending**

### **a. Students**

Should a student Respondent decide to not participate in the resolution process, the process proceeds absent their participation to a reasonable resolution. Should a student Respondent permanently withdraw from the University, the resolution process typically ends, as the University no longer has disciplinary jurisdiction over the withdrawn student.

However, the University will continue to address and remedy any systemic issues, variables that may have contributed to the alleged violation(s), and any ongoing effects of the alleged harassment, discrimination, and/or retaliation.

If the student Respondent only withdraws or takes a leave for a specified period of time (e.g., one semester or term), the resolution process may continue remotely.

### **b. Employees**

Should an employee Respondent resign while the investigation of a Formal Complaint is pending, the resolution process typically ends, as the University no longer has disciplinary jurisdiction over the resigned employee.

However, the University will continue to address and remedy any systemic issues, variables that contributed to the alleged violation(s), and any ongoing effects of the alleged harassment, discrimination, and/or retaliation.

Should the employee be rehired by the University, the employee may be placed on administrative leave until the completion of the resolution process.

## **30. Appeals**

Any party may file an appeal. Any appeal must be submitted in writing to the Title IX Coordinator within five (5) business days of the delivery of the Notice of Outcome.

A single Appeal Officer will decide the appeal. No Appeal Officer will have been involved in the process of the complaint previously, including any prior appeal relating to a decision to dismiss the Formal Complaint.

#### **a. Grounds for Appeal**

Appeals can only be made on one or more of the following grounds:

- 1) Procedural irregularity that affected the outcome of the matter;
- 2) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and/or
- 3) The Title IX Coordinator, Investigator(s), or Decision Maker had a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent that affected the outcome of the matter.

Any appeal must summarize the grounds for the appeal. If the appeal does not assert one or more of the permissible grounds for appeal, the appeal will be denied by the Appeal Officer and the parties and their Advisors will be notified in writing of the denial and the rationale.

If the appeal asserts one or more of the permissible grounds for appeal under these procedures, then the Appeal Officer will notify the other party(ies) and their Advisors, and the Title IX Coordinator.

The other party(ies) and their Advisors will be mailed, emailed, and/or provided a hard copy of the appeal and be given five (5) business days to submit a written response to the Appeal Officer. All responses will be forwarded by the Appeal Officer to all parties for review and comment. Any reply to the response to the Appeal must be filed with the Appeal Officer within five (5) business days.

The Appeal Officer will review the appeal, any responses to the appeal, any reply statements filed, the Written Determination, and any information or evidence considered by the Decision Maker or Investigator in the course of the Formal Complaint process, and the Appeal Officer will render a decision in no more than five (5) business days, barring exigent circumstances. All decisions apply the preponderance of the evidence standard.

A Notice of Appeal Outcome will be sent to all parties simultaneously including the decision on each approved ground for appeal and rationale for each decision.

Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official institutional records, or emailed to the parties' University-issued email or otherwise approved account. Once mailed, emailed and/or received in person, notice will be presumptively delivered.

#### **b. Sanctions Status During the Appeal**

Any sanctions determined by the Decision Maker as a result of the hearing are stayed pending completion of the appeal process. Supportive Measures may be continued or reinstated, subject to the same Supportive Measure procedures in Section 27 above.

If any of the sanctions are to be implemented immediately post-hearing, but prior to the completion of the appeal, then emergency removal procedures (detailed in Policy 13.02) for a hearing on the justification for doing so must be permitted within 48 hours of implementation.

### **c. Appeal Considerations**

Decisions on appeal are to be deferential to the original decision, making changes to the finding only when there is clear error and to the sanction(s)/responsive action(s) only if there is a compelling justification to do so.

Appeals are not intended to provide for a full re-hearing (de novo) of the allegation(s). In most cases, appeals are confined to a review of the written documentation or record of the original hearing and pertinent documentation regarding the specific grounds for appeal.

An appeal is not an opportunity for Appeal Officers to substitute their judgment for that of the original Decision Maker(s) merely because they disagree with the finding and/or sanction(s).

The Appeal Officer may consult with the Title IX Coordinator on questions of procedure or rationale, for clarification, if needed. Documentation of all such consultation will be maintained.

Appeals granted based on new evidence should normally be remanded to the original Investigator(s) and/or Decision Maker(s) for further investigation and/or reconsideration.

Once an appeal is decided, the outcome is final. Further appeals to the University are not permitted except in the case of a remand for a new investigation, and/or new determination by a Decision Maker. A party may choose to file an appeal to the State of Iowa Board of Regents, as provided for by the Board's policy and procedures.

In rare cases where a procedural error cannot be cured by the original Decision Maker (as in cases of bias), the Appeal Officer may order a new hearing with a new Decision Maker.

In cases in which the appeal results in reinstatement to the University or resumption of privileges, all reasonable attempts will be made to restore the Respondent to their prior status, recognizing that some opportunities lost may be irreparable in the short term.

### **31. Failure to Comply with Sanctions, Remedies, and/or Responsive Actions**

All Respondents are expected to comply with any assigned sanctions issued through this resolution process within the timeframe specified by the final Decision Maker (including the Appeal Officer).

Failure to abide by the sanction(s)/action(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanction(s)/action(s), including suspension, expulsion, and/or termination from the University and may be noted on a student's official transcript or employee's personnel file.

A suspension will only be lifted when compliance is achieved to the satisfaction of the Title IX Coordinator.

### **32. Recordkeeping**

The University will maintain for a period of at least seven (7) years records of:

- a. Each Title IX sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required under federal regulation;
- b. Any disciplinary sanctions imposed on the Respondent;
- c. Any remedies provided to the Complainant designed to restore or preserve equal access to the University's education program or activity;
- d. Any appeal and the result therefrom;
- e. Any Informal Resolution and the result therefrom;
- f. All materials used to train Title IX Coordinators, Investigators, Decision Makers, and any person who facilitates an Informal Resolution process. The University will make these training materials publicly available on the University's website; and
- g. Any actions, including any Supportive Measures, taken in response to a report or Formal Complaint of Title IX sexual harassment, including:
  - 1) The basis for all conclusions that the response was not deliberately indifferent;
  - 2) Any measures designed to restore or preserve equal access to the University's education program or activity; and
  - 3) If no Supportive Measures were provided to the Complainant, document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

The University will also maintain any and all records in accordance with state and federal laws.

### **33. Disabilities Accommodations in the Resolution Process**

The University is committed to providing reasonable accommodations and support to qualified students, employees, or others with disabilities to ensure equal access to the University's resolution process.

Anyone needing such accommodations or support should contact the Title IX Coordinator, who will review the request and, in consultation with the person requesting the accommodation, determine which accommodations are appropriate and necessary for full participation in the process.

### **34. Revision**

These procedures supersede any previous procedures addressing harassment, discrimination, sexual misconduct, and/or retaliation under Title IX or similar law or policy and will be reviewed and updated annually by the Title IX Coordinator. The University reserves the right to make changes to this document as necessary, and once those changes are posted online, they are in effect.

During the resolution process, the Title IX Coordinator may make minor modifications to procedures that do not materially jeopardize the fairness owed to any party, such as to accommodate academic schedules. The Title IX Coordinator may also vary procedures materially with notice (on the [civilrights.uni.edu](http://civilrights.uni.edu) website, with the appropriate effective date identified) upon determining that changes to law, regulation, or best practices support procedural alterations not reflected in these procedures.

If laws or regulations change – or court decisions alter – the requirements in a way that impacts this document, this document will be construed to comply with the most recent law, regulations, or holdings.

This document does not create legally enforceable protections beyond the protection of the background state and federal laws which frame such policies and codes, generally.