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**POLICY 13.02: DISCRIMINATION, HARASSMENT, AND SEXUAL MISCONDUCT<sup>1</sup>**

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<sup>1</sup> ATIXA 2020 one policy, two procedures model use and adaptation of this model with citation to ATIXA is permitted through a limited license to the University of Northern Iowa. All other rights reserved. ©2020. ATIXA

## **1. Purpose**

The University (referred to as “University” or “UNI”) is committed to providing a workplace and educational environment, as well as other benefits, programs, and activities, that are free from discrimination and harassment based on a protected class, as well as retaliation.

## **2. Policy Statement and Scope**

To affirm its commitment to promoting the goals of fairness and equity in all aspects of the educational program or activity, and to ensure compliance with federal and state civil rights laws and regulations, the University has developed internal policies and procedures that provide a prompt, fair, and impartial process for those involved in an allegation of discrimination or harassment on the basis of protected class, and for allegations of retaliation. The University values and upholds the equal dignity of all members of its community and strives to balance the rights of the parties in the Formal Complaint process during what is often a difficult time for all those involved.

This policy prohibits all forms of discrimination based on a protected class. Sometimes, discrimination involves exclusion from or different treatment in activities, such as admission, athletics, or employment. Other times, discrimination takes the form of harassment or, in the case of sex-based discrimination, can encompass sexual harassment, sexual assault, stalking, sexual exploitation, dating violence, or domestic violence. When an alleged violation of this policy is reported, the allegations are subject to resolution using the University’s procedures as determined by the Title IX Coordinator, and as detailed below.

When the Respondent is a member of the UNI community, a Formal Complaint process may be available regardless of the status of the Complainant, who may or may not be a member of the University community. This community includes, but is not limited to, students, student organizations, faculty, administrators, staff, and third parties such as guests, visitors, volunteers, invitees, and campers. The procedures below may be applied to incidents, to patterns, and/or to the campus climate, all of which may be addressed and investigated in accordance with this policy.

## **3. Definitions**

- *Advisor*: a person chosen by a party or appointed by the institution to accompany the party to meetings related to the resolution process, to advise the party on that process, and to conduct cross-examination for the party at the hearing, if applicable.
- *Complainant*: an individual who is alleged to be the victim of conduct that could constitute discrimination or harassment based on a protected class; or of retaliation for engaging in a protected activity.
- *Confidential Resource*: an individual from a designated organization or University office who is not a Mandated Reporter of notice of discrimination, harassment, and/or retaliation (irrespective of Clery Act Campus Security Authority status). Confidential resources are listed in Section 16 Mandated Reporting.
- *Day*: a business day when the University is in normal business operation.

- *Decision Maker(s)*: those who have decision making and sanctioning authority within the University's Formal Complaint process.
- *Discrimination*: action that serves to deny, deprive, or limit the educational, employment, residential, and/or social access, benefits, and/or opportunities of any member of the University community, guest, or visitor on the basis of that person's actual or perceived membership in a protected class.
- *Education program or activity*: locations, events, or circumstances where the University exercises substantial control over both the Respondent and the context in which the discrimination or harassment occurs and also includes any building owned or controlled by a student organization that is officially recognized by the University.
- *Employee*: a person in an employment relationship with the University or any of its units, including full- and part-time faculty, staff, and student employees, but not including volunteers or emeritus status individuals.
- *Facilitator*: an individual who facilitates the logistics of hearings, including but not limited to the assignment of rooms, flow of parties in and out of the space, ensuring recordings and technology are working as intended, distributing materials to participants, etc.
- *Finding*: a conclusion by the preponderance of evidence that the conduct did or did not occur as alleged (as in a "finding of fact").
- *Formal Complaint*: a document submitted or signed by a Complainant or signed by the Title IX Coordinator alleging a violation of this policy regarding discrimination or harassment based on a protected class, or retaliation for engaging in a protected activity, against a Respondent and requesting that the University investigate the allegation.
- *Formal Complaint Process*: a method of formal resolution to address conduct that falls within the policies included below, and which follows Process A or Process B as determined by the Title IX Coordinator. Process A and Process B are the procedures by which a Formal Complaint is resolved under this policy and are maintained as separate procedural documents and in accordance with appropriate regulatory requirements.
- *Harassment*: unwelcome conduct by any member or group of the community on the basis of actual or perceived membership in a protected class.
- *Investigator*: the person or persons assigned by the University to gather facts about an alleged violation of this policy, assess relevance and credibility, synthesize the evidence, and compile this information into an investigation report and a file of evidence.

- *Mandated Reporter*: an employee of the University who is obligated by this policy to share knowledge, notice, and/or reports of discrimination, harassment, and/or retaliation with the Title IX Coordinator.<sup>2</sup>
- *Official with Authority (OWA)*: an employee of the University explicitly vested with the responsibility to implement corrective measures for harassment, discrimination, and/or retaliation on behalf of the University.
- *Parties*: include the Complainant(s) and Respondent(s), collectively.
- *Process A*: the Formal Complaint Process for only those complaints that fall under the definition of sexual harassment as detailed in federal Title IX regulations (detailed in Section 14.C.iii. Title IX Sexual Harassment). See [civilrights.uni.edu](http://civilrights.uni.edu) for details of Process A.
- *Process B*: the procedures that apply to reports and complaints of discrimination, harassment, and sexual misconduct (detailed in Section 14 Prohibited Conduct) when Process A does not apply, as determined by the Title IX Coordinator. See [civilrights.uni.edu](http://civilrights.uni.edu) for details of Process B.
- *Process Team*: any Title IX Coordinator, Title IX Deputy Coordinator, Facilitator, Investigator, Decision Maker, Appeal Officer, and Advisor who may perform any or all of these roles (though not at the same time or with respect to the same case).
- *Report*: the initial information or notification (notice) provided by anyone to the Title IX Coordinator, Deputy Coordinator, or OWA regarding a concern of discrimination, harassment, and/or retaliation. A report does not constitute a Formal Complaint.
- *Respondent*: an individual who has been reported to be the perpetrator of conduct that could constitute discrimination or harassment based on a protected class; or of retaliation for engaging in a protected activity.
- *Resolution*: the result of a Formal Complaint Process or an informal resolution process.
- *Sanction*: a consequence imposed by the University on an individual who is found to have violated this policy.
- *Sexual Misconduct*: a broad term encompassing any unwelcome behavior of a sexual nature that is committed without consent or by force, intimidation, or coercion; includes sexual harassment not covered by Title IX regulations noted above. See Section 14.C.iv. for greater detail.

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<sup>2</sup> Not to be confused with those mandated by state law to report child abuse, elder abuse, and/or abuse of individuals with disabilities to appropriate officials, though these responsibilities may overlap with those who have mandated reporting responsibility in this policy.

- *Student*: persons enrolled at the University of Northern Iowa; persons who are not enrolled for a particular academic term but who have a continuing educational relationship with the University; persons who have been notified of their acceptance for admission; persons who are participating in programs sponsored by the University and another college or university (e.g. community college partnership agreements), although not enrolled at this institution; or persons who were defined as a student at the time of their alleged misconduct.
- *Title IX Coordinator*: the official designated by the University to ensure compliance with Title IX and the University's Title IX program. References to the Title IX Coordinator throughout this policy may also encompass a designee of the Title IX Coordinator for specific tasks, including Deputy Title IX Coordinators. The Title IX Coordinator also serves as the Equal Opportunity Officer, the Affirmative Action Officer, and the ADA/Section 504 Coordinator, and therefore oversees all issues that fall within the respective policies.
- *Title IX Sexual Harassment*: sexual harassment as defined by federal Title IX regulations including sexual harassment, sexual assault, dating violence, domestic violence, and stalking as defined by applicable federal law or regulations. See Section 14.C.iii. for greater detail.

#### **4. Title IX Coordinator**

The Assistant to the President for Civil Rights Compliance serves as the Title IX Coordinator, and the Equal Opportunity Officer, the Affirmative Action Officer, and the ADA/504 Coordinator and oversees implementation of the University's Affirmative Action Plan and the University's policy on discrimination, harassment, and sexual misconduct. The Title IX Coordinator has the primary responsibility for coordinating the University's efforts related to the intake, implementation of supportive measures, investigation, resolution, and implementation of measures to stop, remediate, and prevent discrimination, harassment, and retaliation prohibited under this policy. No employee is authorized to resolve reports or complaints covered by this policy without the involvement of the Title IX Coordinator. The Title IX Coordinator oversees the Office of Civil Rights Compliance.

#### **5. Independence and Conflict of Interest**

The Title IX Coordinator manages the Process Team and acts with independence and authority free from bias and conflicts of interest. The Title IX Coordinator oversees all resolutions under this policy and these procedures. The members of the Process Team are vetted and trained to ensure they are not biased for or against any party in a specific case, or for or against Complainants and/or Respondents, generally.

To raise any concern involving bias or conflict of interest by the Title IX Coordinator, contact the University President at 319.273.2566 or [president@uni.edu](mailto:president@uni.edu). Concerns of bias or a potential conflict of interest by any other Process Team member should be raised with the Title IX Coordinator.

Reports of misconduct or discrimination committed by the Title IX Coordinator should be reported to the University President. Reports of misconduct or discrimination committed by any other Process Team member should be reported to the Title IX Coordinator.

## **6. Administrative Contact Information**

Formal Complaints or notice of alleged policy violations, or inquiries about or concerns regarding this policy and procedures, may be made internally to:

Leah Gutknecht

Assistant to the President for Civil Rights Compliance & Title IX Coordinator

Office of Civil Rights Compliance

117 Gilchrist

319.273.2846

[leah.gutknecht@uni.edu](mailto:leah.gutknecht@uni.edu)

[civilrights.uni.edu](http://civilrights.uni.edu)

Kaylee Michelson

Assistant Director & Title IX Deputy Coordinator

Office of Civil Rights Compliance

319.273.2846

[kaylee.michelson@uni.edu](mailto:kaylee.michelson@uni.edu)

[civilrights.uni.edu](http://civilrights.uni.edu)

Stacia Eggers

Senior Associate Athletic Director & Title IX Deputy Coordinator for Athletics

Department of Athletics

319.273.3326

[stacia.eggers@uni.edu](mailto:stacia.eggers@uni.edu)

[civilrights.uni.edu](http://civilrights.uni.edu)

The University has determined that the following administrators are Officials with Authority (OWA) to address and correct discrimination, harassment, and/or retaliation. In addition to the Title IX Coordinator and Deputy Coordinator(s), the OWA may also accept notice or complaints on behalf of the University. OWAs include the President, and Vice Presidents/Division Heads, as well as staff members within the Office of Civil Rights Compliance.

The University has also classified most employees as Mandated Reporters of any knowledge they have that a member of the community is experiencing discrimination, harassment, and/or retaliation. Section 16 below on Mandated Reporting details which employees have this responsibility and their duties, accordingly.

In addition to filing a complaint with the University, individuals who believe they may have been the subject of discrimination prohibited by state and/or federal law(s) may contact one or more of the following agencies for advice, assistance, and explanation of filing requirements:

Office for Civil Rights (OCR) (for issues related to the educational environment)

U.S. Department of Education Chicago Office

John C. Kluczynski Federal Building

230 S. Dearborn Street, 37<sup>th</sup> Floor

Chicago, IL 60604

Phone: (312) 730-1560

Fax: (312) 730-1576  
 TDD: (800) 877-8339  
 Email: [OCR.Chicago@ed.gov](mailto:OCR.Chicago@ed.gov)  
 Web: <http://www.ed.gov/ocr>

Equal Employment Opportunity Commission (EEOC) (for issues related to employment)  
 Reuss Federal Plaza  
 310 W. Wisconsin Avenue, Suite 500  
 Milwaukee, WI 53203  
 Phone: (414) 662-3680  
 Fax: (414) 297-4133  
 TTY: (800) 669-6820  
 Web: [www.eeoc.gov/](http://www.eeoc.gov/)

Iowa Civil Rights Commission (ICRC)  
 6200 Park Ave, Suite 100  
 Des Moines, IA 50321  
 Phone: (515) 281-4121  
 Web: <https://icrc.iowa.gov/>

## **7. Reports and Formal Complaints of Discrimination, Harassment, and/or Retaliation**

Reports of discrimination, harassment, and/or retaliation may be made by anyone using the following options<sup>3</sup>:

- Report to the Title IX Coordinator, Title IX Deputy Coordinator, or an OWA. Such a report may be made in person at any time or by using the telephone number, email address, or office address listed for the Title IX Coordinator or any other official listed.
- Report online, using the reporting form posted at [civilrights.uni.edu](http://civilrights.uni.edu) or [safety.uni.edu](http://safety.uni.edu)
- Anonymous reports are accepted but can give rise to a need to investigate which can be more difficult with anonymous reports. The University tries to provide supportive measures, which is impossible with an anonymous report. Reporting carries no obligation to initiate a formal response, and as the University respects Complainant requests to dismiss complaints unless there is a compelling threat to health and/or safety, the Complainant is largely in control and should not fear a loss of privacy by making a report that allows the University to discuss and/or provide supportive measures.

A Formal Complaint is separate from the initial report and refers to a document submitted or signed by the Complainant and/or signed by the Title IX Coordinator alleging a policy violation and requesting that the University investigate the allegation(s). A Formal Complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information in the section immediately above. As used in this paragraph, the phrase “document submitted or signed by a Complainant” means a document or electronic submission that contains the Complainant’s physical or digital signature, or otherwise indicates that the Complainant is the person filing the complaint.

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<sup>3</sup> See Section 16 for details related to Mandatory Reporting by UNI employees.

If the Formal Complaint is submitted in a form that does not meet this standard, the Title IX Coordinator will provide notice to the Complainant.

### **8. Supportive Measures**

The University will offer and implement appropriate and reasonable supportive measures to the parties upon notice of alleged discrimination, harassment, and/or retaliation.

Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the parties to restore or preserve equal access to the University's education program, activity, or workplace without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the University's educational environment, and/or to deter discrimination, harassment, and/or retaliation.

The Title IX Coordinator promptly makes supportive measures available to the parties upon receiving a report or a Formal Complaint. At the time that supportive measures are offered, the University will inform the Complainant, in writing, that they may file a Formal Complaint with the University either at that time or in the future, if they have not done so already.

The University will maintain the confidentiality of the supportive measures provided that this does not impair the University's ability to provide the supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures and may share information with others as needed to carry out supportive measures.

Supportive measures may include, but are not limited to:

- Referral to counseling, medical, and/or other healthcare services
- One-on-one coaching
- Referral to community-based service providers
- Visa and immigration assistance
- Student financial aid counseling
- Education to the institutional community or community subgroup(s)
- Altering campus housing assignment(s)
- Altering work arrangements for employees or student-employees
- Safety planning
- Providing campus safety escorts
- Implementing contact limitations (no contact orders) between the parties
- Academic support, extensions of deadlines, or other course/program-related adjustments
- Crime alerts/Timely warnings
- Class schedule modifications, withdrawals, or leaves of absence
- Increased security and monitoring of certain areas of the campus
- Any other actions deemed appropriate by the Title IX Coordinator

Violations of no contact and trespass orders will be referred to appropriate student or employee conduct processes for enforcement or added as allegations to an ongoing complaint under this Policy.



## **9. Emergency Removal**

Students: The University may remove a student Respondent entirely or partially from its education program or activities on an emergency basis when an individualized safety and risk analysis has determined that an immediate threat to the physical health or safety of any student or other individual justifies removal. This risk analysis is performed by the Title IX Coordinator in conjunction with select members of the Threat Assessment Team using standard objective risk assessment procedures.

In all cases in which an emergency removal is imposed, the student will be given notice of the action and the option to request to meet with the Title IX Coordinator prior to such action/removal being imposed, or as soon thereafter as reasonably possible, to show cause why the action/removal should not be implemented or should be modified.

This meeting is not a hearing on the merits of the allegation(s), but rather is an administrative process intended to determine solely whether the emergency removal is appropriate. When this meeting is not requested within five days, objections to the emergency removal will be deemed waived. This section also applies to any restrictions that a coach/athletic administrator, student organization advisor/administrator, academic program advisor/administrator, or other program may place on a student arising from allegations related to this policy. There is no appeal process for emergency removal decisions.

A Respondent may be accompanied by an Advisor of their choice when meeting with the Title IX Coordinator for the show cause meeting. The Respondent will be given access to a written explanation for the emergency removal prior to the meeting to allow for adequate preparation.

The Title IX Coordinator has sole discretion under this policy to implement or stay an emergency removal and to determine the conditions and duration. Violation of an emergency removal under this policy will be grounds for discipline, which may include expulsion.

At the discretion of the Title IX Coordinator, alternative coursework options may be pursued to ensure as minimal an academic impact as possible on the parties.

Employees: The Division Head of an employee Respondent, in consultation with the Title IX Coordinator, may place an employee Respondent on administrative leave.

## **10. Promptness**

The University will respond promptly once it has received a report or a Formal Complaint. There are always exceptions and extenuating circumstances that can cause a resolution to take longer, but the University will take action to provide a reasonably prompt resolution and will avoid all undue delays within its control.

Any time the process will be delayed, the University will provide written notice to the parties of the delay, the cause of the delay, and an estimate of the anticipated additional time that will be needed as a result of the delay.

## **11. Privacy**

Every effort is made by the University to preserve the privacy of reports and Formal Complaints. UNI will not share the identity of any individual who has made a report or Formal Complaint of discrimination, harassment, or retaliation; any Complainant, any individual who has been reported to be the perpetrator of discrimination, any Respondent, or any witness, except as permitted by the Family Educational Rights and Privacy Act (FERPA), or as required by law; or to carry out the purposes of federal Title IX regulations, including the conducting of any investigation, hearing, or appeal proceeding arising under these policies and procedures.

The University reserves the right to determine which University officials have a legitimate educational interest in being informed about reports or complaints that fall within this policy, pursuant to FERPA.

Only a small group of officials who need to know will typically be told about the report or complaint, including but not limited to: Office of Civil Rights Compliance, University Counsel, and an employee Respondent's Director/Department Head, Dean, and Vice President/Division Head. Information will be shared as necessary with Investigators, Decision Makers, witnesses, and the parties. The group of people with this knowledge will be kept as tight as possible to preserve the parties' rights and privacy.

The University may contact parents/guardians to inform them of situations in which there is a significant and articulable health and/or safety risk, but will usually consult with the student first before doing so.

Confidentiality and mandated reporting are addressed more specifically in Section 16.

## **12. Jurisdiction of Policy**

This policy applies to the education program and activities of the University, to conduct that takes place on the campus or on property owned or controlled by the University, at University-sponsored events, or in buildings owned or controlled by University recognized student organizations. The Respondent must be a member of the University community, including students, faculty, staff, contractors, and visitors, in order for this policy to apply.

This policy can also be applicable to the effects of off-campus misconduct that effectively deprives someone of access to the University's education programs and activities. The University may also extend jurisdiction to off-campus and/or to online conduct when the Title IX Coordinator determines that the conduct affects a substantial University interest.

Regardless of where the conduct occurred, the University will address notice/complaints to determine whether the conduct occurred in the context of its employment or education program or activity and/or has continuing effects on campus or in an off-campus sponsored program or activity. A substantial University interest includes:

- Any action that constitutes a criminal offense as defined by law. This includes, but is not limited to, single or repeat violations of any local, state, or federal law;
- Any situation in which it is determined that the Respondent poses an immediate threat to the physical health or safety of any student or other individual;

- Any situation that significantly impinges upon the rights, property, or achievements of oneself or others or significantly breaches the peace and/or causes social disorder; and/or
- Any situation that is detrimental to the educational interests or mission of the University.

If the Respondent is unknown or is not a member of the University community, the Title IX Coordinator will assist the Complainant in identifying appropriate campus and local resources and support options and/or, when criminal conduct is alleged, in contacting local or campus law enforcement if the individual would like to file a police report.

In addition, the University may take other actions as appropriate to protect the Complainant against third parties, such as barring individuals from University property and/or events.

All vendors and contractors serving the University through third-party contracts are subject to this policy and related procedures.

### **13. Time Limits on Reporting**

There is no time limitation on providing reports and Formal Complaints to the Title IX Coordinator. However, if the Respondent is no longer subject to the University's jurisdiction and/or significant time has passed, the ability to investigate, respond, and provide remedies may be more limited or impossible.

Acting on reports and Formal Complaints of discrimination, harassment, and sexual misconduct other than Title IX Sexual Harassment significantly impacted by the passage of time (including, but not limited to, the rescission or revision of policy) is at the discretion of the Title IX Coordinator, who may document allegations for future reference, offer supportive measures and/or remedies, and/or engage in informal or formal action, as appropriate. When reports/Formal Complaints are affected by time delay, the University will typically apply the policy in place at the time of the alleged misconduct and the procedures in place at the time of report/Formal Complaint.

### **14. Prohibited Conduct**

#### **A. Discrimination**

The University adheres to all federal and state civil rights laws and regulations prohibiting discrimination in public institutions of higher education.

The University does not discriminate against any employee, applicant for employment, student, or applicant for admission on the basis of:

- Age,
- Color,
- Creed,
- Disability,
- Ethnicity,
- Gender Identity,
- Genetic Information,
- Marital Status,

- National Origin,
- Political Affiliation,
- Pregnancy,
- Race,
- Religion,
- Sex,
- Sexual orientation,
- Veteran or military status (including disabled veteran, recently separated veteran, active duty wartime or campaign badge veteran, and Armed Forces Service Medal veteran),
- or any other protected category under applicable local, state, or federal law, including protections for those opposing discrimination or participating in any grievance process on campus, with the Equal Employment Opportunity Commission, or other human rights agencies.

This policy covers nondiscrimination in both employment and access to educational opportunities. Therefore, any member of the University community whose acts deny, deprive, or limit the educational or employment or residential and/or social access, benefits, and/or opportunities of any member of the University community, guest, or visitor on the basis of that person's actual or perceived membership in the protected classes listed above is in violation of the University policy on discrimination.

When brought to the attention of the University, any such discrimination will be promptly and fairly addressed and remedied by the University according to the appropriate process as determined by the Title IX Coordinator.

#### **B. Disability Discrimination**

The University is committed to complying with the Americans With Disabilities Act of 1990 (ADA), as amended, and Section 504 of the Rehabilitation Act of 1973, which prohibit discrimination against qualified persons with disabilities, as well as other federal and state laws and regulations pertaining to individuals with disabilities.

Under the ADA, a person has a disability if they have a physical or mental impairment that substantially limits a major life activity.

The ADA also protects individuals who have a record of a substantially limiting impairment or who are regarded as disabled by the University, regardless of whether they currently have a disability. A substantial impairment is one that significantly limits or restricts a major life activity such as hearing, seeing, speaking, breathing, performing manual tasks, walking, or caring for oneself.

The Assistant to the President for Civil Rights Compliance has been designated as University's ADA/504 Coordinator responsible for overseeing efforts to comply with these disability laws, including responding to reports and Formal Complaints of any allegation of noncompliance or discrimination based on disability.

For information about UNI's policies and procedures regarding accommodations of disabilities, please refer to [Policy 13.15](#).

## **C. Harassment**

Students, staff, administrators, and faculty are entitled to an employment and educational environment that is free of discriminatory harassment. The University's harassment policy is not meant to inhibit or prohibit educational content or discussions inside or outside of the classroom that include germane but controversial or sensitive subject matters protected by academic freedom.

The sections below describe the specific forms of legally prohibited harassment that are also prohibited under University policy. When speech or conduct is protected by the First Amendment, it will not be considered a violation of University policy, though supportive measures may be offered to those impacted.

### **i. Discriminatory Harassment**

Discriminatory harassment constitutes a form of discrimination that is prohibited by University policy. Discriminatory harassment is defined as unwelcome conduct by any member or group of the community on the basis of actual or perceived membership in a class protected by policy or law.

The University does not tolerate discriminatory harassment of any employee, student, visitor, or guest. The University will act to remedy all forms of harassment when reported, whether or not the harassment rises to the level of creating a "hostile environment."

A hostile environment is one that unreasonably interferes with, limits, or effectively denies an individual's educational or employment access, benefits, or opportunities. This discriminatory effect results from harassing verbal, written, graphic, or physical conduct that is severe or pervasive and objectively offensive.

When discriminatory harassment rises to the level of creating a hostile environment, the University may also resolve the matter through the appropriate process and impose sanctions as necessary.

The University reserves the right to address offensive conduct and/or harassment that 1) does not rise to the level of creating a hostile environment, or 2) that is of a generic nature and not based on a protected status. Addressing such conduct will not result in the imposition of discipline under University policy, but may be addressed through respectful conversation, remedial actions, education, and/or other informal resolution mechanisms. For assistance with resolving such issues, employees should contact the Director of Human Resources, and students should contact the Dean of Students.

### **ii. Online Harassment**

Members of the community are encouraged to be good digital citizens and to refrain from online misconduct, such as posting disparaging comments, unwelcome sexual or sex-based messaging, distributing or threatening to distribute revenge pornography, breaches of privacy, or otherwise using the ease of transmission and/or anonymity of the Internet or other technology to harm another member of the University community.

Any online posting or other electronic communication by employees or students, including cyber-bullying, cyber-stalking, cyber-harassment, etc., that may constitute a violation of this

policy and occurs completely outside of the University's control (e.g., not on University networks, websites, or between University email accounts) will only be subject to this policy when such online conduct can be shown to cause a substantial in-program disruption or infringement on the rights of others.

Otherwise, such communications are considered speech protected by the First Amendment. Supportive measures for Complainants may be provided, but protected speech cannot legally be subjected to discipline.

iii. **Title IX Sexual Harassment**<sup>4</sup>

Title IX Sexual Harassment is a specific form of discriminatory harassment. Acts of Title IX Sexual Harassment may be committed by any person upon any other person, regardless of the sex, sexual orientation, and/or gender identity of those involved.

Title IX Sexual Harassment is defined as conduct on the basis of sex that satisfies one or more of the following:

a. **Quid Pro Quo Sexual Harassment**

An employee of the University conditions the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct.

b. **Hostile Environment Sexual Harassment**

Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's education program or activity.

Unwelcomeness is subjective and determined by the Complainant (except when the Complainant is younger than the age of consent). Severity, pervasiveness, and objective offensiveness are evaluated based on the totality of the circumstances from the perspective of a reasonable person in the same or similar circumstances ("in the shoes of the Complainant"), including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

c. **Sexual Assault (as defined under the Title IX regulations)**

Any sexual act directed against another person without the consent of that person, including instances in which that person is incapable of giving consent. Sexual Assault is defined by applicable federal regulations to include the following:

1) **Rape**

Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the Complainant.

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<sup>4</sup> In the event that a Formal Complaint alleging Title IX Sexual Harassment is dismissed under Process A as provided by federal Title IX regulations, the alleged conduct may still constitute a violation of this policy and may be investigated under Process B using the same definitions described herein.

**2) Fondling**

The touching of the private body parts of another person for the purposes of sexual gratification without the consent of that person, including instances where that person is incapable of giving consent because of their age or because of their temporary or permanent mental incapacity.

**3) Incest**

Sexual intercourse, between persons who are related to each other, within the degrees wherein marriage is prohibited by Iowa law.

**4) Statutory Rape**

Sexual intercourse, with a person who is under the statutory age of consent of 16.

**d. Dating Violence**

Violence, on the basis of sex, committed by a person who is in or has been in a social relationship of a romantic or intimate nature with the Complainant.

The existence of such a relationship shall be determined based on the Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

For the purposes of this definition, Dating Violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating Violence does not include acts covered under the definition of Domestic Violence.

**e. Domestic Violence**

Violence, on the basis of sex, committed by a current or former spouse or intimate partner of the Complainant; by a person with whom the Complainant shares a child in common; or by a person who is/has cohabitated with the Complainant as a spouse or intimate partner; or by a person similarly situated to a spouse/partner of the Complainant under the domestic or family violence laws of Iowa; or by any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of Iowa.

**f. Stalking**

Engaging in a course of conduct, on the basis of sex, directed at a specific person, that would cause a reasonable person to fear for the person's safety, or the safety of others; or suffer substantial emotional distress.

For the purposes of this definition, course of conduct means two or more acts, including, but not limited to, acts in which the Respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property; reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant; and substantial emotional distress means significant mental suffering or anguish that may but does

not necessarily require medical or other professional treatment or counseling.

**iv. Sexual Misconduct**

**a. Sexual Harassment**

This policy prohibits any form of sexual harassment, including forms of sexual harassment that would not meet the definition of Title IX Sexual Harassment in Section 14.C.iii. Sexual harassment is unwelcome sexual- or gender-based verbal, written, online, and/or physical conduct.

Sexual harassment creates a hostile environment and may be disciplined when it is sufficiently severe, pervasive, persistent, or objectively offensive that it:

- has the effect of unreasonably interfering with, denying, or limiting employment opportunities or the ability to participate in or benefit from the University's educational, social, and/or residential program, or
- is based on power differentials (quid pro quo), the creation of a hostile environment, or retaliation.

Some examples of possible sexual harassment include:

- A professor insists that a student have sex with the professor in exchange for a good grade. This is harassment regardless of whether the student complies with the request.
- A student repeatedly sends sexually oriented jokes on an e-mail list the student created, even when asked to stop, causing one recipient to avoid the sender on campus and in the residence hall in which they both live.
- Two supervisors frequently rate several employees' bodies and sex appeal, commenting suggestively about their clothing and appearance.

**b. Non-Consensual Sexual Contact with an Object**

Defined as any intentional sexual touching; however slight; with any object; by a person upon another person; that is without consent and/or by force.

Sexual touching includes any bodily contact with the breasts, groin, genitals, mouth, or other bodily orifice of another individual or any other bodily contact in a sexual manner.

**c. Sexual Exploitation**

Defined as taking non-consensual or abusive sexual advantage of another for their own benefit or for the benefit of anyone other than the person being exploited, and that conduct does not otherwise constitute Title IX Sexual Harassment under this policy.

Examples of Sexual Exploitation include, but are not limited to:

- Sexual voyeurism (such as observing or allowing others to observe a person undressing or using the bathroom or engaging in sexual acts, without the consent of the person being observed).



- Invasion of sexual privacy.
- Taking pictures, video, or audio recording of another in a sexual act, or in any other sexually-related activity when there is a reasonable expectation of privacy during the activity, without the consent of all involved in the activity, or exceeding the boundaries of consent (such as allowing another person to hide in a closet and observe sexual activity, or disseminating sexual pictures without the photographed person's consent), including the making or posting of revenge pornography
- Prostituting another person.
- Engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or a sexually-transmitted disease (STD) or infection (STI), without informing the other person of the infection.
- Causing or attempting to cause the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give consent to sexual activity, or for the purpose of making that person vulnerable to non-consensual sexual activity.
- Forcing a person to take an action against that person's will by threatening to show, post, or share information, video, audio, or an image that depicts the person's nudity or sexual activity.
- Knowingly soliciting a minor for sexual activity.
- Engaging in sex trafficking.
- Creation, possession, or dissemination of child pornography.

**v. Consent, Force, Coercion, and Incapacitation**

As used in the offenses above, the following definitions and understandings apply:

**a. Consent:**

- knowing, and
- voluntary, and
- clear permission
- by word or action
- to engage in mutually agreed upon sexual activity.

Individuals may experience the same interaction in different ways. Therefore, it is the responsibility of each party to determine that the other has consented before engaging in the activity.

For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Reasonable reciprocation can be implied. For example, if an individual kisses someone, the person kissed can kiss the first individual back if they wish without the need to explicitly obtain consent to being kissed back.

Consent can also be withdrawn once given, as long as the withdrawal is reasonably and clearly communicated. If consent is withdrawn, that sexual activity should cease within a reasonable time.

Consent to a specific sexual contact (such as kissing or fondling) cannot be presumed to be consent for another sexual activity (such as intercourse). A current or previous intimate relationship is not sufficient to constitute consent.

The existence of consent is based on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.<sup>5</sup>

Consent in relationships must also be considered in context. When parties consent to BDSM<sup>6</sup> or other forms of kink, non-consent may be shown by the use of a safe word. Resistance, force, violence, or even saying “no” may be part of the kink and thus consensual, so the University’s evaluation of communication in kink situations should be guided by reasonableness, rather than strict adherence to policy that assumes non-kink relationships as a default.

**b. Force:**

Force is the use of physical violence and/or physical imposition to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent (e.g., “Have sex with me or I’ll hit you” “Okay, don’t hit me, I’ll do what you want”).

Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Silence or the absence of resistance alone is not consent. Consent is not demonstrated by the absence of resistance. While resistance is not required or necessary, it is a clear demonstration of non-consent.

**c. Coercion:**

Coercion is unreasonable pressure for sexual activity. Coercive conduct differs from seductive conduct based on factors such as the type and/or extent of the pressure used to obtain consent. When someone makes clear that they do not want to engage in certain sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

**d. Incapacitation:**

A person cannot consent if they are unable to understand what is happening or is disoriented, helpless, asleep, or unconscious, for any reason, including by alcohol or other drugs. As stated above, a Respondent violates this policy if they engage in sexual activity with someone who is incapable of giving consent.

An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has violated this policy. It is not an excuse that the Respondent was intoxicated and, therefore, did not realize the

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<sup>5</sup> Proof of consent or non-consent is not a burden placed on either party involved in an incident. Instead, the burden remains on the University to determine whether this policy has been violated.

<sup>6</sup> Bondage, discipline/dominance, submission/sadism, and masochism.

other person's incapacity. "Should know" is an objective, reasonable person standard which assumes that a reasonable person is both sober and exercising sound judgment.

Incapacitation occurs when someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the "who, what, when, where, why, or how" of their sexual interaction).

Incapacitation is determined through consideration of all relevant indicators of an individual's state and is not synonymous with intoxication, impairment, blackout, and/or being drunk.

This policy also covers a person whose incapacity results from a temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the consumption of incapacitating drugs.

### **15. Retaliation**

The University and any member of the University community are prohibited from taking or attempting to take materially adverse action by intimidating, threatening, coercing, harassing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by law or policy, or because the individual has made a report or Formal Complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this policy.

Protected activity under this policy includes reporting an incident that may implicate this policy, participating in the grievance process, supporting a Complainant or Respondent, assisting in providing information relevant to an investigation, and/or acting in good faith to oppose conduct that constitutes a violation of this policy. The exercising of rights protected under the First Amendment does not constitute retaliation.

Acts of alleged retaliation should be reported immediately to the Title IX Coordinator and will be promptly investigated. The University will take all appropriate and available steps to protect individuals who fear that they may be subjected to retaliation.

### **16. Mandated Reporting**

All UNI employees (faculty, staff, administrators) are expected to report actual or suspected discrimination or harassment to appropriate officials immediately, though there are some limited exceptions.

In order to make informed choices, it is important to be aware of confidentiality and mandatory reporting requirements when consulting campus resources. On campus, some resources may maintain confidentiality and are not required to report actual or suspected discrimination or harassment. They may offer options and resources without any obligation to inform an outside agency or campus official unless a Complainant has requested the information be shared.

If a Complainant expects formal action in response to their allegations, reporting to any Mandated Reporter can connect them with resources to report crimes and/or policy violations, and these

employees will immediately pass reports to the Title IX Coordinator (and/or police, if desired by the Complainant), who will take action when an incident is reported to them.

The following sections describe the reporting options at the University for a Complainant or third-party:

#### **A. Confidential Resources**

If a Complainant would like the details of an incident to be kept confidential, the Complainant may speak with:

- UNI Counseling Center licensed professional counselors and staff (students)
- Employee Assistance Program licensed professional counselors and staff (employees)
- UNI Student Health Clinic providers and staff (students)
- Riverview Center UNI Campus Coordinator/Sexual Assault Advocate
- Athletic trainers (if licensed and privileged under Iowa state statute, and/or working under the supervision of a health professional)
- Off-campus:
  - Licensed professional counselors and other medical providers
  - Crisis counselors
  - Domestic violence and sexual assault resources
  - Local or state assistance agencies
  - Clergy/Chaplains
  - Attorneys

The UNI Counseling Center and/or the Employee Assistance Program are available to help free of charge and may be consulted on an emergency basis 24 hours a day, 365 days a year.

[Employees who are confidential and who receive reports within the scope of their confidential roles will submit timely anonymous statistical information to the Clery Officer for Clery Act purposes.]

#### **B. Mandated Reporters and Reports/Formal Complaints**

All employees of the University (including student employees), with the exception of those who are designated as Confidential Resources, are Mandated Reporters and must promptly share with the Title IX Coordinator all known details of a report made to them in the course of their employment relating to issues and behaviors related to this policy.

Employees must also promptly share all details of behaviors under this policy that they observe or have knowledge of, even if not reported to them by a Complainant or third-party.

Complainants may want to carefully consider whether they share personally identifiable details with non-confidential Mandated Reporters, as those details must be shared with the Title IX Coordinator.

Generally, disclosures in climate surveys, classroom writing assignments or discussions, human subjects research, or at events such as “Take Back the Night” marches or speak-outs do not provide notice that must be reported to the Title IX Coordinator by employees, unless the Complainant clearly indicates that they desire a report to be made or seek a specific response from the University.

Supportive measures may be offered by the Title IX Coordinator as the result of such disclosures regardless of whether the Complainant chooses to pursue any University action.

Failure of a Mandated Reporter, to report an incident of discrimination or harassment or of which they become aware is a violation of University policy and can be subject to disciplinary action.

Finally, it is important to clarify that a Mandated Reporter who is themselves a target of harassment or other misconduct under this policy is not required to report their own experience, though they are, of course, encouraged to do so.

### **17. Unethical/Consensual Relationships**

There are inherent risks in any romantic or sexual relationship between individuals in unequal positions (such as faculty member and student or supervisor and employee). These relationships may, in reality, be less consensual than perceived by the individual whose position confers power or authority. Similarly, the relationship also may be viewed in different ways by each of the parties, particularly in retrospect. Circumstances may change, and conduct that was once welcome may, at some point in the relationship, become unwelcome.

Even when both parties have initially consented to romantic or sexual involvement, the possibility of a later allegation of a relevant policy violation still exists. The University does not wish to interfere with private choices regarding personal relationships when these relationships do not interfere with the goals and policies of the University. However, for the personal protection of members of this community, relationships in which power differentials are inherent (e.g., faculty-student, staff-student) are generally discouraged. They may also violate standards of professionalism and/or professional ethics.

Consensual romantic or sexual relationships in which one party maintains a direct supervisory or otherwise evaluative role over the other party are inherently problematic. Refer to [Policy 4.03](#) regarding obligations relating to such relationships, including the need to report such relationships.

### **18. Cooperation with Investigations**

Investigators are to be given access to witnesses and evidence needed to conduct a thorough investigation and resolution process. All members of the University community are expected to cooperate with investigations conducted under this policy, including serving as a witness and providing evidence when requested by the Investigator except as restricted by law (e.g., pursuant to a legally recognized privilege, court order, etc.).

### **19. When a Complainant Does Not Wish to Proceed**

If a Complainant does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a Formal Complaint Process to be pursued, they may make such a request to the Title IX Coordinator, who will evaluate that request in light of the duty to ensure the safety of the campus and to comply with state or federal law.

The Title IX Coordinator has ultimate discretion over whether the University proceeds when the Complainant does not wish to do so.

The Title IX Coordinator must consider the effect that non-participation by the Complainant may have on the availability of evidence and the University's ability to pursue a Formal Complaint Process fairly and effectively.

When the Title IX Coordinator signs the Formal Complaint, they do not become the Complainant. The Complainant is the individual who is alleged to be the victim of conduct that could constitute a violation of this policy.

When the University proceeds, the Complainant (or their Advisor) may have as much or as little involvement in the process as they wish. The Complainant retains all rights of a Complainant under this policy irrespective of their level of participation. When the Complainant chooses not to participate, the Advisor may be appointed as proxy for the Complainant throughout the process, acting to ensure and protect the rights of the Complainant, though this does not extend to the provision of evidence or testimony.

Note that the University's ability to remedy and respond to a report may be limited if the Complainant does not want the University to proceed with an investigation and/or Formal Complaint process. The goal is to provide the Complainant with as much control over the process as possible, while balancing the University's obligation to protect its community.

In cases in which the Complainant requests confidentiality/no formal action and the circumstances allow the University to honor that request, the University will offer informal resolution options and supportive measures to the Complainant, but will not otherwise pursue formal action.

If the Complainant elects to take no action, they can change that decision if they decide to pursue a Formal Complaint at a later date. Upon making a Formal Complaint, a Complainant has the right, and can expect, to have allegations taken seriously by the University, and to have the incidents investigated and properly resolved through this policy and corresponding procedures. Delays may cause limitations on access to evidence, or present issues with respect to the status of the parties.

## **20. Federal Timely Warning Obligations**

Parties reporting sexual assault, domestic violence, dating violence, and/or stalking should be aware that under the Clery Act, the University's Clery Officer must issue timely warnings for incidents reported to them that are considered by the institution to represent a serious or continuing threat to students and employees.

The University will ensure that a Complainant's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger.

## **21. False Allegations and Evidence**

Deliberately false and/or malicious accusations under this policy are a serious offense and will be subject to appropriate disciplinary action. This does not include allegations that are made in good faith but ultimately shown to be erroneous or do not result in a finding of a policy violation.

Additionally, witnesses and parties knowingly providing false evidence, tampering with or destroying evidence, or deliberately misleading an official conducting an investigation can be subject to discipline under this policy.

## **22. Amnesty for Complainants and Witnesses**

The University community encourages the reporting of potential violations of this policy. Sometimes, Complainants or witnesses are hesitant to report to University officials or participate in grievance processes because they fear that they themselves may be in violation of certain policies (e.g., underage drinking or use of illicit drugs at the time of the incident).

It is in the best interests of the University community that Complainants report potential policy violations to University officials, that witnesses come forward to share what they know, and that all parties be forthcoming during the process.

To encourage reporting and full participation in the process, the University maintains a policy of offering students amnesty from minor policy violations – such as underage consumption of alcohol or the use of illicit drugs – related to the incident that is the subject of the report or matter being investigated.

Amnesty will not generally apply to more serious allegations such as physical abuse of another or illicit drug distribution.

In addition, the University maintains a policy of amnesty for students who offer help to others in need ([Good Samaritan Provision of Student Conduct Code](#)). Although policy violations cannot be overlooked, the University may provide purely educational options with no official disciplinary finding, rather than punitive sanctions, to those who offer their assistance to others in need.

## **23. Federal Reporting Obligations**

Certain campus officials – those deemed Campus Security Authorities (CSAs) – have a duty to report the following for federal statistical reporting purposes (Clery Act):

- All “primary crimes,” which include homicide, sexual assault, robbery, aggravated assault, burglary, motor vehicle theft, and arson;
- Hate crimes, which include any bias motivated primary crime as well as any bias motivated larceny or theft, simple assault, intimidation, or destruction/damage/vandalism of property;
- VAWA<sup>7</sup>-based crimes, which include sexual assault, domestic violence, dating violence, and stalking; and
- Arrests and referrals for disciplinary action for weapons-related law violations, liquor-related law violations, and drug abuse-related law violations. All other criminal incidents of which they have been made aware of or witnessed in order to be added to the Daily Crime Log.

All personally identifiable information is kept private, but information about criminal incidents must be shared with the UNI Clery Officer regarding the type of incident and its specific location for publication

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<sup>7</sup> VAWA is the Violence Against Women Act, enacted in 1994 codified in part at 42 U.S.C. sections 13701 through 14040.

in the Annual Security Report and entry on the Daily Crime Log. Refer to [Policy 7.08](#) for further details regarding Clery and CSA reporting requirements.

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