UNIVERSITY SEXUAL MISCONDUCT POLICY

It is Bushnell University's policy to provide an educational environment free of all forms of sex discrimination, including but not limited to unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct or communications constituting sexual harassment. Sexual harassment, including acts of sexual assault, is a form of sex discrimination and is prohibited by Bushnell. The University's goal is to foster an open and safe community where these behaviors are deemed unacceptable, where those who are affected are provided support, and where a fair and impartial grievance process is provided to all parties. All forms of prohibited conduct under this policy are regarded as serious, and violations may result in discipline, including the possibility of separation from the University.

In order to address incidents of sexual misconduct that do and do not fall within the definition of Title IX Sexual Harassment (which is a definition set forth in regulations promulgated by the U.S. Department of Education under Title IX of the Education Amendments Act of 1972), the University has two policies that address sexual misconduct: (1) the Title IX Sexual Harassment policy, and (2) this policy. These policies are inter-related and must be read together. If allegations that are the basis of a formal complaint would constitute prohibited conduct under both this University Sexual Misconduct policy and the Title IX Sexual Harassment policy, the grievance process set forth in the Title IX Sexual Harassment policy will be applied in the investigation and adjudication of all of the allegations.

This University Sexual Misconduct policy applies only to certain conduct defined under this policy. Conduct not falling under the scope of this policy may be addressed under other University policies. Specifically, this policy applies to forms of sexual misconduct that do not fall under the scope of the Title IX Sexual Harassment policy, including Sexual Exploitation, Improper Conduct related to Sex, and University Sexual Harassment. The University Sexual Misconduct Policy also applies to complaints alleging certain conduct that would otherwise be prohibited under the Title IX Sexual Harassment policy (e.g., Quid Pro Quo Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence, and Stalking under the Title IX Sexual Harassment policy), but which must be dismissed under the Title IX Sexual Harassment policy because they do not meet that policy's and the federal government's jurisdictional requirements.

The University will respond to reports or formal complaints (as defined in section 3) of conduct prohibited under this policy with measures designed to stop the prohibited conduct, prevent its recurrence, and remediate any adverse effects of such conduct on campus or in University-related programs or activities.

1. Designation of Title IX Coordinator

Federal regulations require the University to designate and authorize at least one employee to coordinate its efforts to comply with its responsibilities under Title IX and 34 CFR Part 106, which employee must be referred to as the "Title IX Coordinator." For Bushnell University, those individuals are:

- Jocelyn Hubbs, Vice President for Student Development, Title IX Coordinator
  - jhubbs@bushnell.edu,
  - 541-684-7291,
  - office is located in Womack Hall 1st Floor

- Sarah Freeman, Associate Athletic Director, Deputy Coordinator
  - sfreeman@bushnell.edu,
  - 541-684-7252,
  - office is located in Morse Center 2nd Floor

- Chad Meadors, Assistant Athletic Director & Women's Basketball Coach, Deputy Coordinator
  - cmeadors@bushnell.edu,
  - 541-684-7341,
  - office is located in Morse Center Gym 1st Floor

The mailing address for each of these persons is 828 E. 11th Ave., Eugene, Oregon 97401.

The University's Title IX Coordinator must be informed of all reports or formal complaints of violations of this policy.

2. Reporting

a. *Report to the University*. Any person may report University Sexual Misconduct (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute University Sexual Misconduct), in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. Such a report may be made at any time (including during non-business hours) by using the pertinent telephone number or electronic mail address, or by mail to the office address, listed for the Title IX Coordinator.

b. *Report to Law Enforcement*. **A complainant may always report sexual misconduct such as sexual assault or other potentially criminal activity to law enforcement by calling 911.** The University supports any complainant who wishes to file a police report and will assist the complainant with reporting if needed. Complainants are encouraged to contact local police in the jurisdiction where the incident occurred, but it is their choice whether or not to report to law enforcement. If an individual reports an alleged incident to law enforcement, the University will cooperate with any investigation to the extent permitted under applicable law.

c. ***EMERGENCIES*. In emergency situations, if there is a suspected crime in progress or imminent or serious threats to the safety of anyone, employees must, and students are encouraged to, immediately contact the Eugene Police Department by dialing 911.**

d. *Non-emergency Situations*. In non-emergency situations, employees (other than those formally designated as Confidential Resources, must promptly report suspected violations of this policy or the Title IX Sexual Harassment policy to the Title IX Coordinator. Some students with special responsibilities,

including Resident Assistants (RAs), must report suspected violations of this policy or the Title IX Sexual Harassment policy to the Title IX Coordinator.

e. *Timeliness of Reporting*. Complainants and other reporting individuals are encouraged to report any violation of this policy or the Title IX Sexual Harassment policy as soon as possible in order to maximize the University's ability to respond promptly and effectively. Reports and formal complaints may be made at any time without regard to how much time has elapsed since the incident(s) in question. If the respondent is no longer a student or employee at the time of the report or formal complaint, the University may not be in a position to gather evidence sufficient to reach a determination as to the formal complaint or the University may not be able to take disciplinary action against the respondent. However, the University will still seek to provide support for the complainant and seek to take steps to end the prohibited behavior, prevent its recurrence, and address its effects.

f. *Amnesty*. To encourage and support the reporting of University Sexual Misconduct and Title IX Sexual Harassment, students who participate as witnesses or complainants in investigations under this policy will not be subject to student conduct charges for conduct like under-age drinking or use of illegal drugs that may have occurred at the time of or as a result of the sexual misconduct in question.

3. Terminology Used in this Policy

The following definitions clarify key terminology as used in this policy.

a. *Complainant* means an individual who is alleged to be the victim of conduct that could constitute University Sexual Misconduct.

b. *Consent* means informed, freely and actively given, mutually understandable words or communications by a person capable of giving consent that indicate a willingness to participate in mutually agreed upon sexual activity. Consent obtained through use of force (actual or implied, immediate or future), whether that force consists of physical force, threats, intimidation, or coercion, is invalid. Consent may not be demonstrated by lack of resistance, silence, a previous relationship, or a current relationship. Intoxication may invalidate consent and does not negate the need to obtain consent. A person who is not of legal age, who is incapacitated by physical or mental illness, who is mentally or physically incapacitated, or who is unconscious or unaware, is incapable of giving consent.

c. *Employee* means a person employed by the University.

d. *Formal complaint* refers to a document filed by a complainant (meaning a document or electronic submission (such as by electronic mail) that contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the individual filing the formal complaint) alleging University Sexual Misconduct against a respondent and requesting that the University investigate the allegation of University Sexual Misconduct. A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information provided in this policy, and by any additional method identified in this policy. *Formal complaint* may also refer to a document signed by the Title IX Coordinator alleging University Sexual Misconduct against a respondent. Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or otherwise a party.

e. *Official with Authority* refers to the University's Title IX Coordinator, the Dean of Students, any Vice President, and the President.

f. *Report* refers to information brought to the attention of an Official with Authority alleging conduct prohibited under this policy; a report is not considered to be a formal complaint. A party may bring a report and then subsequently file a formal complaint.

g. *Respondent* refers to the individual(s) who has been alleged to be the perpetrator of conduct that could constitute University Sexual Misconduct.

h. *Third party* refers to any individual who is not a University student, a faculty member, or a staff member (e.g., vendors, alumni/ae, or local residents).

i. *Witness* refers to any individual who shares information relating to an allegation of prohibited conduct under this policy.

j. *Student* means a person enrolled in the University. Except as provided in this policy, a person who is not officially enrolled but who has a continuing academic relationship with the University is considered to be enrolled for purposes of this policy. A former student still living in University housing is also considered to be an enrolled student for purposes of this policy, unless this policy provides otherwise. Finally, a person who has been accepted for admission with the University but has not yet begun coursework is considered to be an enrolled student for purposes of this policy.

k. *Supportive measures* are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the University's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the University's educational environment, or deter sexual harassment. Supportive measures may include:

- counseling,
- extensions of deadlines or other course-related adjustments,
- modifications of work or class schedules,
- campus escort services,
- mutual restrictions on contact between the parties,
- changes in work or housing locations,
- leaves of absence,
- increased security and monitoring of certain areas of the campus, and
- other similar measures.

The University must maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the University to provide the supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

4. Prohibited Conduct

a. This policy addresses "University Sexual Misconduct." University Sexual Misconduct encompasses all of the prohibited conduct described below that occurs on the basis of sex that does not fall within the definitional or jurisdictional requirements of the federal regulations underlying the Title IX Sexual Harassment policy.

Examples of prohibited conduct under this University Sexual Misconduct policy may include:

- Conduct that occurs in the local vicinity but outside of a University program or activity; or
- Conduct that occurs outside of the United States when the conduct is associated with a University-sponsored program or activity, such as travel, research, or internship programs; or
- Conduct that involves the use of the University's computing and network resources from a remote location, including but not limited to accessing email accounts.

In determining whether alleged conduct violates this policy, the University will consider the totality of the facts and circumstances involved in the incident, including the nature of the alleged conduct and the context in which it occurred. Any of the prohibited conduct defined in this policy can be committed by individuals of any gender, and it can occur between individuals of the same gender or different genders. It can occur between strangers or acquaintances, as well as people involved in intimate or sexual relationships.

The prohibited behaviors listed below are serious offenses and will result in University discipline. Prohibited conduct involving force, duress, or inducement of incapacitation, or where the perpetrator has deliberately taken advantage of another individual's state of incapacitation, will be deemed especially egregious and may result in expulsion or termination of employment. The respondent's consumption of alcohol or the use of illegal substances does not constitute a mitigating circumstance when it contributes to a violation under this policy.

The following prohibited behaviors fall under the University Sexual Misconduct policy only if they fall outside the jurisdictional requirements of the Title IX Sexual Harassment policy—Conduct on the basis of sex that satisfies one or more of the following:

- *Quid Pro Quo Sexual Harassment*: An employee of the University conditioning the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct;

- *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;

- Sexual assault, which means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation. 20 U.S.C. 1092(f)(6)(A)(v).

  The following are forcible sex offences: Any sexual act directed against another person, without the consent of the victim including instances where the victim is incapable of giving consent.

Forcible Rape—(Except Statutory Rape) The carnal knowledge of a person, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving consent because of his/her temporary or permanent mental or physical incapacity.

Forcible Sodomy—Oral or anal sexual intercourse with another person, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.

Sexual Assault With An Object—To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.

Forcible Fondling—The touching of the private body parts of another person for the purpose of sexual gratification, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.

The following are nonforcible sex offenses: Unlawful, nonforcible sexual intercourse:

Incest—Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

Statutory Rape—Nonforcible sexual intercourse with a person who is under the statutory age of consent.

- *Dating violence*, which means violence committed by a person--(A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) where the existence of such a relationship is be determined based on a consideration of the following factors: (i) The length of the relationship. (ii) The type of relationship. (iii) The frequency of interaction between the persons involved in the relationship. See 34 U.S.C. 12291(a)(10).
- *Domestic violence*, which includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of Oregon, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of Oregon. See 34 U.S.C. 12291(a)(8).
- *Stalking*, which means engaging in a course of conduct directed at a specific person that would cause a reasonable person to--(A) fear for his or her safety or the safety of others; or (B) suffer substantial emotional distress. See 34 U.S.C. 12291(a)(30).
- *Retaliation*. The University expressly prohibits any form of retaliatory action against any member of the University community who in good faith: (1) files a report, complaint or

grievance under this policy (or with an external entity); (2) opposes in a reasonable manner an action or policy believed to constitute a violation of this policy; or (3) participates in University investigations, compliance reviews, or discipline proceedings under this policy.

Depending on the circumstances referenced above, retaliatory acts may include (but are not limited to):

- Adverse employment action;
- Adverse action relating to participation in an educational or work program;
- Unreasonably interfering with the academic or professional career of another individual;
- Engaging in conduct which constitutes stalking, harassment, or assault;
- Engaging in efforts to have others engage in retaliatory behavior on one's behalf.

The University retains the right to charge an individual for making a materially false statement in bad faith during the course of an investigation, or proceeding, under this policy, but will not conclude that any individual has made a materially false statement in bad faith solely based on the determination regarding responsibility.

Complaints alleging retaliation under this policy, including for the exercise of rights under this policy, must be filed in accordance with this policy and will be addressed promptly and equitably. Where the individual allegedly retaliating is not affiliated with the University and not otherwise subject to its policies, the University will process the complaint and take appropriate measures.

Notwithstanding the above, the exercise of rights protected under the First Amendment does not constitute retaliation prohibited under this policy; and charging an individual with a violation for making a materially false statement in bad faith in the course of a grievance proceeding under this policy does not constitute retaliation.

b. The jurisdictional requirements of the Title IX Sexual Harassment policy do not apply to the following prohibited behaviors, that is, the following prohibited behaviors do not fall under the Title IX Sexual Harassment policy regardless of where or under what circumstances they occur:

- *University Sexual Harassment*: Sexual harassment is unwelcome conduct of a sexual nature. Sexual harassment can include unwelcome sexual advance, request for sexual favors, or other verbal, nonverbal or physical conduct of a sexual nature where such conduct is sufficiently server or pervasive that it has the effect, intended or unintended, of unreasonably interfering with an individual's work or academic performance or it has created an intimidating, hostile or offensive environment and would have such an effect on a reasonable person.
- Examples of conduct that can constitute sexual harassment if based on an individual's sex include but are not limited to:
    - Unwelcome jokes or comments (e.g., sexist jokes);
    - Disparaging remarks about sex, gender identity, or gender expression (e.g., negative or offensive remarks or jokes about an individual's self-presentation);
    - Displaying negative or offensive posters or pictures about sex;
    - Electronic communications, such as e-mail, text messaging, and Internet use, that violate this policy.

- *Sexual Exploitation*. Any act whereby one individual violates the sexual privacy of another or takes unjust or abusive sexual advantage of another who has not provided consent, and that does not constitute non-consensual sexual penetration or non-consensual sexual contact. Examples may include: recording, photographing, transmitting, viewing, or distributing intimate or sexual images or sexual information without the knowledge and consent of all parties involved; voyeurism (i.e., spying on others who are in intimate or sexual situations).
- *Improper Conduct Related to Sex*. Unprofessional or inappropriate conduct that does not fall under other forms of Title IX Sexual Harassment or University Sexual Misconduct, but that is sexual and/or sex-based in nature and has the effect of unreasonably interfering with an individual's educational experience, working conditions, or living conditions.

5. Formal Complaints

Upon receipt of a formal complaint, the Title IX Coordinator will respond to any immediate health or safety concerns raised. The Title IX Coordinator will then conduct an initial assessment for the sole purpose of determining whether the alleged conduct, if substantiated, would constitute prohibited conduct under this policy or prohibited conduct under the Title IX Sexual Harassment policy. The University will seek to complete the initial assessment within 14 days of receipt of the formal complaint. Following the initial assessment, the Title IX Coordinator may take any of the following actions:

- If the allegations forming the basis of the formal complaint would, if substantiated, constitute prohibited conduct as defined in this policy, the Title IX Coordinator will implement appropriate supportive measures. In addition, the Title IX Coordinator may initiate an investigation of the allegations under this policy in a formal complaint. However, if the Title IX Coordinator deems the formal complaint appropriate for the informal resolution process, upon the consent of both parties, the Title IX Coordinator may instead refer the matter to the informal resolution process.

- If the allegations forming the basis of the formal complaint would not, if substantiated, constitute prohibited conduct as defined in this policy, the Title IX Coordinator may dismiss the formal complaint from the University Sexual Misconduct grievance process (and either party may appeal this dismissal, as discussed below). However, if appropriate, the Title IX Coordinator may refer the matter to the Title IX Sexual Harassment process; or, if the Title IX Coordinator deems the formal complaint appropriate for the informal resolution process, upon the consent of both parties, the Title IX Coordinator may instead refer the matter to the informal resolution process.

In addition, at any time prior to the final investigation report, the University may dismiss a formal complaint if:

- The complainant notifies the Title IX Coordinator in writing that the complainant wishes to withdraw the formal complaint or any allegations therein;
- The respondent is no longer enrolled or employed by the University; or
- Specific circumstances prevent the University from gathering sufficient evidence to reach a determination as to the formal complaint or the allegations therein.

Upon dismissal, the University shall send written notice of the dismissal and reason(s) therefor simultaneously to the parties. Both parties will have an equal right to appeal the dismissal through the appeal process described in this policy. The determination regarding dismissal becomes final either on

the date that the parties are provided with the written determination of the result of an appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely. Once final, a complainant cannot file a formal complaint under this policy concerning the same alleged conduct.

6. Anonymity and Confidentiality; Clery Act; Preservation of Evidence

a. *Anonymity*. Sometimes complainants request anonymity or that an investigation not be conducted. If a complainant makes such a request, the University will balance the request with its obligation to protect the complainant and provide a safe and non-discriminatory environment. However, complainants should understand that complete anonymity cannot be guaranteed. Granting a request for anonymity may hamper the University's ability to conduct an investigation.

b. *Confidentiality*. Several campus professionals are designated confidential resources, to whom confidentiality attaches. Confidential resources are not obligated to report information that is provided to them. This allows individuals to explore their options in a non-pressured environment while they make informed decisions. There may be exceptions in cases involving child abuse, imminent risk of serious harm, emergent hospitalization, or a court order. In addition, non-identifying information about violations of this policy may be provided to other University officials for purposes of anonymous statistical reporting under the Clery Act.

Bushnell Certified Advocate:

Sarah Halstead, shalstead@bushnell.edu, 541-349-7489, Office is located in Womack Hall
The certified advocate role is available for confidential communication for those seeking safety planning, counseling, support or advocacy services.

An individual who is not prepared to make a report or formal complaint, or who may be unsure how to label what happened, but still seeks information and support, is strongly encouraged to contact a confidential resource.

While complainants, respondents, and witnesses involved in the grievance process under this policy are strongly encouraged to exercise discretion in sharing information in order to safeguard the integrity of the process and to avoid the appearance of retaliation, complainants and respondents are not restricted from discussing the allegations under investigation.

c. *Clery Act*. Under certain circumstances, the University may be obligated to issue a timely warning notice under the Clery Act about an incident of sexual misconduct. Nothing in this policy prevents the University from complying with this obligation and its other obligations under the Clery Act.

d. *Preservation of Evidence*. Complainants, respondents, and witnesses should consider whether there is information and evidence to collect that might be helpful to an investigator and should preserve relevant information and evidence. Such information and evidence might include receipts, text messages, pictures, videos, emails, Facebook posts or messages, Snapchats, and other social media posts.

e. *Medical Exams*. Forensic exams (commonly referred to as rape kits) are conducted at all hospital locations in the Eugene-Springfield area. More information can be gathered from these exams the sooner the exam is performed following the alleged incident. Individuals are encouraged to not bathe,

shower, douche, or brush their teeth before the exam. Additionally, individuals are encouraged to maintain any physical objects such as clothing worn during an alleged incident or other relevant materials. If clothing is changed, each garment should be placed in a separate paper (not plastic) bag.

f. *Restraining Orders*. Should a student or employee obtain a restraining order against another individual, the student or employee is encouraged to share that information with the Title IX Coordinator so that the University can be prepared to assist law enforcement with the enforcement of the restraining order.

7. Supportive Measures

Upon receipt of a report or formal complaint of a violation of this policy, the University, through the Title IX Coordinator, will promptly contact the complainant to discuss the availability of supportive measures, consider the complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint. The University will also consider supportive measures, as appropriate and reasonably available, for the respondent.

Supportive measures may include, but not be limited to, the following options:

- Academic Assistance
  - Transferring to another section of a lecture or laboratory
  - Rescheduling an academic assignment or test
  - Accessing academic support (e.g., tutoring)
  - Arranging for incompletes, a leave of absence, or withdrawal from course(s)
  - Preserving eligibility for academic, athletic, or other scholarships, financial aid, internships, study abroad, or international student visas
- Counseling
- Change in campus housing and/or dining locations
- Assistance in finding alternative housing
- Consultation with Campus Security or local police agency as appropriate
- Assistance in arranging for alternative University employment arrangements and/or changing work schedules
- Providing an escort to ensure that the student can move safely between school programs and activities
- Transportation and parking assistance
- Assistance identifying any additional resources including off-campus support and services
- No contact orders

8. Emergency Removal (Students)

The University may remove a respondent from the University's education program or activity on an emergency basis, provided that the University undertakes an individualized safety and risk analysis, determines that an immediate threat to the physical health or safety of any student or other individual

arising from the allegations of sexual harassment justifies removal, and provides the respondent with notice and an opportunity to challenge the decision immediately following the removal. This section of the policy will not be construed to modify any rights under Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act.

9. Administrative Leave (Employees)

The University may place a non-student employee respondent on administrative leave during the pendency of its process under this policy. This section of the policy will not be construed to modify any rights under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act.

10. Informal Resolution Process

a. Subject to the consent of the parties and the approval of the Title IX Coordinator, the University permits informal resolution processes in cases in which a report has been made to or a formal complaint has been filed with the Title IX Coordinator. Subject to approval by the Title IX Coordinator, the informal resolution process is available in matters involving a student complainant and a student respondent, as well as in matters involving an employee complainant and an employee respondent; the informal resolution process is not available in matters involving a student and an employee.

b. At any time prior to reaching a determination regarding responsibility the University may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication, provided that the University –

(1) Provides to the parties a written notice disclosing: the allegations, the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint, and any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared; and

(2) Obtains the parties' voluntary, written consent to the informal resolution process.

11. Grievance Process—In General

a. *Equitable Treatment*. The University's grievance process will treat complainants and respondents equitably by providing remedies to a complainant where a determination of responsibility has been made against the respondent, and by following this grievance process before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a respondent. Remedies will be designed to restore or preserve equal access to the University's education program or activity. Such remedies may include the same individualized services described as "supportive measures;" however, remedies may be disciplinary or punitive in nature and need not avoid burdening the respondent. The University generally does not compel students to participate in a grievance process under this policy. However, failure to participate may affect the outcome.

b. *Objective Evaluation of Evidence*. The University's grievance process will require an objective evaluation of relevant evidence – including both inculpatory and exculpatory evidence – and provide

that credibility determinations may not be based on a person's status as a complainant, respondent, or witness.

c. *Conflict of Interest*. The University's grievance process requires that any individual designated by the University as a Title IX Coordinator, investigator, decision-maker, or any person designated by the University to facilitate an informal resolution process, not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. Parties will be notified at the appropriate junctures of the identities of the individuals serving as investigators, decision maker, and appellate officers. A party who has concerns that one or more of the individuals performing one of the aforementioned roles has a conflict of interest or is biased must report those concerns to the Title IX Coordinator within 48 hours of being notified of their identities and include a brief explanation of the basis for the conflict or bias concern. The Title IX Coordinator will assess the allegations of conflict or bias to determine whether the identified individual(s) can fulfill their duties in an impartial way. If the Title IX Coordinator concludes that the facts and circumstances support the claim of conflict or bias, the pertinent individual(s) will not participate in the case.

d. *Presumption of Non-responsibility*. The University's grievance process includes a presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.

e. *Prompt Time Frames*. The University's grievance process includes reasonably prompt time frames for conclusion of the grievance process, including reasonably prompt time frames for filing and resolving appeals, and a process that allows for the temporary delay of the grievance process or the limited extension of time frames for good cause with written notice to the complainant and the respondent of the delay or extension and the reasons for the action. Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.

f. *Range of Sanctions*. Following any determination of responsibility, the University may implement remedies or sanctions ranging from an educational paper to expulsion.

g. *Standard of Evidence*. The standard of evidence used is the preponderance of the evidence standard, and the same standard of evidence will be used for formal complaints against students as for formal complaints against employees, including faculty.

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

i. *Procedures where One Party is a Member of the University Community and the Other party is Not.* When a third party, (i.e., a non-member of the University community, which could include, for example, alumni) is a party under this policy, the University will use procedures that are generally consistent with the procedures described in this policy, appropriately modified based on the particular circumstances of the case and taking into account privacy requirements and similar considerations. In no case will a member of the University community (i.e., current student, faculty member, or staff member) be afforded lesser rights or lesser opportunities to participate in the disciplinary proceeding than the non-member of the University community.

j. *Advisers*. Throughout the grievance process, each party may have an adviser of their choice; parties may change their adviser at any time during the grievance process. An adviser is an individual chosen by a complainant or a respondent to provide guidance during the grievance process. An adviser may be a member or non-member of the University community and may be an attorney. The role of the adviser is narrow in scope: the adviser may attend any interview or meeting connected with the grievance process, but the adviser may not actively participate in interviews and may not serve as a proxy for the party. Any individual who serves as an adviser is expected to make themselves available for meetings and interviews throughout the investigation process as scheduled by the University. The University (including any official acting on behalf of the University such as an investigator or a decision maker) has the right at all times to determine what constitutes appropriate behavior on the part of an adviser and to take appropriate steps to ensure compliance with this policy.

k. *Prior Sexual Behavior*. The complainant's predisposition or prior sexual behavior are not relevant and will not be used during the grievance process, unless offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

l. *Consolidation*. The Title IX Coordinator has the discretion to consolidate multiple formal complaints as to allegations of University Sexual Misconduct against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of University Sexual Misconduct arise out of the same facts or circumstances.

12. Grievance Procedure—Investigation

a. *Notice of Allegations*.

(1) In order to protect the safety of the campus community, the Title IX Coordinator may review reports of violations of this policy even absent the filing of a formal complaint, or under certain circumstances, even if a formal complaint has been withdrawn. The Title IX Coordinator may need to themselves file a formal complaint and proceed with an investigation even if a complainant specifically requests that the matter not be pursued. In such a circumstance, the Title IX Coordinator will take into account the complainant's articulated concerns, the best interests of the University community, and fair treatment of all individuals involved.

Upon receipt of a formal complaint, the University will provide the following written notice to the parties who are known: (A) A copy of this policy. (B) Notice of the allegations potentially constituting sexual harassment, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting sexual harassment, and the date and location of the alleged incident, if known. The written notice must also include a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process. The written notice must inform the parties that they may have an advisor of their choice, who may be an attorney, and may inspect and review evidence. The written notice must inform the parties of any provision in the University's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

(2) If, in the course of an investigation, the University decides to investigate allegations about the complainant or respondent that are not included in the notice, the University will provide notice of the additional allegations to the parties whose identities are known.

b. *Dismissal of a Formal Complaint*.

(1) Within 14 days of receipt of a formal complaint, the University will appoint one or more persons to investigate the allegations contained in a formal complaint.

(2) The University may dismiss the formal complaint or any allegations therein, if at any time during the investigation: a complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein; the respondent is no longer enrolled or employed by the University; or specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

(3) Upon a required or permitted dismissal, the University will promptly send written notice of the dismissal and reason(s) therefor simultaneously to the parties.

c. *Investigation of a Formal Complaint*. When investigating a formal complaint and throughout the grievance process, the University will—

(1) Ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on the University and not on the parties; provided, that the University cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the University obtains that party's voluntary, written consent to do so.

(2) Provide an equal opportunity for the parties to identify fact witnesses and inculpatory and exculpatory evidence.

(3) Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.

(4) Provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice and not limit the choice or presence of advisor for either the complainant or respondent in any meeting or grievance proceeding; however, the advisor may not participate in a meeting or the proceedings.

(5) Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, , investigative interviews, or other meetings, with sufficient time for the party to prepare to participate.

(6) Provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which the University does not intend to rely in reaching a determination regarding

responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation.

(7) Prior to completion of the investigative report, the University will meet with each party and the party's advisor, if any, to review the draft report and the evidence relevant to the investigation. The parties will have 10 days to submit a written response including questions of the other party relevant to the investigation, which the investigator will follow-up on and/or consider prior to final completion of the investigative report.

13. Determination regarding Responsibility.

(1) Within 21 days after the conclusion of the final investigation report, the decision-maker will issue a written determination regarding responsibility. To reach this determination, the decision-maker must apply the preponderance of the evidence standard.

(2) The written determination must include—(A) Identification of the allegations potentially constituting University Sexual Misconduct; (B) A description of the procedural steps taken from the receipt of the formal complaint through the written determination, including any notifications to the parties, interviews with parties and witnesses, site visits, and methods used to gather other evidence; (C) Findings of fact supporting the determination; (D) Conclusions regarding the application of this policy to the facts; (E) A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions imposed 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 (F) The University's procedures and permissible bases for the complainant and respondent to appeal.

(3) The Title IX Coordinator will provide the written determination to the parties simultaneously. The determination regarding responsibility becomes final either on the date that the University provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

(4) The Title IX Coordinator or designee is responsible for effective implementation of any remedies.

14. Grievance Procedure—Appeals

a. Either or both parties may appeal from a written determination regarding responsibility and from the University's dismissal of a formal complaint or any allegations therein, within seven calendar days from the date of the pertinent University action. Appeals are on only the following bases: (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; (3) The Title IX Coordinator, investigator(s), decision-maker(s), or person determining the sanction and remedies had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter; and (4) The sanction is grossly unreasonable.

b. Appeals are decided on the basis of written materials submitted by the parties and, in the discretion of the person considering the appeal, the case file and the record at previous stages of the

matter. As to any appeal, the University will: (1) Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties; (2) Ensure that the appellate officer is not the same person as the decision-maker, the investigator(s), or the Title IX Coordinator; (3) Ensure that the decision-maker for the appeal treats the parties equitably; (4) Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome; (5) Issue a written decision within 30 days of receipt of an appeal describing the result of the appeal and the rationale for the result; and (6) Provide the written decision simultaneously to both parties.

c. An appeal in a matter in which a student is the respondent shall be filed with the Vice President for Enrollment and Student Development. An appeal in a matter in which an employee is the respondent shall be filed with the Vice President for Administration and Finance. If the respondent is both a student and employee, the appeal may be filed with either Vice President. In any case, a copy of the appeal shall be provided to the Title IX Coordinator. Appeals should be filed by email.

d. The Vice President receiving the appeal shall designate a person to consider the appeal, who is called the "appellate officer." The appellate officer may not be the same person as the decision-maker, the investigator(s), or the Title IX Coordinator.

15. Recordkeeping

The University will maintain an appropriate record of the proceedings undertaken pursuant to this policy in accordance with the University's recordkeeping policy.