

# HOWARD UNIVERSITY POLICY

<b>Policy Number:</b>	400-005 Governance, Risk and Compliance
<b>Policy Title:</b>	(INTERIM) TITLE IX POLICY ON PROHIBITED SEXUAL AND GENDER-BASED HARASSMENT AND VIOLENCE AND OTHER FORMS OF INTERPERSONAL VIOLENCE
<b>Responsible Officers:</b>	Provost and Chief Academic Officer Title IX Officers
<b>Responsible Offices:</b>	Office of the Provost and Chief Academic Officer Title IX Office
<b>Effective Date:</b>	November 13, 2017 (Revised Policy – Issued as Interim) January 18, 2017 (Revised Policy) April 29, 2016 (Updated) March 9, 2016 (Revised Policy) May 31, 2015 (Revised Policy) March 12, 2015 (Interim Policy) August 11, 2011 (Updated Title IX Contacts) June 5, 1999 (Original)

## I. POLICY STATEMENT

Howard University (the “University”) is committed to ensuring compliance with Title IX of the *Education Amendments of 1972*, as amended, the *Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act)*, as amended by the *Violence Against Women Reauthorization Act of 2013 (VAWA)*, Title VII of the *Civil Rights Act of 1964* and related authority. To that end, the University reaffirms its commitment to providing educational and employment opportunities free from harassment and discrimination based upon sex, gender, gender expression, gender identity, sexual orientation, or marital status; sexual violence; dating violence, domestic violence; stalking; and retaliation. In furtherance of this commitment, the University strives to maintain an environment in which all members of the University community are: (a) judged and rewarded solely on the basis of ability, experience, effort, and performance; and (b) provided conditions for educational and employment pursuits that are free from sexual and gender-based harassment and violence, other forms of interpersonal violence, stalking, and retaliation.

Sexual and gender-based harassment, discrimination and violence, dating violence, domestic violence and stalking (collectively referred to in this Policy as “Prohibited Conduct”) are violations of federal law and District of Columbia, Maryland, and Virginia law. Such conduct can result in physical and psychological harm to individuals, while corrupting the positive work and academic environment the University strives to maintain. Therefore, Prohibited Conduct committed by any member of the Howard University community, including students, staff, faculty, administrators, contractors, and third parties, shall not be tolerated under any circumstance. Such conduct is strictly prohibited under both Title IX and Title VII, and by this University policy.

The University considers the forms of Prohibited Conduct defined in this policy to be extremely serious matters. In accordance with federal law, the University has a legal obligation to investigate

or otherwise respond to all reports of Prohibited Conduct. This obligation arises when designated University employees (known as Responsible Employees) receive direct or indirect notice that Prohibited Conduct may have taken place.

Additionally, making a good faith report of Prohibited Conduct is a protected civil rights activity. As such, retaliation against a Complainant, Title IX Officer, administrator, faculty member, employee, student, witness, or any individual involved in any aspect of the complaint or investigative process under this policy is strictly prohibited and will be sanctioned accordingly.

This policy is not designed to limit the academic freedom of University faculty. The University prides itself on affording faculty with a fair opportunity to teach, conduct research, and provide services to the community in a setting that allows the academic freedom necessary to cultivate a wide expanse of ideas and teaching methods. The University encourages the expression of such ideas and the use of such methods in a manner that is reasonably related to the subject matter of instruction, and provided that they are expressed or used in a manner that is consistent with this policy and the rights of students, faculty members, staff, and University community members.

The Title IX Coordinator is primarily responsible for implementing this policy and ensuring that all students and employees are adequately trained or otherwise made aware of their rights and responsibilities under this policy. While it is the responsibility of the University to disseminate this policy, it is the responsibility of each member of the University community to read the policy and become familiar with its provisions. The Chief Operating Officer shall ensure that appropriate notice of this policy and its contents are distributed to all University vendors and those seeking to do business with the University.

If the performance of a duty or responsibility under this policy creates an actual or apparent conflict of interest, or is a violation of another University policy, the General Counsel may reassign duties and/or responsibilities of such employees on a case-by-case basis to avoid such conflict or violation. The General Counsel will make all conflict of interest determinations.

This policy is issued as an interim policy which, consistent with the University's Policy on Policies, will remain in effect for up to six months, by which time it is expected that a final policy will be adopted.

## **II. RATIONALE**

Title IX of the Education Amendments of 1972, as amended ("Title IX"), and its implementing regulations (34 CFR Part 106), prohibit any individual from being excluded from participation in, denied the benefits of, or subjected to discrimination under any education program or activity on the basis of sex or gender. In compliance with this federal law, it is the policy of the University not to discriminate on the basis of sex or gender in the education programs and activities that it operates. This prohibition against discrimination also extends to employment in education programs and activities and to admission to such programs and activities.

Further, this policy is designed to protect all University students, faculty members, employees and third parties from illegal and improper forms of harassment and discrimination. It provides students, faculty members, employees, and third parties with an opportunity to seek redress for conduct that may violate this policy and allows the University to reaffirm its commitment to providing educational and employment opportunities free from the negative effects of Prohibited Conduct. The University will respond to reports about Prohibited Conduct with measures designed to eliminate the conduct, prevent its recurrence, and remedy any adverse effects of the conduct on individuals, members of the campus community, or University-related programs or activities. In addition, the University may impose interim remedial or protective measures during an investigation to provide a Complainant with continued access to University programs and activities and protect individual and campus safety.

### **III. SCOPE (ENTITIES AFFECTED BY THIS POLICY)**

This policy applies to all Howard University students, faculty members, and employees. It also applies to third parties (contractors and vendors doing business at and/or with the University, visitors, alumni and other non-members of the University community who are present on the University's campus, or participating in events or programs that are sponsored by or related to the University).

This policy applies to conduct that occurs both on and off of the University's campus, as described below. More specifically, this policy will apply in any instance where:

- The conduct occurs on-campus or on University property;
- The conduct occurs in the context of a University-related or sponsored educational program or activity, regardless of location (including travel, research, and internship programs);
- The conduct occurs through the use of University-owned or provided technology resources; or
- The conduct has a sufficient nexus to the University, such as continuing adverse effects or the creation or continuation of a hostile environment on campus.

The University uses the following terms in this policy to refer to the participants involved in the investigation or resolution of reported misconduct:

**Complainant** - An individual who is reported to have experienced Prohibited Conduct, regardless of whether the individual makes a report or seeks disciplinary action.

**Respondent** - An individual who has been accused of Prohibited Conduct.

**Witness** - An individual who may have information relevant to a report of Prohibited Conduct. A witness may be a student, an employee, or a third party.

**University Community** - this term refers to all members of the Howard University community including, but not limited to, students, faculty, administrative personnel, staff, members of the Howard University Board of Trustees and those who are conducting any type of business on any of the University premises (i.e., vendors and independent contractors) and individuals engaged and/or participating in educational or other activities hosted by, or affiliated with, the University.

If a member, or members, of the University Community commits an act in violation of this policy, the University will take appropriate measures under the circumstances to sanction those individuals, to mitigate against the potential for recurrence, and to discipline any member of the University Community who may have participated in such conduct, or may have failed to stop such conduct when they had the authority to do so.

If a third-party who is not within the control of the University, such as a student from another institution in a non-Howard study abroad program or a supervisor at an external clinical or training site, is alleged to have committed an act in violation of this policy, the University may be unable to investigate or impose discipline against that individual. However, the University will provide the Complainant with reasonable and appropriate remedial measures.

#### **IV. COORDINATION WITH OTHER POLICIES**

This policy addresses discrimination on the basis of sex or gender as it relates to sexual and gender-based harassment and sexual assault, and other forms of interpersonal violence defined in more detail below. Other forms of sex discrimination (not based on harassment or violence), and discrimination and harassment based on race, color, nationality or ethnic origin, sex, age, or disability are governed by the Howard University Policy and Procedure on Equal Opportunity in Employment and Education Program and Activities.

In addition, the conduct of students, employees, and faculty are governed or impacted by the following:

*600-001 Student Code of Conduct*

*600-002 Students Privacy Rights Policy (FERPA)*

*Clery Act Disclosure Policy (200-004)*

*Employee Handbook*

*Howard University Faculty Handbook (August 1993)*

Where conduct involves the potential violation of both this policy and another University policy, the University may choose to investigate other potential misconduct under the procedures set forth in this policy provided that it does not unduly delay a prompt or equitable resolution of the report, or may elect to investigate and resolve other potential misconduct pursuant to the procedures in other applicable University policies.

## **V. TITLE IX COORDINATOR**

The Title IX Coordinator coordinates the University's compliance with Title IX and related provisions of the Clery Act (as amended by VAWA). The Title IX Coordinator oversees the University's centralized response to all reports of Prohibited Conduct to assure consistent implementation of this policy and ensure compliance with federal and District of Columbia law. The Title IX Coordinator and designated staff will, among other steps:

- Communicate with all members of the University community regarding applicable law and policy and provide information about how individuals may access reporting and support options.
- Review applicable University policies to ensure institutional compliance with applicable federal and District of Columbia law.
- Monitor the University's administration of its own applicable policies, including record keeping, adherence to timeframes, and other procedural requirements.
- Conduct training regarding Title IX, related provisions of the Clery Act (as amended by VAWA), and Prohibited Conduct defined in this policy.
- Respond to any report regarding conduct that may violate this policy.

In this capacity, the Title IX Coordinator shall oversee the investigation and resolution of reported misconduct, direct the provision of any remedial and protective measures (including oversight of the failure to abide by an interim protective measure), and monitor the administration of any request for review of the finding.

The Title IX Coordinator may delegate responsibilities under this policy to designated administrators or external professionals who will have appropriate training and/or experience. When used in this policy, the term Title IX Coordinator may include a Deputy Title IX Coordinator or appropriate designee. The Title IX Coordinator is:

**Candi N. Smiley**  
Administration Building  
2400 6th Street, N.W., Suite 306  
Washington, D.C. 20059  
Phone: (202) 806-2561  
Email: candi.smiley@howard.edu

The University also has two designated Title IX Investigators:

**Marcus A. Winder**

Administration Building  
2400 6th Street, N.W., Suite 306  
Washington, D.C. 20059  
Phone: (202) 806-2573  
Email: [marcus.winder@howard.edu](mailto:marcus.winder@howard.edu)

**Vanessa C. Love**

Administration Building  
2400 6th Street, N.W., Suite 306  
Washington, D.C. 20059  
Phone: (202) 806-2524  
Email: [vanessa.love@howard.edu](mailto:vanessa.love@howard.edu)

The Title IX Coordinator and Title IX Investigators are all Title IX Officers for the purposes of this policy.

## **VI. PROHIBITED CONDUCT**

In determining whether alleged conduct constitutes Prohibited Conduct under this policy, the University will look at the entire record as a whole and consider the totality of the circumstances. This inquiry will examine information such as the nature of the conduct and the context in which the alleged incidents occurred. All determinations regarding whether a Respondent has engaged in Prohibited Conduct will be based upon a thorough and comprehensive review of the facts, and made on a case-by-case basis utilizing the preponderance of the evidence standard.

The following forms of conduct, including attempting to engage in such conduct, are expressly prohibited by this policy (“Prohibited Conduct”):

**A. Sexual Assault** – Any act of vaginal or anal intercourse or penetration, however slight, by a person’s penis, finger, other body part or object; oral-genital contact; or intentional touching of a person’s breasts, buttocks, groin, genitals, or other intimate parts without **Consent**. Touching may be over or under clothing and may include the Respondent touching the Complainant, the Respondent making the Complainant touch the Respondent or another person, or the Respondent making the Complainant touch the Complainant’s own body.

**B. Sexual Harassment** - Unwelcome sexual advances, requests for sexual favors, and/or other verbal or physical conduct of a sexual nature when:

(1) submission to, or rejection of, such conduct is made either explicitly or implicitly a term or condition of a person’s instruction, academic standing, employment or participation in any University program, activity, or benefit; or

(2) submission to, or rejection of, such conduct is used as a basis for evaluation in making academic or personnel decisions; or

(3) such conduct creates a hostile environment. A hostile environment exists when the conduct is sufficiently severe, persistent, or pervasive, both subjectively and objectively, that it unreasonably interferes with, limits, or deprives an individual from participating in or benefiting from the University's educational, employment, residential, and/or campus experience.

A hostile environment can be created by persistent or pervasive conduct or by a single or isolated incident if sufficiently severe. The more severe the conduct, the less need there is to show a repetitive series of incidents to prove a hostile environment, particularly if the conduct is physical. A single incident of sexual assault, for example, may be sufficiently severe to constitute a hostile environment. In contrast, the perceived offensiveness of a single verbal or written expression, standing alone, is typically not sufficient to constitute a hostile environment.

**Examples of Sexual Harassment** - The following examples are illustrative of conduct that, if proven, may be considered by the University to establish sexual harassment:

(1) unsolicited, unwelcomed flirtations, advances, and/or propositions of a sexual nature;

(2) insults, jokes, or anecdotes that belittle or demean an individual or a group's sexuality, gender, gender identity, gender expression, non-conformance with gender stereotypes, or sexual orientation;

(3) unwelcomed sexually-oriented gestures, verbal expressions, or comments of a sexual nature about an individual's body, clothing, or sexual experience;

(4) inappropriate displays of sexually suggestive objects or pictures;

(5) unnecessary and inappropriate touching, such as hugging, or brushing against an individual's body, patting, pinching,

(7) suggestions that submission to or rejection of sexual advances will affect decisions regarding such matters as an individual's employment, work assignments, status, salary, academic standing, grades, receipt of financial aid, or letters of recommendation.

**C. Gender-Based Discrimination or Harassment** - Any intentional or unintentional act that results in an individual being excluded from participation in, denied the benefits of, or subjected to discrimination or harassment under any academic, extracurricular, research, occupational training, or other education program or activity, based upon the individual's gender, gender identity, gender expression, non-conformance with gender stereotypes, or sexual orientation. Gender-Based Discrimination or Harassment may include acts of aggression, intimidation, or hostility, whether verbal or non-verbal, graphic, physical, or otherwise, even if the acts do not involve contact of a sexual nature.

Gender-Based Harassment also includes harassment based upon the individual's gender, gender identity, gender expression, non-conformance with gender stereotypes, or sexual orientation when:

- (1) submission to, or rejection of, such conduct is made either explicitly or implicitly a term or condition of a person's instruction, academic standing, employment or participation in any University program, activity or benefit; or
- (2) submission to, or rejection of, such conduct is used as a basis for evaluation in making academic or personnel decisions; or
- (3) such conduct creates a hostile environment. A hostile environment exists when the conduct is sufficiently severe, persistent, or pervasive, both subjectively and objectively, that it unreasonably interferes with, limits, or deprives an individual from participating in or benefiting from the University's educational, employment, residential and/or campus experience.

As used in this policy, gender, gender expression, gender identity, and sexual orientation are defined as follows:

**Gender** - The sex of an individual, male or female, based on reproductive anatomy.

**Gender Identity** - A person's self-conception of being a man or woman, boy or girl, transgender, or gender fluid.

**Gender Expression** - The physical manifestation of one's gender identity, usually expressed through clothing, grooming, mannerisms, chosen names, and social interactions that associate with the social definitions of masculinity and femininity, rather than birth sex.

**Sexual Orientation** - An individual's natural preference when developing emotional and/or sexual relationships with people of the same sex (homosexual relationships), opposite sex (heterosexual relationships), or either sex (bisexual relationships).

**Examples of Gender-Based Discrimination or Harassment** - Specifically, under this policy, in providing any aid, benefit, or service to a student, no person shall, on the basis of gender, gender identity, gender expression, non-conformance with gender stereotypes, or sexual orientation:

- (1) treat one person differently from another in determining whether such person satisfies any requirement or condition for the provision of such aid, benefit, or service;
- (2) provide different aid, benefits, or services, or provide aid, benefits, or services in a different manner;



- (3) deny any person any aid, benefit, or service;
- (4) subject any person to separate or different rules of behavior, sanctions, or other treatment;
- (5) apply any rule concerning the domicile or residence of a student or applicant, including eligibility for fees and tuition;
- (6) aid or perpetuate discrimination against any person by providing significant assistance to any agency, organization, or person which discriminates on the basis of gender, gender identity, gender expression, non-conformance with gender stereotypes, or sexual orientation; or
- (7) otherwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity.

**D. Sexual Exploitation** - Any act where one person violates the sexual privacy of another or takes unjust or abusive sexual advantage of another without their consent. Sexual exploitation may include, but is not limited to:

- surreptitiously observing another individual's nudity or sexual activity or allowing another to observe consensual sexual activity without the knowledge and consent of all parties involved;
- recording, photographing, transmitting, showing, viewing, streaming, or distributing intimate or sexual images, audio recordings, or sexual information without the knowledge and consent of all parties involved; or
- exposing one's genitals or inducing another to expose their own genitals in non-consensual circumstances.

**E. Dating and Domestic Violence** - A pattern of controlling behaviors used by one partner to control the other partner. There are many forms of dating and domestic violence:

- (1) Physical Abuse - Dating and domestic violence that includes, but is not limited to, hitting, shoving, slapping, pushing, punching, burning, and stabbing. It can also include withholding someone from receiving needed medical care or medication.
- (2) Sexual Abuse - Dating and domestic violence that includes, but is not limited to, forced sex, or forcing someone to have sex without protection, with an object, or with another person.
- (3) Psychological and Emotional Abuse - Dating and domestic violence that includes, but is not limited to, controlling someone's behavior or actions, isolating a person from friends and

family, making threats against a person, their family, friends, colleagues, or pets, using social media to make threats, and verbal abuse.

(4) Economic Abuse - Dating and domestic violence that includes, but is not limited to, taking a partner's money, or not allowing a person, or disrupting a person's ability, to work or go to school.

**F. Stalking** - A course of conduct that is unwanted, unwelcome and unreciprocated that is directed at a specific person that would cause a reasonable person to feel fear, to experience substantial emotional distress, or to fear for their safety or the safety of a third party such as a family member, friend, colleague, or pet. Acts that together constitute stalking may be direct actions or may be communicated by a third party, and can include, but are not limited to, threats of or actual harm to self, others, or property; pursuing or following; non-consensual (unwanted) communication by any means; unwanted gifts; trespassing; and surveillance or other related types of observation. Stalking also includes cyber-stalking through electronic media, such as social networks, blogs, cell phones, or text messages.

Additional examples of stalking behaviors include, but are not limited to:

- (1) Waiting outside a person's class or residence;
- (2) Sending unwanted letters, phone calls, emails, texts, posts to a person;
- (3) Sending information to others about the person; or
- (4) Tracking the person's computer and internet use.

**G. Retaliation** - This policy prohibits acts or words taken against an individual or group of individuals involved in a protected activity. Protected activity includes making a good faith report under this policy; filing an external complaint; or opposing in a reasonable manner and consistent with University policy an action reasonably believed to constitute a violation of this policy. Retaliation may also include acts or words taken against an individual or group of individuals because they have participated in proceedings under this policy.

Retaliation can take many forms including, but not limited to, adverse action or violence, threats, and intimidation that would discourage a reasonable person (under similar circumstances and with similar identities to the Complainant) from engaging in protected activity. Actions in response to a good faith report or response under this policy are considered retaliatory if they have a materially adverse effect on the working, academic, or living environment of an individual, or if they hinder or prevent the individual from effectively carrying out their University responsibilities. All individuals and groups of individuals are prohibited from engaging in retaliation and will be held accountable under this policy.

Concerns or questions about retaliation should be immediately reported to a Title IX investigator or the Title IX Coordinator.

**H. Complicity** – Any act that knowingly aids, facilitates, promotes, or encourages the commission of Prohibited Conduct by another person.

## **I. Additional Guidance Regarding Consent and Incapacitation**

The following definitions clarify key terminology as it is used throughout the policy:

**Consent:** Consent is the voluntary, informed, and freely given agreement, through words and/or actions, to participate in mutually agreed-upon sexual acts. Consensual sexual activity happens when each partner willingly and affirmatively chooses to participate in a particular sexual act.

In evaluating whether consent has been freely sought and given, the University will consider the presence of any force, threat of force, or coercion; whether the Complainant had the capacity to give consent; and whether the communication (through words and/or actions) between the parties would be interpreted by a reasonable person (under similar circumstances and with similar identities) as a willingness to engage in a particular sexual act.

Consent cannot be obtained through physical force or where there is a reasonable belief of the threat of physical force, when one person takes advantage of the physical or psychological limitations of another person, or by taking advantage of another person's incapacitation.

Important points regarding consent include:

- Consent to one act does not constitute consent to another act;
- Consent on a prior occasion does not constitute consent on a subsequent occasion;
- Consent to an act with one person does not constitute consent to an act with any other person;
- The existence of a prior or current relationship does not, in itself, constitute consent; even in the context of a relationship, there must be mutual consent for particular sexual acts;
- Consent can be withdrawn or modified at any time, and sexual contact must cease immediately once consent is withdrawn;
- Consent cannot be inferred from silence, passivity, or lack of resistance, and relying on nonverbal communication alone may result in a violation of this policy; and
- Consent cannot be given by an individual under the legal age of consent.

**Incapacitation:** Incapacitation is the inability, temporarily or permanently, to give consent because the individual is mentally and/or physically helpless, either voluntarily or involuntarily, or the individual is unconscious, asleep, or otherwise unaware that the sexual activity is occurring. In addition, an individual is incapacitated if they demonstrate that they are unaware at the time of the incident of where they are, how they got there, or why or how they became engaged in a sexual interaction.

Alcohol and other drugs impact each individual differently, and determining whether an individual is incapacitated requires an individualized determination based on the available information.

The University does not expect community members to be medical experts in assessing incapacitation. Individuals should look for the common and obvious warning signs that show that a person may be incapacitated or approaching incapacitation. A person's level of intoxication is not always demonstrated by objective signs. However, some signs of intoxication may include clumsiness, difficulty walking, poor judgment, difficulty concentrating, slurred speech, vomiting, combativeness, or emotional volatility.

In evaluating consent in cases of reported incapacitation, the University asks two questions: (1) Did the Respondent know that the Complainant was incapacitated? and, if not, (2) Should a sober, reasonable person in a similar set of circumstances as the Respondent have known that the Complainant was incapacitated? If the answer to either of these questions is "yes," there was no consent, and the conduct is likely a violation of this policy.

A Respondent's voluntary intoxication is never an excuse for, or a defense to, Prohibited Conduct, and it does not diminish the responsibility to determine that the other person has given consent.

## **VII. UNIVERSITY PROHIBITION ON CONSENSUAL RELATIONSHIPS**

Sexual or romantic relationships, including dating, between students and faculty, staff, or any other type of University employee are strictly prohibited under this policy, regardless of whether such a relationship may violate the law. Therefore, violations of this prohibition by a faculty member, staff member, or any other type of University employee and a student may lead to disciplinary action against one or both parties. This section does not prohibit consensual relationships between full-time students at the University who are employed as student-employees or working in another position that is available only to University students, and other University students, provided that the student employee/worker does not have any form of supervisory responsibilities for the student, the student does not reside in the building or other housing unit which the student-employee/worker supervises or manages, and the student is not enrolled in a class that the student-employee/worker is teaching.

## **VIII. CONFIDENTIALITY, PRIVACY AND REPORTING BY EMPLOYEES**

Issues of privacy and confidentiality play important roles in this policy and may affect individuals differently. While they are closely related, the concepts of privacy and confidentiality are distinct terms that are defined below.

**A. Confidentiality** - Confidentiality refers to the protections provided to information disclosed in legally-protected or privileged relationships under District law, including licensed professional mental health counselors, licensed medical professionals, and ordained clergy. These confidential resources can engage in confidential communications under the law when the information is

disclosed within the scope of the provision of professional services. When an individual shares information with a confidential resource (on campus or in the community) as a confidential communication in the course of a protected relationship, the confidential resource cannot disclose the information (including information about whether an individual has received services) to any third party without the individual's written permission, or unless required by ethical or legal obligations which compel the professional to reveal such information. For example, information may be disclosed when the individual gives written consent for its disclosure, there is an imminent concern that the individual will likely cause serious physical harm to self or others or poses a threat to the campus community as a whole, or the information concerns conduct involving suspected abuse or neglect of a minor under the age of 18.

Confidential resources submit non-personally-identifying information about Clery-reportable crimes to the Howard University Department of Public Safety for purposes of the anonymous statistical reporting under the Clery Act.

**B. Privacy** -- Privacy refers to the discretion that will be exercised by the University in the course of any investigation or disciplinary processes under this policy. Information related to a report of Prohibited Conduct may be shared with a limited circle of University employees who need to know in order to assist in the assessment, investigation, and resolution of the report and related issues. University employees receive training in how to safeguard private information.

The University will make reasonable efforts to investigate and address reports of Prohibited Conduct under this policy, and information may be disclosed to participants in an investigation as necessary to facilitate the thoroughness and integrity of the investigation. In all such proceedings, the University will take into consideration the privacy of the parties to the extent reasonably possible.

The privacy of student education records will be protected in accordance with the Family Educational Rights and Privacy Act (FERPA). The privacy of an individual's medical and related records generally is protected by the Health Insurance Portability and Accountability Act (HIPAA), excepting health records protected by FERPA. Access to an employee's personnel records is governed by the policy stated in the Employee Handbook.

It is important to understand the different responsibilities of University employees. Every employee is designated as either a Confidential Employee or a Responsible Employee:

**C. Confidential Employee** - Confidential Employees include any employee who is a licensed medical, clinical, or mental-health professional (e.g., physicians, nurses, physician's assistants, psychologists, psychiatrists, professional counselors, and social workers, and those performing services under their supervision), when acting in that professional role in the provision of services to a patient; and any employee providing administrative, operational, and/or related support for such health care providers in their performance of such services. Confidential employees also include clergy and other religious or spiritual advisors when serving in their religious or spiritual capacity and any employee providing administrative, operational, and/or related support to such

clergy or other religious or spiritual providers. Confidential Employees will not disclose information about Prohibited Conduct without the individual's permission or as set forth in the Confidentiality section above. When individuals who otherwise may be Confidential Employees receive information outside of the provision of confidential services, the Confidential Employee is required to share that information with the Title IX Office.

**D. Responsible Employee** – With the exception of University employees designated as Confidential Employees, every individual employed by Howard University and Howard University Hospital, and anyone employed or retained under contract in a security or safety position or in a University residence hall is considered to be a Responsible Employee. **ALL** Responsible Employees **are required to report** any information regarding a known or suspected violation of this policy to a Title IX Officer as soon as the Responsible Employee learns of it, no matter how they learn of this information.

Student workers who have supervisory responsibility or responsibility for the welfare of other students are also considered Responsible Employees when they learn of potential violations of this policy in the scope of their employment. Student workers who are Responsible Employees include but are not limited to resident assistants, teaching assistants, graduate assistants, and tutors provided through any University programs or offices.

Responsible Employees must report all information that they have obtained, including the identities of the parties, the date, time and location, and any details about the reported incident to the Title IX Office. Responsible Employees cannot promise confidentiality or withhold information about Prohibited Conduct. Failure by a Responsible Employee to report information regarding possible Prohibited Conduct in a timely manner may subject them to appropriate discipline, up to and including removal from a position or termination of employment.

Responsible Employees are not required to report information disclosed: (1) at public awareness events (e.g., "Take Back the Night," candlelight vigils, protests, "survivor speak-outs," or other public forums in which students may disclose Prohibited Conduct; or (2) during an individual's participation as a subject in an Institutional Review Board-approved human subjects research protocol (IRB Research). The University may provide information about Title IX rights and available University and community resources and support at public awareness events, however, and Institutional Review Boards may, in appropriate cases, require researchers to provide such information to all subjects of IRB Research.

**E. Clery Act Reporting** - Pursuant to the Clery Act, the University includes statistics about certain offenses in its annual security report, and provides those statistics to the United States Department of Education in a manner that does not include any personally-identifying information about individuals involved in an incident. The Clery Act also requires the University to issue timely warnings to the University community about certain crimes that have been reported and which may continue to pose a serious or continuing threat to campus safety. Consistent with the Clery Act, the University withholds the names and other personally-identifying information of Complainants when issuing timely warnings to the University community.

## **IX. RESOURCES AND REPORTING OPTIONS**

All University community members are urged to promptly report information regarding Prohibited Conduct to the University and/or law enforcement. A Complainant or witness will not be reprimanded, retaliated against, or discriminated against in any way for initiating an inquiry or making a good faith report.

A Complainant or witness has many options, including seeking counseling or assistance from a Confidential Employee, making a report under this policy, and/or making a report to law enforcement. The University recognizes that deciding among these options can be difficult and is an intensely personal decision. Complainants and witnesses are encouraged to seek assistance from a Confidential Employee and to explore all potential reporting and support options.

### **A. Emergency Resources and Law Enforcement**

Emergency medical assistance and campus safety/law enforcement assistance are available both on and off campus. Individuals are encouraged to contact law enforcement and seek medical treatment as soon as possible following an incident that may pose a threat to safety or physical well-being, or following a potential criminal offense.

#### **1. Law Enforcement Assistance**

University community members are encouraged to immediately contact the Howard University Department of Public Safety (DPS) and/or the Metropolitan Police Department in order to report potential criminal conduct to law enforcement.

The Howard University Department of Public Safety may be reached at:

**Department of Public Safety**  
2244 10th Street, N.W., Suite 270  
Washington, D.C. 20059  
Phone: (202) 806-1100

The District of Columbia Metropolitan Police Department may be reached at:

**Metropolitan Police Department**  
1620 V Street, N.W.  
Washington, D.C. 20009  
Third District Main Phone: (202) 673-6815; or  
Detectives Office Phone: (202) 673-6918

Note that any law enforcement investigation is separate from, and independent of, the University's Title IX administrative investigation. The University's Title IX administrative investigation will

proceed simultaneously with any law enforcement investigation, whether by the University's Department of Public Safety or the Metropolitan Police Department.

## **2. Medical Services**

Confidential medical treatment and services are available at:

### **Howard University Hospital**

2041 Georgia Avenue, N.W.  
Washington, D.C. 20060  
Phone: (202) 865-1131

Sexual Assault Nurses Examinations (SANE Exams) (commonly referred to as rape kits), are only available at:

### **Washington Hospital Center**

110 Irving St. N.W.  
Washington, D.C. 20010  
Phone: (202) 877-7000

Students can also receive confidential medical services at:

### **Howard University Student Health Center**

2139 Georgia Avenue, N.W.  
Washington, D.C. 20059  
Phone: (202) 806-7540

## **3. Crisis Counseling and other Support Services**

Students can access confidential crisis counseling and mental health services at:

### **University Counseling Services**

CB Powell/School of Communications Building  
6th and Bryant Streets, N.W.  
Washington, D.C. Phone: (202) 806-6870

Confidential support services on campus are also available through:

### **The Howard University Interpersonal Violence Prevention Program**

2225 Georgia Avenue N.W., Suite 508  
Washington, D.C. 20059  
Phone: (202) 238-2382



**Office of Student Services**  
1851 9<sup>th</sup> Street NW, 2<sup>nd</sup> floor  
Washington, D.C. 20059  
Phone: (202) 238-2420

Note that these counseling and support resources are available regardless of whether or not an individual makes a report to a Title IX Officer or law enforcement, or otherwise participates in an investigation. These resources are available to Complainants, Respondents, and any other individual to provide ongoing support.

## **B. Campus Confidential Resources**

As described above, University community members may speak with a Confidential Employee for support and assistance. This does not constitute a report to the University, but will enable a student or employee to access support services on campus.

Campus Confidential Resources include:

- Howard University Student Health Center
- University Counseling Services
- Howard University Interpersonal Violence Prevention Program
- Chapel
- Employee Assistance Program

## **C. Other Campus Support Services**

The following University departments are available to offer support and resources. These departments can provide information and resources, but consistent with their designation as Responsible Employees, will share any reports of Prohibited Conduct with the Title IX Office:

- Office of Human Resources
- Office of Student Services
- Office of Residence Life
- Office of Intercultural Affairs

## **D. Reporting Options**

The University encourages all individuals to report Prohibited Conduct or a potential violation of this policy to the Title IX Office, the Howard University Department of Public Safety, and/or to local law enforcement. A Complainant has the right to report, or decline to report, potential criminal conduct to law enforcement. Upon request, the University will assist a Complainant in contacting law enforcement at any time. Under limited circumstances posing a threat to health or safety of any University community member, the University may independently notify law enforcement.

An individual may make a report to the University, to law enforcement, to neither, or to both. Campus Title IX processes and law enforcement investigations operate independently of one another, although the University will coordinate information with the Howard University Department of Public Safety and/or local law enforcement when both an administrative proceeding and criminal investigation are on-going.

Anyone may make a report as follows:

- Make a report to a Title IX Officer in person, by telephone, or by email;
- If on campus, contact the Howard University Department of Public Safety or Metropolitan Police Department for assistance in filing a criminal complaint and preserving physical evidence; or
- If off campus, contact local law enforcement to file a criminal complaint.

An individual may pursue some or all of these steps at the same time (e.g., one may simultaneously pursue a Title IX report and a criminal complaint). When initiating any of the above options, an individual does not need to know whether they wish to request any particular course of action nor how to label what happened. As part of a report to the Title IX Office, an individual can also request interim remedial measures and support. University community members are encouraged to consult with the Title IX Coordinator if they have any questions regarding this policy or reporting Prohibited Conduct.

### **1. Reports to Responsible Employees**

As explained above, all University employees, with the exception of those designated as Confidential Employees, are considered to be Responsible Employees. All reports that are brought to the attention of a Responsible Employee are not confidential and must be promptly submitted to the Title IX Coordinator by the Responsible Employee.

### **2. Requests for Anonymity**

Once a report has been shared with the Title IX Office, a Complainant may also directly request that their identity remain private (request for anonymity); that no investigation occur; or that no disciplinary action be taken. The Title IX Coordinator will carefully balance such requests with the University's commitment to provide a non-discriminatory environment, and the Respondent's right to have specific notice of the allegation(s) if there is a possibility of disciplinary action against Respondent. In such circumstances, the Title IX Coordinator may arrange for preliminary fact-finding by an investigator to gain a better understanding of the context of the report or take other appropriate steps, including consulting with the University's threat assessment team.

In cases where a Complainant's anonymity is maintained, the University may be unable to pursue disciplinary action against a Respondent consistent with the Respondent's right to specific notice of the allegations against them. In these cases, the Complainant is eligible to receive remedial measures, however disciplinary action against Respondent may not be possible.

### **3. University Amnesty Statement**

The University recognizes that an individual who has been drinking or using drugs at the time of the incident may be hesitant to make a report because drinking and drug use may be a violation of the Student Code of Conduct and/or local law. In order to encourage reporting and remove barriers to doing so, any individual who reports Prohibited Conduct under this policy, either as a Complainant or as a third party witness, will not be subject to disciplinary action by the University for their own personal consumption of alcohol or drugs at or near the time of the incident, provided that any such violations did not and do not place the health, safety or well-being of any other person at risk. The University may, however, advise a student to engage in an educational discussion regarding the dangers of alcohol consumption or drug use or to pursue other educational and counseling activities regarding such use.

### **4. Timeframe for Reporting**

There is no time limit for reporting Prohibited Conduct. University community members are urged to make a report as soon as possible after the conduct has occurred to maximize the University's ability to respond promptly and effectively. Reports under this policy 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, the University may be limited in its ability to take disciplinary action against the Respondent. The University will still seek to meet its Title IX obligations by providing support for the Complainant and taking steps to end the prohibited behavior, prevent its recurrence, and address its effects. The University may assist the Complainant in identifying and contacting law enforcement and other external enforcement agencies.

## **X. UNIVERSITY ACTION UPON RECEIPT OF A REPORT**

The University is committed to providing a prompt, thorough, equitable, and impartial resolution of all reported violations of this policy. The University uses two processes to resolve reports of Prohibited Conduct under this policy: Disciplinary Resolution, which involves an investigation, adjudication, and, if appropriate, the imposition of sanctions, and Alternative Resolution, which includes informal or restorative options for resolving reports that does not involve the possibility of disciplinary action against a Respondent. The Title IX Coordinator will determine the appropriate resolution process after making an initial assessment of the reported information, considering the stated preference of the Complainant regarding process, campus safety, and the University's obligation to maintain an environment free from harassment and discrimination.

The initial response by the Title IX Office will include an initial assessment of the context and circumstances of the report, and identification of reasonably available and appropriate interim measures for a Complainant and a Respondent.

## **A. Interim Measures**

Upon receipt of a report of Prohibited Conduct, the University will consult with the Complainant to identify and provide reasonable and appropriate interim measures designed to preserve the Complainant's educational experience, protect the Complainant during an investigation, address safety concerns for the broader University community, maintain the integrity of the investigative and/or resolution process, and deter retaliation. These measures may be remedial (measures designed to maintain continued access to educational opportunities) or protective (involving a restrictive action against a Respondent).

Interim remedial measures may include:

- Access to counseling and medical services
- Assistance in obtaining a sexual assault forensic examination
- Assistance in arranging rescheduling of exams and assignments and extensions of deadlines
- Academic support
- Assistance in requesting long-term academic accommodations through the Office of Student Services, if the Complainant qualifies as an individual with a disability
- Change in the Complainant's class schedule, including the ability to transfer course sections or withdraw from a course without penalty
- Change in the Complainant's University work schedule or job assignment
- Change in the Complainant's campus housing
- Assistance navigating off campus housing concerns
- Safety planning
- Imposition of a "no contact order," an administrative remedy designed to curtail contact and communications between two or more individuals
- Voluntary leave of absence
- Referral to resources which can assist in obtaining a protective order, or other legal remedy, under District of Columbia, Maryland, Virginia, or other applicable state or local law
- Referral to resources which can assist with any financial aid, visa, immigration or other administrative concerns
- Any other remedial measure that can be used to achieve the goals of this policy.

**Interim remedial measures are available to the Complainant regardless of whether the Complainant pursues an investigation or seeks formal disciplinary action.**

Interim protective measures may include:

- Change in the Respondent's class schedule
- Change in the Respondent's University work schedule or job assignment

- Change in the Respondent's campus housing
- Exclusion of Respondent from all or part of University housing
- Exclusion of Respondent from specified activities or areas of campus
- Prohibition of Respondent from participating in student activities or representing the University in any capacity such as playing on an official team, serving in student government, performing in an official band, ensemble, or production, or participating in a recognized student organization
- Interim suspension of Respondent
- Administrative leave of Respondent
- Any other protective measure that can be used to achieve the goals of this policy.

The availability of remedial and protective measures will be determined by the specific circumstances of each report. The University will consider a number of factors in determining which measures to take, including the needs of the student or employee seeking remedial and/or protective measures; the severity or pervasiveness of the alleged conduct; any continuing effects on the Complainant; whether the Complainant and the Respondent share the same residence hall, academic course(s), or job location(s); and whether judicial measures have been taken to protect the Complainant (e.g., protective orders).

The determination of whether to impose the interim protective measure of interim suspension or administrative leave will be made by the Title IX Coordinator in consultation with the Provost and/or an appropriate Cabinet-level administrator. A Respondent may be suspended on an interim basis when the University has received information that indicates that the continued presence on campus of the Respondent will likely have a serious effect on the physical, mental, or emotional health, safety, or well-being of another person; when physical safety is seriously threatened; or when the ability of the University to carry out its operation is threatened or impaired. The decision to impose an interim suspension may be made at any point in the process.

The University will provide reasonable remedial and protective measures to third parties as appropriate and available.

Any interim measures will not disproportionately impact the Complainant. Requests for interim measures may be made by the Complainant to the Title IX Office. The Title IX Office is responsible for ensuring the implementation of interim measures and coordinating the University's response with the appropriate offices on campus. The Title IX Office has the discretion to impose and/or modify any interim measure based on all available information, and is available to meet with a Complainant or Respondent to address any concerns about the provision of interim measures. The University will maintain the privacy of any remedial and protective measures provided under this policy to the extent practicable and will promptly address any violation of interim remedial or protective measures.

All individuals are encouraged to report to the Title IX Office any concerns about the failure of another to abide by any restrictions imposed through an interim protective measure. In the event

of an immediate health or safety concern, individuals should contact 911 or the Howard University Department of Public Safety immediately. The University will take prompt action to enforce a previously implemented measure, which may include additional interim restrictions and/or disciplinary sanctions for failing to abide by a University-imposed interim protective measure. In evaluating whether the conditions of an interim protective measure have been violated, the Title IX Office has the authority to conduct expedited fact-gathering (with appropriate notice and the opportunity to be heard), to impose separate disciplinary action for the violation based on the facts as gathered irrespective of the outcome of the investigation of the original complaint, or to incorporate the failure to comply with the interim protective measure into the underlying investigation and charges of Prohibited Conduct. Even if not charged separately, information regarding a failure to abide by an interim protective measure may also be considered in determining an appropriate sanction.

## **B. Initial Assessment**

After receiving a report of Prohibited Conduct, the Title IX Office will gather information about the reported conduct and respond to any immediate health or safety concerns raised by the report. The Title IX Office will assess the Complainant's safety and well-being, offer the University's immediate support and assistance, and assess the nature and circumstances of the report to determine whether the reported conduct raises a potential policy violation, whether the reported conduct is within the scope of this policy, and the appropriate method of resolution under this policy. The Title IX Coordinator may consult with the University's threat assessment team or other University administrators as part of the initial assessment.

As part of the initial assessment, the Title IX Office will:

- assess the nature and circumstances of the report, including whether it provides the names and/or any other information that identifies the Complainant, the Respondent, any witness, and/or any other individual with knowledge of the reported incident;
- address immediate physical safety and emotional well-being;
- notify the Complainant of their right to contact (or decline to contact) law enforcement or seek a civil protection order;
- notify the Complainant of the right to seek medical treatment;
- notify the Complainant of the importance of preservation of evidence;
- with the Howard University Department of Public Safety, assess the reported conduct and discern the need for a timely warning under the Clery Act;
- provide the Complainant with written information about on and off campus resources;
- provide the Complainant with an explanation of the procedural options, including

Disciplinary Resolution and Alternative Resolution;

- notify the Complainant of the range of interim measures available, including the right to reasonable interim remedial measures regardless of whether they choose to participate in a University or law enforcement investigation;
- notify the Complainant of the range of interim protective measures available if the University pursues an investigation;
- discuss the Complainant's expressed preference for manner of resolution and any barriers to proceeding (e.g., confidentiality concerns);
- notify the Complainant of the right to be accompanied at any meeting by an advisor of their choice;
- assess for any pattern of conduct that may give rise to a public safety concern;
- explain the University's policy prohibiting retaliation, how to report retaliation, and that the University will take prompt action when retaliation is reported; and
- determine age of the Complainant, and if the Complainant is a minor, make the appropriate notifications under applicable law.

At the conclusion of the initial assessment the University will provide the Complainant with a written summary of the topics discussed during the initial assessment, and will outline the manner in which the matter will proceed.

The University will proceed with one of the following options:

- Proceed with an investigation under the Disciplinary Resolution process. This will occur when a Complainant requests an investigation; where the Title IX Coordinator determines that an investigation must be pursued even when a Complainant requests that no investigation be pursued; or where Alternative Resolution is not appropriate or available.
- Proceed with Alternative Resolution. This will always require the consent of the Complainant. The consent of the Respondent is also required when the form of resolution involves the Respondent.
- If outside the scope of this policy, refer the matter to another appropriate office or department for resolution under the relevant policy.

When the Title IX Coordinator decides to initiate an investigation, impose interim protective measures, or take any other action that impacts a Respondent, the Title IX Coordinator will also ensure that Respondent is notified and receives written information on available resources and options, consistent with the list outlined above.

### **C. Balancing Complainant Autonomy with University Responsibility to Respond**

In order to protect the safety of the campus community, the Title IX Coordinator may determine that it is necessary to proceed with an investigation even if a Complainant specifically requests that the matter not be investigated. The Title IX Office may also initiate an investigation of potential violations of this policy even absent a formal report or identified Complainant or Respondent, and even if a report has been withdrawn. In such a circumstance, the Title IX Coordinator will take into account the Complainant's articulated concerns, the safety of the campus community, fairness to all individuals involved, and the University's obligations under Title IX.

A Complainant may request that their name or other personally-identifiable information not be shared with a Respondent, that no investigation be pursued, or that no disciplinary action be taken. In these instances, before taking any further investigative steps, a member of the Title IX Office will discuss any concerns with the Complainant and seek to address and remedy barriers to reporting based upon concerns about retaliation or other lack of clarity in understanding procedural options and potential outcomes.

The Title IX Coordinator will balance the Complainant's request against the following factors in reaching a determination as to whether the University's need to proceed with an investigation outweighs the considerations expressed by the Complainant:

- the totality of the known circumstances;
- the nature and scope of the alleged conduct, including whether the reported behavior involves the use of a weapon or drugs;
- the respective ages and roles of the Complainant and Respondent;
- the risk posed to any individual or to the campus community by not proceeding, including the risk of additional violence;
- whether there have been other reports of Prohibited Conduct or other misconduct by the Respondent;
- whether the report reveals a pattern of misconduct related to Prohibited Conduct (e.g., via illicit use of drugs or alcohol) at a given location or by a particular group;
- the Complainant's interest in the University's not pursuing an investigation or disciplinary action and the impact of such actions on the Complainant;
- whether the University possesses other means to obtain relevant evidence;
- fairness considerations for both the Complainant and the Respondent;
- the University's obligation to provide a safe and non-discriminatory environment; and
- any other available and relevant information.

The Title IX Coordinator will consider what steps may be possible or appropriate when a Respondent is unknown or the Complainant requests anonymity, and what other measures or remedies might be considered to address any effects of the reported behavior on the campus community. The Title IX Coordinator will make a determination regarding the appropriate method of resolution under the policy. The University will seek resolution consistent with the



Complainant's request, if it is possible to do so, based upon the facts and circumstances, while also protecting the health and safety of the Complainant and the University community.

Where the Title IX Coordinator determines that a Complainant's request(s) can be honored, the University may still take other appropriate steps to eliminate the reported conduct, prevent its recurrence, and remedy its effects on the Complainant and the University community. Those steps may include offering appropriate remedial measures to the Complainant, providing targeted training and prevention programs, providing increased monitoring, supervision, or security at locations or activities where the misconduct occurred, and/or providing or imposing other remedies. The Title IX Coordinator may also request that a report be re-opened and pursued under this policy if any new or additional information becomes available, and/or if the Complainant later decides that they would like for the University to pursue an investigation.

In those instances when the Title IX Coordinator determines that the University must proceed with an investigation despite the Complainant's request that it not occur, the Title IX Coordinator will provide written notification to the Complainant that the University intends to initiate an investigation. The Complainant is not required to participate in the investigation or in any of the actions taken by the University.

The University's ability to investigate and respond fully to a report may be limited if the Complainant requests anonymity or declines to participate in an investigation. The University will, however, pursue other steps to limit the effects of the potential Prohibited Conduct and prevent its recurrence. In all cases, the final decision on whether, how, and to what extent the University will conduct an investigation and whether other interim remedial or protective measures will be taken in connection with a report of Prohibited Conduct will be made in a manner consistent with this policy.

## **XI. ALTERNATIVE RESOLUTION**

Alternative Resolution is a voluntary and remedies-based resolution that does not involve taking disciplinary action against a Respondent. Where an initial assessment concludes that Alternative Resolution may be appropriate, the University will take immediate and corrective action through the imposition of individual and community remedies designed to maintain or restore the Complainant's access to the educational, extracurricular, and employment activities at the University and to eliminate a potential hostile environment.

Other potential remedies include targeted or broad-based educational programming or training, supported direct conversation or interaction between the Complainant and Respondent, and/or indirect conversation or interaction through a Title IX Officer, facilitated by the Title IX Office. Depending on the form of Alternative Resolution used, it may be possible for a Complainant to maintain anonymity. The University will not compel a Complainant to engage in mediation, to confront the Respondent directly, or to participate in any particular form of Alternative Resolution. Face-to-face mediation, even if voluntary, may not be used in cases involving alleged sexual

assault. The decision to pursue Alternative Resolution will be made only when the University has sufficient information about the nature and scope of the conduct.

Participation in Alternative Resolution is voluntary, and either party can request to end Alternative Resolution at any time prior to final resolution. If Alternative Resolution is terminated prior to a resolution being reached, and the Complainant thereafter elects to pursue Disciplinary Resolution, no information disclosed during the Alternative Resolution process will be considered during the Disciplinary Resolution phase. This policy is intended to encourage the parties to engage in candid and collaborative discussion during Alternative Resolution.

Upon successful resolution of a matter through Alternative Resolution, all parties who have participated in the Alternative Resolution process will be provided with a Notice of Completion of Alternative Resolution, which will state the terms of the resolution and all parties' agreement to those terms.

The Title IX Office will maintain records of all reports and conduct referred for Alternative Resolution, which will typically be complete within 60 calendar days of the initial report.

## **XII. GENERAL INFORMATION REGARDING DISCIPLINARY RESOLUTION**

### **A. Timeframe for Investigation and Resolution**

The Title IX Office endeavors to complete the investigation and resolution process within a reasonable timeframe - approximately 60 calendar days following the notice of the investigation. This policy outlines reasonable timeframes for the major stages of the investigation and resolution process. The University may extend or modify these timeframes within the 60 day period provided that the investigation is completed within a reasonable time. The Title IX Coordinator, in consultation with the investigator, has the authority to determine whether an extension is required or warranted by the circumstances. If an investigation or resolution will not be completed within 60 days from the notice of investigation, the University will provide written notice to the parties which will include a statement of the reason(s) necessitating the extension.

An extension may be required to ensure the integrity and thoroughness of the investigation; to comply with a request by law enforcement; in response to the unavailability of the parties or witnesses; or for other legitimate reasons, such as intervening breaks in the University calendar, University finals periods, the complexity of the investigation, the volume of information or length of the written record, and/or the severity and extent of the alleged misconduct. While requests for delays for good cause by the parties may be considered, the University cannot unduly or unreasonably delay the prompt resolution of a report under this policy. Reasonable requests for delays by the parties, if granted, will serve to extend the 60 calendar day time period for resolution of the report.

Although cooperation with law enforcement may require the University to suspend the fact-finding portion of a Title IX investigation temporarily, the University will promptly resume its Title IX

investigation upon notification from the law enforcement agency that proceeding with the Title IX investigation will not jeopardize the law enforcement investigation. The University will not, however, wait for the conclusion of a criminal proceeding to begin its own investigation, and will promptly initiate the process of assessing and providing appropriate interim remedial measures for the Complainant.

Investigations will proceed according to the timeframes in this policy to the extent possible during the summer and at other times when classes at the University are not in session, or during holidays, or other scheduled days when the University is closed. The Title IX Office will work with the parties to balance the need for promptness and the preference for in-person meetings regarding the investigation. Timeframes for all phases of the disciplinary process including the investigation, any related disciplinary proceedings, and any related review of the finding, apply equally to both Complainant and Respondent.

## **B. Expectations of the Parties**

The University affords both the Complainant and the Respondent an equal opportunity to participate fully in the investigation and adjudication process, including the opportunity to receive a written notice of investigation; to participate in the investigation; to review and present information and evidence; to be accompanied by an advisor of their choice to any meeting; to timely and equal access to information that will be used in disciplinary proceedings; to timely notice of meetings at which their presence will be requested or required; to simultaneous written notice of the outcome, sanction, and rationale; and to seek review of the finding as stated in this policy.

All University community members are expected to provide truthful information in any report or proceeding under this policy. Submitting or providing false or misleading information in bad faith or with a view to personal gain or intentional harm to another in connection with an incident of Prohibited Conduct is prohibited and subject to disciplinary sanctions. This provision does not apply to reports made or information provided in good faith, even if the facts alleged in the report are not later substantiated or no policy violation is found to have occurred.

Howard University expects all members of the University community to cooperate fully with the investigation and disciplinary procedures. It is understood that there may be circumstances in which a Complainant or Respondent wish to limit their participation, and the University will respect the choice of the Complainant or Respondent as to how to engage in proceedings under this policy. The University may, however, move forward with an investigation and disciplinary action without the participation of one or more parties. Should the Respondent opt not to participate, that refusal will not preclude the continuation of the investigation process and a resolution of the investigation, including possible sanctions against the Respondent if a violation of this policy is found by a preponderance of the evidence.

The University also recognizes that witnesses may be reluctant to participate in the process. University students retain the right to decline to participate as a witness in any process under this

policy. However, any faculty member, staff member, or other employee who refuses to cooperate in an investigation may be subject to sanction. Refusal to cooperate includes, but is not limited to, delaying or failing to acknowledge requests from University officials for information, delaying or failing to make oneself available for meetings with University officials, and refusing to provide relevant information to University officials.

If a Complainant or Respondent chooses not to answer any or all questions in an investigation for any reason, the University will continue its process; and the University will issue any discipline or sanctions, as appropriate. The University will not draw any adverse inference from a Complainant's or Respondent's decision not to participate in the investigation or any form of resolution under this policy. However, the Complainant and Respondent should be aware that declining to participate in the investigation may impact the timing and outcome of the investigation.

At any time, the University may place an administrative hold on the Respondent's University transcript, or defer or withhold the award of the Respondent's degree. Although a Respondent may withdraw from the University while the investigation is pending, the Title IX Coordinator may decide to proceed with the investigation and resolution process, and may impose appropriate sanctions, up to and including expulsion from the University. The University may note on the Respondent's transcript that the withdrawal is pending investigation.

### **C. Advisor of Choice**

Throughout the investigation and resolution, all parties have the right to consult with an advisor of their choosing. The advisor may be any person, including an attorney, who is not otherwise a party or witness involved in the investigation. The parties may be accompanied by their chosen advisor at any meeting or proceeding related to the investigation and resolution of a report under this policy. While the advisor may provide support and advice to the parties at any meeting and/or proceeding, they may not speak on behalf of any party; ask or answer any questions on behalf of any party; or otherwise participate in, or in any manner delay, disrupt, or interfere with meetings and/or proceedings.

Generally, the Title IX Office and investigator will communicate directly with the Complainant or Respondent, and any communications with an advisor may only occur after a FERPA waiver has been executed. An advisor should plan to make themselves reasonably available, and the University will not unduly delay the scheduling of meetings or proceedings based on the advisor's unavailability. An advisor may be asked to meet with a University administrator in advance of any proceedings to understand the expectations of the role, privacy considerations, and appropriate decorum.

### **D. Safeguarding Privacy**

Individuals involved in investigations or disciplinary proceedings under this policy are encouraged to exercise discretion in sharing information in order to safeguard the integrity of the process and

to avoid the appearance of retaliation. While discretion regarding the process is important, Complainants and Respondents are not restricted from discussing and sharing information with others who may support or assist them during the process. However, doing so with the intent to harass another individual, retaliate against another individual who is involved in the investigation, or to influence the outcome of the investigation, will subject an individual to sanctions under this policy.

All participants in any investigation or other proceeding under this policy, including all parties, are encouraged to maintain the privacy of information gathered or learned through their participation in the process.

### **XIII. DISCIPLINARY RESOLUTION**

#### **A. Investigation**

##### **1. Investigator**

When the University receives a report alleging a violation of this policy, the Title IX Coordinator will appoint one or more investigators to conduct a prompt, thorough, fair, and impartial investigation. The investigator may be a University employee and/or an experienced external investigator. Any investigator used by the University will receive annual training on this policy and on the issues related to sexual and gender-based harassment, sexual assault, dating violence, domestic violence, and stalking, and on how to conduct an investigation that is fair and impartial, provides parties with notice and a meaningful opportunity to be heard, and protects the safety of Complainants while promoting accountability. The investigator will be impartial and free from conflict of interest or bias.

##### **2. Notice of Investigation**

A Title IX Officer will provide the Complainant and the Respondent with a written Notice of Investigation within ten (10) days of receiving a complaint, which includes the following information: (1) the names of the Complainant and the Respondent; (2) the date, time (if known), location, and nature of the reported conduct; (3) the reported policy violation(s); (4) the name of the investigator; (5) information about the parties' respective rights and responsibilities; (6) any interim remedial or protective measures; (7) the prohibition against retaliation; (8) the importance of preserving any potentially relevant evidence in any format; (9) how to challenge participation by the investigator on the basis of a conflict of interest or bias; and (10) a copy of this policy.

Information regarding interim remedial and protective measures will be forwarded to the appropriate offices of the University for implementation (i.e. ETS if email access is to be suspended; Human Resources if employment is impacted; the appropriate Dean if class attendance/assignment is affected).

If the investigation reveals the existence of additional or different potential policy violations, the Title IX Office will issue a supplemental notice of investigation, or, if appropriate, refer that portion of the matter to the appropriate University office for resolution.

### **3. Overview**

During an investigation, the investigator will seek to meet separately with the Complainant, Respondent, and relevant witnesses. Witnesses are individuals who may have information relevant to the incident, including individuals who may have observed the acts in question, may be able to provide contextual information, or may have other information related to the alleged conduct or related matters. Witnesses may not participate solely to speak about an individual's character. Where witnesses are interviewed as part of the investigation, the name of the witness and the relevant information gathered in the interviews will be shared with the parties in the preliminary and final Report of Investigation. The investigator will also gather other relevant information or evidence, including documents, photographs, communications between the parties, and other records as appropriate.

The investigator, not the parties, is responsible for gathering relevant evidence to the extent reasonably possible. Both the Complainant and Respondent are encouraged, however, to submit any information they believe may be relevant, and both the Complainant and Respondent will be asked to identify witnesses and provide other relevant information, such as documents, communications, photographs, and other evidence. Both parties are encouraged to provide all relevant information as promptly as possible to facilitate prompt resolution. All available information and supporting documents and evidence must be identified and/or submitted prior to issuance of the Preliminary Report of Investigation. In the event that a party declines to provide material information, the University's ability to conduct a prompt, thorough, and equitable investigation may be impacted.

The investigator may also consider information publicly available from social media or other online sources that comes to the attention of the investigator. The Title IX Office does not actively monitor social media or online sources, however, and as with all potentially relevant information, the Complainant, Respondent, or witness should bring relevant online information to the attention of the investigator.

Similarly, the parties should bring any new or evolving evidence, such as harassing or retaliatory conduct, to the attention of the investigator. The investigator may consider such information in the investigation, and will also share any information about retaliation or violation of the terms of an interim protective measure with the Title IX Coordinator for further action.

When appropriate, the investigator may visit relevant sites or locations and record observations through written, photographic, or other means. In some cases, the investigator may consult medical, forensic, technological, or other experts when expertise on a topic is needed in order to achieve a fuller understanding of the issues under investigation. The University will not consider polygraph results. In general, a person's medical and counseling records are confidential and not

accessible to the investigator unless the person voluntarily chooses to share those records with the investigator. Before disclosing such information the party should keep in mind that the relevant information from the records must be shared with the other party for that information to be considered in the investigation.

The investigator will review all information identified or provided by the parties and will determine the appropriateness, relevance, and probative value of the information developed or received during the investigation. In general, the investigator will not consider statements of personal opinion or statements as to any party's general reputation for any character trait. All information considered relevant by the investigator will be provided to the parties for their review and comment, as described in this policy. Information received by the investigator that is not determined to be relevant will be excluded from such disclosure.

The Title IX Office has the sole discretion to consolidate multiple reports into a single investigation if evidence relevant to one incident might be relevant to the others. Consolidation might involve multiple Complainants and a single Respondent, multiple Respondents, or conduct that is temporally or logically connected.

The investigator will provide periodic updates to the parties about the status of the investigation, with a goal to complete the fact-gathering portion of the investigation and issue a Preliminary Report of Investigation within approximately 30 calendar days of the notice of investigation.

#### **4. Presumption of Non-Responsibility**

It shall be presumed that there has been no violation of any University policy by a Respondent unless and until a thorough and comprehensive investigation has been conducted and there is a final administrative finding, by a preponderance of the evidence, or an admission of responsibility for a policy violation.

#### **5. Prior or Subsequent Conduct of the Respondent**

Prior or subsequent conduct of the Respondent may be considered in determining pattern, knowledge, intent, motive, or absence of mistake. For example, evidence of a pattern of Prohibited Conduct by the Respondent, either before or after the incident in question, regardless of whether there has been a prior finding of a policy violation, may be deemed relevant to the determination of responsibility for the Prohibited Conduct under investigation. The determination of relevance of pattern evidence will be based on an assessment of whether the previous or subsequent conduct was substantially similar to the conduct under investigation or indicates a pattern of similar Prohibited Conduct. The investigator will determine the relevance of this information and both parties will be informed if evidence of prior or subsequent conduct is deemed relevant.

#### **6. Prior Sexual History**

The sexual history of the Complainant or Respondent will never be used to prove character or reputation. Evidence related to the prior sexual history of the parties is generally not used in determining whether a violation of this policy has occurred and will only be considered under limited circumstances when relevant and appropriate. For example, if consent is at issue, the sexual history between the parties may be relevant to determine the nature and manner of communications between the parties, which may inform the determination whether consent was sought and reasonably appeared to have been given during the incident in question. As set forth in the consent definition, even in the context of a relationship, consent to one sexual act does not constitute consent to another sexual act, and consent on one occasion does not constitute consent on a subsequent occasion. In addition, prior sexual history may be relevant to explain injury, to provide proof of a pattern, or to address another specific issue raised in the investigation. The investigator will determine the relevance of this information and both parties will be informed if evidence of prior or subsequent conduct is deemed relevant.

## **7. Cooperation with Law Enforcement**

If there is a criminal investigation or other legal proceeding, the University may be obligated to provide investigative records to law enforcement or a court in response to a subpoena, search warrant, or court order.

## **8. Review of Preliminary Report of Investigation**

At the conclusion of the fact-gathering portion of the investigation, the investigator will prepare a Preliminary Report of Investigation that provides the Complainant and the Respondent equal and timely access to information that will be used in determining whether there was a policy violation. The Preliminary Report of Investigation will provide only a summary of the relevant facts and applicable policy. The Preliminary Report of Investigation will not state a preliminary finding as to whether or not a violation has occurred or any information with regard to potential sanctions.

The Preliminary Report of Investigation and accompanying documents will be made available to the Complainant and the Respondent to review. Upon notice of the availability of the Preliminary Report of Investigation, each party will have seven days to (1) review the Preliminary Report of Investigation; (2) meet again with the investigator, if desired; (3) provide written comment or feedback on the facts as stated in the Preliminary Report of Investigation, if desired; (4) submit additional information not reasonably available earlier through the exercise of due diligence, if desired; and/or (5) identify additional witnesses or request the collection of other information by the investigator, if desired.

If either party provides a written response or makes a request for additional information, the content will be shared with the other party and incorporated as appropriate in the final Report of Investigation. Any relevant information gathered through additional investigative steps will be shared with both parties, and, as appropriate, the parties may have the opportunity for further response if sufficient new information has been gathered. If additional review is granted, each party will have five days to review any additional information and any further comment by the



parties will be limited to responding to the new information only. As necessary, the investigator will designate reasonably prompt timeframes to ensure a timely completion of the process while also providing an adequate opportunity for both sides to respond thoroughly to the information gathered during the investigation. In the absence of good cause, information that was discoverable through the exercise of due diligence that was not provided to the investigator prior to review of the Preliminary Report of Investigation will not be considered in the determination of responsibility for a violation of the policy.

### **9. Standard of Proof: Preponderance of the Evidence**

The investigator will make a finding by a preponderance of the evidence, whether there is sufficient evidence to support a finding of policy violation. A finding of responsibility based on a preponderance of evidence means that based on all relevant evidence and reasonable inferences from the evidence, the greater weight of information indicates that it was more likely than not the policy violation occurred.

### **10. Final Report of Investigation**

Unless there are significant additional investigative steps requested by the parties or identified by the investigator, within seven days after receipt and consideration of additional comments, questions, and/or information from the parties, the investigator will prepare a final Report of Investigation. The Final Report of Investigation will include a summary of the relevant facts and applicable policy; a determination as to whether there is sufficient information, by a preponderance of the evidence, to support a finding of responsibility for a violation of the policy; the rationale for this finding; if there is a finding of responsibility for a violation of the policy, the sanctions to be imposed; and notification of the available procedures to contest the finding and/or sanction. In preparing the final Report of Investigation, the investigator will confer with the appropriate Disciplinary Authority with regard to formulating sanctions.

Both parties will simultaneously receive the Final Report of Investigation.

### **B. Review of Finding by the Provost**

Each party may accept or contest the findings or sanctions stated in the Final Report of Investigation.

A party may contest the investigative finding by asserting that (1) there was a material deviation from the procedures as stated in this policy that significantly impacted the outcome; (2) there was no rational basis, applying a preponderance of the evidence standard, for the investigative finding; (3) new information or evidence is available that was not reasonably available earlier through the exercise of due diligence; or (4) the sanction levied against the Respondent is disproportionate based on the findings as stated in the Final Report of Investigation.

To contest the findings or sanctions, the Complainant or Respondent must submit a written statement to the Title IX Coordinator within five days of receiving the Final Report of Investigation. This statement must explain why the party contests the findings or sanctions, including clearly identifying one or more of the four grounds enumerated in the previous paragraph. Each party will have the opportunity to review and respond in writing to the other party's request for review; any response must be submitted to the Title IX Coordinator within five days after that party has received notice of the request to review.

- If neither party contests the findings or sanctions, those findings and sanctions will become final, and will be submitted to the Title IX Coordinator for signature and implementation. The Title IX Coordinator will inform the parties that the findings and sanctions are final.
- If either party contests the findings or sanctions, the Title IX Coordinator will submit the Final Report of Investigation and any statements received from the parties to the Provost. The Provost will determine whether to uphold the findings and sanctions; whether to modify the findings and/or sanctions; or whether further action is needed by the Title IX investigator.

If applicable, the Provost will reach a final determination as to the outcome and sanction within ten days of receipt of the Report of Investigation and the parties' statements. The Provost will provide the final decision to the Title IX Coordinator, who will inform the parties of the Provost's decision.

### **C. Findings Meeting**

If applicable, once the Provost has rendered a final decision, both the Complainant and the Respondent will be contacted to schedule an individual Findings Meeting with the Title IX investigator. During this meeting, each party will receive written notification of the results of the investigation. In the event that either party is unable or unwilling to attend the Findings Meeting, the written notification may be mailed or e-mailed to that party.

### **D. Procedures for Imposition of Sanction**

#### **1. Disciplinary Authority**

The Disciplinary Authority is an individual or office which has supervisory or other authority over the Respondent, and for this reason, will participate in the decision as to the appropriate disciplinary action to be imposed against the Respondent upon a finding of violation of this policy. The Disciplinary Authority will consult with the Title IX investigator (and, if reconsideration of the sanction is requested, the Provost) to determine the appropriate sanction.

The Disciplinary Authority for students is: Office of Student Conduct and Judicial Affairs.

The Disciplinary Authority for staff and contractors is: Director of Employee Relations.

The Disciplinary Authority for faculty is: The Dean of the School/College and/or the Department Chair of the Department in which the faculty member holds a faculty appointment.

The Disciplinary Authority for Hospital Staff is: Associate Vice President for Administration and Operations.

## **2. Sanctioning Process**

Engaging in any act that is found to be a violation of this policy, or failing to carry out the responsibilities established by this policy, will give rise to disciplinary action, up to and including separation from the University.

Where there is a finding of responsibility, the Title IX investigator, in consultation with the appropriate Disciplinary Authority, may impose one or more sanctions. The policy prohibits a broad range of conduct, all of which is serious in nature. In keeping with the University's commitment to foster an environment that is safe, inclusive, and free from discrimination and harassment, the Title IX investigator and Disciplinary Authority have great latitude in the imposition of sanctions tailored to the facts and circumstances of each report, the impact of the conduct on the Complainant and surrounding community, and accountability for the Respondent. The imposition of sanctions is designed to eliminate Prohibited Conduct, prevent its recurrence, and remedy its effects, while supporting the University's educational mission and legal obligations. Sanctions may include educational, restorative, rehabilitative, and punitive components. Some conduct, however, is so egregious in nature, harmful to the individuals involved, or so deleterious to the educational process that it requires severe sanctions, including suspension or expulsion/termination.

In determining the appropriate sanction, the Title IX investigator and Disciplinary Authority shall consider the following factors:

- the nature and violence of the conduct at issue;
- the impact of the conduct on the Complainant;
- the impact or implications of the conduct on the community or the University;
- prior misconduct by the Respondent, including the Respondent's relevant prior disciplinary history, both at the University or elsewhere (if available), including criminal convictions;
- whether the Respondent has accepted responsibility for the conduct;
- maintenance of a safe and respectful environment conducive to learning;
- protection of the University community; and
- any other mitigating, aggravating, or compelling circumstances in order to reach a just and appropriate resolution in each case.

Sanctions may be imposed individually or in combination.

If the Provost, a Vice President, or person of similar rank is the subject of a report of Prohibited Conduct, the Title IX Coordinator will forward the Report of Investigation to the President, who will make the final determination regarding appropriate sanctions. If the President, in his individual capacity, is the subject of such a complaint, the Title IX Coordinator shall immediately notify the General Counsel who, in turn, will recommend a special investigative protocol to the chair of the Audit and Legal Committee of the Board of Trustees. Thereafter, the complaint shall be investigated as directed by said Committee.

The Title IX Investigator will also notify the appropriate University Offices (i.e. Department of Public Safety, Office of the Provost, Office of the Registrar, Office of Financial Aid, Office of Human Resources, Athletics Department, etc.), which will be responsible for implementing the imposed sanctions.

In all cases, the appropriate University Officer is responsible for imposing all sanctions. Additionally, after consultation with the Title IX Officer, the appropriate University Officer is responsible for taking any recommended remedial action necessary to promptly and effectively eliminate the harassment or discrimination, prevent its recurrence, and protect the Complainant from future incidents as well as the entire University Community. Failure to do so may result in disciplinary action against the University Officer.

### **3. Sanctions for Students**

Potential sanctions for students include: academic and/or social probation, disciplinary probation, community service, restitution, limited-term suspension, indefinite suspension, expulsion, a campus-wide barring order, a no contact order, a written apology, a requirement to receive counseling through the University Counseling Service, and/or Title IX training.

### **4. Sanctions for Employees and Third Parties**

Potential sanctions for faculty or staff include: administrative leave without pay, restitution, suspension, requirement to receive counseling through the Employee Assistance Program, Title IX training, a no contact order, a campus-wide barring order, and/or termination of employment.

Potential sanctions for third-parties, including contractors or vendors include: requirement to receive counseling or Title IX training before returning to the University's campus, a no contact order, a campus-wide barring order and/or a requirement to cease doing business with the University.

### **5. Additional Remedies**

Regardless of the outcome, the Title IX Investigator or Disciplinary Authority may recommend additional remedies for the Complainant to address the effects of the conduct on the Complainant, restore the Complainant's access to University programs and activities, and restore to the

Complainant, to the extent possible, benefits and opportunities lost as a result of the Prohibited Conduct. The Title IX Investigator or Disciplinary Authority may also identify remedies to address the effects of the conduct on the University community.

In addition, the Title IX Investigator or Disciplinary Authority may determine that one or both parties should receive training on Title IX, alcohol consumption, drug use or any other subject matter relevant to the information contained within the Report of Investigation. Training is neither designed to be nor considered to be a punishment or sanction, and will not be characterized as such.

The Title IX Coordinator will review the remedies recommended by the Provost or Disciplinary Authority and will consider the appropriateness of continuing interim remedial or protective measures on an ongoing basis. Extended protective measures may be included in the sanctions.

#### **XIV. EXTERNAL REPORTING**

University community members may raise concerns about the University's application of Title IX or Title VII with the United States Department of Education, Office for Civil Rights ("OCR"). The address and telephone number of the appropriate OCR District are as follows:

U. S. Department of Education  
Office for Civil Rights  
District of Columbia Office  
400 Maryland Avenue, S.W.  
Washington, D.C. 20202-1475  
Telephone: (202) 453-6020  
FAX: (202) 453-6021  
TDD (877) 521-2172

#### **XV. PREVENTION AND AWARENESS PROGRAMS**

The University is committed to the prevention of Prohibited Conduct through regular and ongoing education and awareness programs. Incoming students and new employees receive primary prevention and awareness programming, and returning students and current employees receive ongoing training and related programs. The University provides coordinated programming and training through multiple areas, including the Title IX Office, Division of Student Affairs, Howard University Department of Public Safety, Human Resources, the Provost's Office, Interpersonal Violence Prevention Program, University Counseling Services, the Student Health Center and other University departments.

#### **XVI. ANNUAL REVIEW**

This policy is maintained by the Title IX Office. The University will review this policy on at least an annual basis. The review will capture evolving legal requirements, evaluate the supports and resources available to the parties, and assess the effectiveness of the resolution process (including

as to the fairness of the process, the time needed to complete the process, and the sanctions and remedies imposed).

## **XVII. HYPERLINKS**

[www.howard.edu/policy](http://www.howard.edu/policy)

Emergencies & Alerts

<https://www2.howard.edu/title-ix>

Title IX: U.S. Department of Education