

# HOWARD UNIVERSITY POLICY

**Policy Number:** 400-005 Governance, Risk and Compliance  
**Policy Title:** POLICY PROHIBITING SEX AND GENDER-BASED DISCRIMINATION, SEXUAL MISCONDUCT AND RETALIATION  
**Responsible Officers:** Provost and Chief Academic Officer  
**Responsible Offices:** Office of the Provost and Chief Academic Officer  
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August 11, 2011 (Updated Title IX Contacts)  
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## **I. POLICY STATEMENT**

Howard University, including Howard University Hospital (hereinafter referred to collectively as the “University”), is committed to ensuring compliance with Title IX of the Education Amendments of 1972, as amended, Title VII of the Civil Rights Act of 1964, as amended, both of which are federal laws that prohibit sex discrimination, as well as applicable state and local laws that prohibit sex and gender-based discrimination, including sexual misconduct such as sexual harassment, sexual assault, dating violence, domestic violence, and stalking. Retaliation against anyone involved in filing an internal report or complaint under this policy, filing an external complaint, participating in the internal disciplinary process or any other process under this policy, or opposing in a reasonable manner an act believed to constitute a violation of this policy, is prohibited, will not be tolerated and will be subject to separate sanctions. 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 sex and gender-based discrimination, harassment, and violence.

Sex and gender-based discrimination and sexual misconduct (collectively referred to in this Policy as “Prohibited Conduct”) are violations of federal law as well as 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.<sup>1</sup>

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.

Additionally, making a good faith report of Prohibited Conduct is a protected civil rights activity. As such, retaliation against a Complainant, Respondent, 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, which may include expulsion or termination if appropriate

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 University will publish a notice of discrimination that includes information for contacting the University's Title IX Coordinator and the U.S. Department of Education. This notice will be distributed widely to all students, employees, applicants for admission and employment and other relevant individuals. The notice will be prominently displayed on the University's website and included in publications of general distribution that provide information to students and employees about the University's services and policies, including each handbook or catalog that it makes available to individuals entitled to a notification. The notice is attached as Appendix A.

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<sup>1</sup> On May 19, 2020, the United States Department of Education issued new Title IX regulations, effective August 14, 2020. However, there are several lawsuits pending which seek to stay, delay or block implementation of some or all of the provisions in the 2020 Title IX Regulations. Should a court delay, stay or strike down, either temporarily or permanently, any portion of the 2020 Title IX Regulations, the University will make any necessary modifications to this Policy, which will become effective immediately. If a court delays implementation of or strikes down all of the regulations, the University may revert back to the previous version of this Policy.

The Title IX Coordinator acts with independence and authority free from bias and conflicts of interest. To raise any concern involving bias or conflict of interest by the Title IX Coordinator, contact the University's General Counsel. Concerns of bias or a potential conflict of interest by any other Title IX Officers or individuals with decision-making responsibilities in the process should be raised with the Title IX Coordinator.

## 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 applies equally to employment in the University's 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 supportive measures during an investigation to provide a Complainant or Respondent with continued access to University programs and activities and protect individual and campus safety.

## III. DEFINITIONS

For purposes of this Policy, the following definitions apply:

**Actual Knowledge** - This means notice of Sexual Harassment I or allegations of Sexual Harassment I (as defined in Prohibited Conduct) to the University's Title IX coordinator or any official of the University who has actual authority to institute corrective measures on behalf of the University.

**Advisor** - A person chosen by a party or appointed by the University to provide advice and consult with a party, and to conduct cross-examination for the party at the hearing, if a hearing is required to be held.

**Complainant** - An individual who is alleged to have experienced Prohibited Conduct.

**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.

**Education Program or Activity** – Includes locations, events or circumstances over which the University exercises substantial control over the context in which the prohibited conduct occurs, and also includes any building owned or controlled by a student organization that is officially recognized by the University. With respect to allegations of Sexual Harassment I, as defined below, the conduct must have occurred in the United States and the University must have substantial control over the Respondent.

**Formal Complaint** – A document or electronic submission submitted by a Complainant containing the Complainant's physical or digital signature, or a document signed by the Title IX Coordinator alleging Sexual Harassment I, as defined below, against a Respondent and requesting that the University investigate the allegation. At the time of filing a Formal Complaint, a Complainant must be participating in or attempting to participate in the University's education program or activity. Where the Title IX Coordinator signs a Formal Complaint, the Title IX Coordinator is not a Complainant or otherwise a party.

**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 assessment based on the available information.

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) Would a 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.

**Respondent** - An individual who has been reported to have engaged in Prohibited Conduct.

**Sexual Misconduct** - An umbrella term that encompasses Sexual Harassment, Sexual Assault, Dating Violence, Domestic Violence, Stalking, Sexual Exploitation, and Stalking. Sexual Misconduct can be committed by any person, regardless of gender identity, and can occur between people of the same or different sex, gender identity, sexual orientation, or gender expression.

**Support Person** – A person chosen by the Complainant or Respondent to provide emotional, support and assistance to the party. The Support Person is not an active participant or a witness and may not disrupt or cause any delay in the process. The Support Person may not serve as an Advisor, does not act at the direction of an Advisor, and has no role in posing questions or otherwise participating in any live hearing that might be held, although the Support Person may accompany a party to a hearing.

**University Community** - 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.

**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.

#### **IV. 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:

- 1) The conduct occurs on-campus or on property owned or controlled by the University;
- 2) The conduct occurs in buildings owned or controlled by recognized student organizations;
- 3) 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);
- 4) The conduct occurs through the use of University-owned or provided technology resources; or
- 5) The conduct occurs off-campus and effectively deprives or limits an individual's access to the University's program.

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 supportive measures.

#### **V. COORDINATION WITH OTHER POLICIES**

This policy addresses discrimination on the basis of sex or gender, including sexual misconduct, as defined in more detail below. Other forms of discrimination and harassment based on race, color, nationality or ethnic origin, age, or disability are governed by the Howard University Policy and Procedure on Equal Opportunity in Employment and Education Program and Activities. All such complaints or reports received by the Title IX Office will be referred to the University's EEO Office.

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

[\*Student Code of Conduct\*](#)

[\*Students Privacy Rights Policy \(FERPA\)\*](#)

[\*Clery Act Disclosure Policy \(200-004\)\*](#)

[\*Employee Handbook\*](#)

[\*Howard University Faculty Handbook \(June 2019\)\*](#)

[\*Protection of Minors Policy\*](#)

To the extent that any university policies or agreements provide information and/or procedures regarding the University's response to sex and gender-based discrimination, including sexual misconduct, that is not consistent with this policy, this policy supersedes those policies or agreements. 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.

## **VI. TITLE IX COORDINATOR**

The Howard University Title IX Director serves as the University's Title IX Coordinator. The Title IX Coordinator coordinates the University's compliance with Title IX and applicable state and local laws governing sex and gender-based discrimination, including sexual misconduct, and oversees the University's centralized response to all reports of Prohibited Conduct to assure consistent implementation of this policy. The Title IX Coordinator is responsible for coordinating the activities of all individuals who may have responsibilities under this policy as necessary to fulfill the University's obligations under this policy.

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 and Prohibited Conduct defined in this policy.
- Respond to any report regarding conduct that may violate this policy.

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's contact information provided here is also included in the Appendix.

**Leslie T. Annexstein, Title IX Director**

Administration Building  
2400 6th Street, N.W., Suite G06  
Washington, D.C. 20059  
Phone: (202) 806-2550  
Email: TitleIX@howard.edu

The University also has designated Title IX Investigators and a Title IX Training Manager. The Title IX Coordinator and the Title IX Investigators and Training Manager are all Title IX Officers for the purposes of this policy.

## **VII. 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, objective and comprehensive review of the facts, and made on a case-by-case basis utilizing the preponderance of the evidence standard.

Conduct defined as Sexual Harassment I applies only to conduct that takes place in the United States. All other prohibited conduct defined below applies to such conduct, regardless of whether it occurred in the United States or outside of the United States.

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

**A. Sexual Harassment I** - This category of prohibited conduct has been defined by the Office for Civil Rights, U.S. Department of Education. It includes sexual harassment, sexual assault, domestic violence, dating violence, and stalking, and is defined as conduct on the basis of sex that satisfies one or more of the following:

- 1) An employee conditioning educational benefits on participation in unwelcome sexual conduct (i.e., quid pro quo);
- 2) Unwelcome conduct that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the educational institution's education program or activity; or
- 3) Sexual Assault, Dating Violence, Domestic Violence, or Stalking.



**Sexual Assault** is an offense classified as a sex offense in the uniform crime reporting system of the Federal Bureau of Investigation. Sex offenses are any sexual act including Rape, Sodomy, Sexual Assault with An Object, or Fondling directed against another person, without the consent of the person, including instances where the person is incapable of giving consent and also includes other unlawful sexual intercourse.

The following definitions apply:

Rape (Except Statutory Rape) – Any act of vaginal or anal intercourse or penetration, however, slight, by a person’s penis, finger, or other body part or oral-genital contact, without the consent of the Complainant, including instances in which the person is incapable of giving consent.

Sodomy – Oral or anal sexual assault with another person, without the consent of that person, including instances where the person is incapable of giving consent because of the person’s age or because of the person’s temporary or permanent mental or physical incapacity.

Sexual Assault With An Object - The use of an object or instrument to penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the person, including instances where the person is incapable of giving consent because of the person’s age or because of the person’s temporary or permanent mental or physical incapacity.

Fondling - The touching of the private body parts of another person (buttocks, groin, genitals, breasts), for the purpose of sexual gratification without the consent of the person, including instances where the person is incapable of giving consent because of the person’s age or because of the person’s temporary or permanent mental or physical incapacity.

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

Statutory Rape - Non-forcible sexual intercourse with a person who is under the statutory age of consent of 16.

**Dating Violence** means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the Complainant. The existence of such a relationship shall be determined based on the Complainant’s statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of domestic violence.

**Domestic Violence** includes violence committed by a current or former spouse or intimate partner of the Complainant, by a person with whom the Complainant shares a child in common, by a person who is cohabitating with or has cohabitated with the Complainant as a spouse or intimate partner, by a person similarly situated to a spouse of the Complainant, or by any other person against an adult or youth Complainant protected from those acts by domestic or family violence laws of the District of Columbia or Maryland.

**Stalking** means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others or suffer substantial emotional distress. Substantial emotional distress may not necessarily require medical or other professional treatment or counseling.

**B. Sexual Harassment II** – This category of prohibited conduct incorporates the definition of Sexual Harassment I, as well as sexual harassment that may not meet the definitions provided in Sexual Harassment I above. It includes 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 submission to, or rejection of, such conduct is used as a basis for evaluation in making academic or personnel decisions; or
- 2) 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 non-exhaustive 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,
- 6) 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. Sex or 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 that otherwise adversely affects a term or condition of the individual's employment or education based upon the individual's sex, 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 are not of a sexual nature.

Harassment is a form of discrimination that encompasses unwelcome conduct on the basis of the individual's sex, 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, sex, gender, gender expression, gender identity, and sexual orientation are defined as follows:

**Sex** - Assigned or Assumed Sex or Sex Assigned at Birth.

**Gender** - A social construct used to classify a person as a man, woman, or some other identity.

**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 Sex or Gender-Based Discrimination or Harassment** - Specifically, under this policy, in providing any aid, benefit, or service to a student or employee, no person shall, on the basis of sex, 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 sex, 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 sexual images, audio recordings, or sexual information without the knowledge or consent of all parties involved; or
- Exposing one's genitals or inducing another to expose their own genitals in non-consensual circumstances.

- E. 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; supporting a Complainant or Respondent; 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.

Charges against an individual for code of conduct violations that do not involve sex or gender-based discrimination or sexual misconduct but arise out of the same facts or circumstances as a report or complaint of sex or gender-based discrimination, or a report or complaint of sexual misconduct, for the purpose of interfering with any right or privilege secured by Title IX and/or this policy, constitutes retaliation.

Concerns or questions about retaliation should be immediately reported to a Title IX Officer.

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

## **VIII. UNIVERSITY PROHIBITION ON CONSENSUAL RELATIONSHIPS BETWEEN EMPLOYEES AND STUDENTS**

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. This is an additional form of prohibited conduct under this policy. 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 and the processes for investigating and adjudicating this prohibited conduct are encompassed below. This prohibition includes attempts to engage in prohibited consensual relationships, regardless of whether such attempts culminate in a relationship.

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/or the student is not enrolled in a class that the student- employee/worker is teaching.

## **IX. 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 mental health professionals, 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 to the Howard University Department of Public Safety for purpose of satisfying the University's legal responsibilities under the Clergy 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 on 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. The University has also designated the staff of the Interpersonal Violence Prevention Program (IVPP) as confidential employees, when IVPP staff are providing individualized advocacy services to students, per the request of those students. 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 when acting in that professional role, 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 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.

## **X. 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 administrative investigation under this policy. The University's administrative investigation may proceed simultaneously with any law enforcement investigation, whether by the University's Department of Public Safety or the Metropolitan Police Department, at the discretion of the University.

## **2. Medical Services**

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 available at:

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

Nurse Examiners can be dispatched to other hospitals, upon request.

Students can also receive 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

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
- Division of Student 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 administrative processes and law enforcement investigations operate independently of one another, although the University may 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 mail, by telephone, or by electronic mail;
- 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 complaint under this policy 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. 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. The Title IX Coordinator has the discretion to file a Formal Complaint if there are allegations of Sexual Harassment I and the Complainant requests anonymity and/or does not wish to pursue any University response.

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 supportive 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.

This Policy is effective August 14, 2020 and governs conduct that takes place on or after August 14, 2020. Sexual harassment that allegedly occurred prior to August 14, 2020 will be classified as Sexual Harassment II and handled in accordance with the procedures provided herein for Sexual Harassment II.

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 provide support for the Complainant, including supportive measures as appropriate, and take 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.

#### **XI. UNIVERSITY ACTION UPON RECEIPT OF A REPORT OR FORMAL COMPLAINT**

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 Formal Complaints of Sexual Harassment I or reports of other Prohibited Conduct under this policy: the Formal Grievance Process, which involves an investigation, adjudication, and, if appropriate, the imposition of sanctions, and Informal Resolution, which includes informal or restorative options for resolving Formal Complaints or reports of other Prohibited Conduct 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. Informal resolution is voluntary, and the University will not offer or facilitate an informal resolution process to resolve any allegations that an employee engaged in Sexual Harassment I or Sexual Harassment II of a student.

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 supportive measures for a Complainant and a Respondent.

## **A. Supportive Measures**

The University will provide supportive measures to both complainants and respondents upon notice of a report, regardless of whether a formal complaint is filed. These measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge. The purpose is to restore or preserve equal access to the University's education program or activity, without unreasonably burdening the other party, including measures designed to protect the safety of all parties in the University's educational environment, or deter sex and gender-based discrimination and sexual misconduct. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

At the time that supportive measures are offered to the Complainant, the Title IX Coordinator will inform the Complainant that they may file a formal complaint either at that time or in the future, if they have not already done so. The Title IX Coordinator will consider the Complainant's wishes with respect to supportive measures.

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

Supportive measures may include, but are not limited to:

- Access to counseling, medical and/or other healthcare services
- Referral to the Employee Assistance Program
- 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 or Human Resources, if the party qualifies as an individual with a disability
- Change in the party's class schedule, including the ability to transfer course sections or withdraw from a course without penalty
- Change in the party's University work schedule or job assignment
- Administrative leave
- Change in the party'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 actions deemed appropriate by the Title IX Coordinator that can be used to achieve the goals of this policy

Alleged violations of a no contact order will be promptly reviewed. The Title IX Coordinator 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 no contact order into the underlying investigation and charges of Prohibited Conduct. Even if not charged separately, information regarding a failure to abide with a no contact order may also be considered in determining an appropriate sanction.

The University will maintain the privacy of supportive measures provided to the Complainant or Respondent to the extent practicable, provided that maintaining such privacy does not impair the University's ability to provide supportive measures.

### **B. Emergency Removal**

The University may remove a Respondent from its education program or activities on an emergency basis when an individualized safety and risk analysis has determined that an immediate threat to the physical health or safety of any student or other individual arising from the prohibited conduct justifies removal. Where an emergency removal has been imposed, the individual will be provided with notice and an opportunity to challenge the removal decision. The decision to impose an emergency removal may be made at any point in the process. The Title IX Coordinator, in consultation with the University's Department of Public Service, the Office of General and University Counseling Services will determine whether an emergency removal is necessary.

To challenge the removal action, the individual must request a meeting with the Title IX Coordinator within 3 days of receiving notice of the removal and present reasons for why the removal should not be implemented or should be modified. The Title IX Coordinator will determine whether the removal will stand or be modified, and there is no appeal process. This meeting is not about the merits of the allegation(s); it is intended only to determine whether the emergency removal is appropriate. When a meeting with the Title IX Coordinator is not requested within 3 days, objections to the emergency removal will be considered waived.

### **C. 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 may:

- 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 Formal Grievance Resolution and Informal Resolution, and for allegations of Sexual Harassment I the option of filing a Formal Complaint;
- Notify the Complainant of the range of supportive measures available, including the right to reasonable supportive measures regardless of whether they choose to participate in a University or law enforcement investigation;
- Notify the Complainant of the range of supportive 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 and/or support person 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 the age of the Complainant, and if the Complainant is a minor, make the appropriate notifications under applicable law.

With respect to Formal Complaints alleging a violation of Sexual Harassment I, the University may proceed with one of the following options:

- Mandatory Dismissal – If the conduct alleged in the Formal Complaint would not constitute Sexual Harassment I, even if proved, did not occur in the institution's education program or activity, or did not occur against a person in the United States, the Formal Complaint must be dismissed as a Sexual Harassment I complaint. If dismissed, the University will promptly send written notice of the dismissal and



reason(s) for such dismissal to the parties. Nevertheless, the Title IX Office will then assess the Formal Complaint will then be assessed to determine whether the conduct alleged would constitute Sexual Harassment II or any other Prohibited Conduct under this policy.

- Proceed with an investigation under the Formal Grievance Resolution - This occurs if the Formal Complaint has not been dismissed.
- Proceed with Informal Resolution - This will always require the consent of the parties. Informal Resolution will not be used to resolve any allegations that an employee engaged in Sexual Harassment I or Sexual Harassment II of a student.
- Permissive Dismissal – A Formal Complaint or any allegations therein may be dismissed at any time during the investigation or hearing if the Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations therein; if the Respondent is no longer enrolled or employed by the University; or if specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein. If dismissed, the University will promptly send written notice of the dismissal and reason(s) for such dismissal to all of the parties.

With respect to complaints alleging all other forms of Prohibited Conduct, the University may proceed with one of the following options:

- Proceed with an investigation under the Formal Grievance Process. This will occur when a Complainant requests an investigation and the Title IX Coordinator determines that an investigation is warranted or where the Title IX Coordinator determines that an investigation must be pursued even when a Complainant requests that no investigation be pursued.
- Proceed with Informal Resolution – This will always require the consent of the parties.
- If outside the scope of this policy, refer the matter to another appropriate office or department for resolution under the relevant policy.
- 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.

#### **D. 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 and/or that the Complainant's name not be disclosed. In such a circumstance, the Title IX Coordinator may 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 this policy and state and federal

law. The Title IX Coordinator may 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 may initiate a grievance process by signing a Formal Complaint with respect to allegations of Sexual Harassment I or completing a written statement for the other forms of Prohibited Conduct. The Title IX Coordinator's decision should be based on an assessment of the violence risk, such as evidence of patterns of misconduct, predatory conduct, threats, abuse of minors, use of weapons, or violence. The Title IX Coordinator may consider the effect that non-participation by the Complainant will have on the availability of evidence and the ability to pursue a Formal Grievance Process. 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 may 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 fully respond and/or investigate is limited if the Complainant does not wish to participate and/or wishes to remain anonymous.

## **XII. INFORMAL RESOLUTION**

Informal Resolution is a voluntary and remedies-based resolution that does not involve taking disciplinary action against a Respondent. Mediation or other informal resolution processes is permitted but the University will not require the parties to engage in an informal resolution process. Informal Resolution is not available for allegations of Sexual Harassment I unless a Formal Complaint has been filed.

The University may facilitate an informal resolution process at any time prior to reaching a determination regarding responsibility. The University will provide the parties with a written notice disclosing the allegations, the requirements of the informal resolution process, any consequences that might result from participating in the informal resolution process, and a statement that any party has the right to withdraw from the informal resolution process and resume the investigation and adjudication process. In order to proceed with informal resolution, the University must obtain the parties' voluntary, written consent to the informal resolution process. The University will not offer or facilitate an informal resolution process to resolve allegations that an employee engaged in Sexual Harassment I or Sexual Harassment II of a student.

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

### **XIII. GENERAL INFORMATION REGARDING FORMAL GRIEVANCE PROCESS**

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

The Title IX Office endeavors to complete the investigation and resolution process within a reasonable timeframe - approximately 90 business 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 90-business 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 90 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 90-business day time period.

Although cooperation with law enforcement may require the University to suspend the fact-finding portion of an investigation temporarily, the University will promptly resume its investigation upon notification from the law enforcement agency that proceeding with the 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 supportive measures for the Complainant and Respondent.

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.

#### **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 the grievance 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 appeal 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 procedures delineated in this policy. 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.

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.

### **C. Right to Advisor and Support Person**

Throughout the investigation and adjudication process, all parties have the right to be accompanied to any meeting by an Advisor and/or a Support Person.

**Advisor.** The parties may each have 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 during the Formal Grievance Process, 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 the Formal Grievance Process.

However, when a live hearing is required for the adjudication of Sexual Harassment I allegations, the advisor will be permitted to ask the other party and any witnesses all relevant

questions and follow-up questions, including those challenging credibility. If a party to a hearing does not have their own advisor, the University will provide that party with an advisor without any fee or charge to that party, so that the advisor may conduct cross-examination on behalf of that party. A party who will not have an Advisor of their own choosing at a required live hearing, must inform the University of this at least 10 days in advance of the scheduled hearing so that the University has adequate time to provide an Advisor.

**Support Person.** The parties may have a Support Person of their choice, A Support Person is an individual who can provide emotional, support and other kinds of assistance to a party. The Support Person is not an active participant or a witness and may not disrupt or cause any delay in the process. The Support Person may not serve as an Advisor, does not act at the direction of an Advisor, and has no role in posing questions or otherwise participating in any live hearing that might be held, although the Support Person may accompany a party to a hearing.

Generally, the Title IX Office and investigator will communicate directly with the Complainant or Respondent. The parties and their advisor and/or support person must execute a FERPA waiver, 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.

Any Advisor or Support Person who does not stay within their defined role will receive a warning that they must abide by the parameters that have been established. Violations of their role as defined by this policy will be subject to one warning only. If the Advisor or Support Person fails to abide by the parameters of their role, any meeting or procedure in progress will be ended. The Title IX Coordinator has the discretion to determine whether that Advisor or Support Person will be permitted to continue in their role for that specific matter, or to serve as an Advisor or Support Person in the future.

#### **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.

## **XIV. FORMAL GRIEVANCE PROCESS**

### **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 and the University has the authority and the sole discretion in determining when to assign an internal and/or external investigator. 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, which may include the following information: (1) the names of the Complainant and the Respondent, if known; (2) the date and location of the alleged incident, if known, and the nature of the reported conduct; (3) the reported policy violation(s); (4) a description of the applicable procedures; (5) a statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the investigation and adjudicative process; (6) information about the parties' respective rights and responsibilities, including that the parties may have an advisor of their choice, who may be, but is not required to be, an attorney, and may inspect and review evidence; (7) a statement informing the parties that the University's policy prohibits knowingly submitting false information during the investigation and adjudication process; (8) the prohibition against retaliation; (9) the importance of preserving any potentially relevant evidence in any format; (10) a statement that if the University decides to investigate additional allegations not included in the original notice, notice of the additional allegations will be provided to the parties whose identities are known; (11) the name and contact information of the assigned investigator; and (12) how to challenge participation by the investigator on the basis of a conflict of interest or bias. The parties will also be provided with a copy of this policy.

#### **3. Overview**

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

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. 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. 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. All evidence submitted by the Parties during the investigation is not required to be inventoried in the Preliminary Report of Investigation.

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 the violation of a no contact order 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 relevant information identified or provided by the parties 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 also be provided to the parties for review.

The Title IX Office has the sole discretion to consolidate multiple reports or multiple Formal Complaints against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one party against the other party, where the allegations arise out of the same facts or circumstances.

The investigator may 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 45 business 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, at the conclusion of the process.

#### **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 the evidence that has been obtained as part of the investigation that is directly related to the allegations raised, as well as evidence that was collected that the Investigator may not deem to be relevant. This includes making available any documents that were gathered by the University. 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 each party and the party's advisor, if any, in an electronic format or a hard copy. Each party will have 10 days to submit a written response, which the investigator will consider prior to completion of the investigative report. If the party has additional information that was not reasonably available earlier through the exercise of the party's due diligence, this information should be provided with the written response. A party may also request the opportunity to meet with the Investigator to provide additional verbal information; the Investigator will determine whether such a meeting is necessary to ensure that all relevant evidence has been provided.

If either party provides a written response or provides additional verbal 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 the University deems 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.

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

Findings are made based on a preponderance of the evidence. 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. This standard of evidence is the same for

complaints against students as for complaints against employees, including faculty, and for all University policy violations involving discrimination to another individual.

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

The investigator will prepare a Final Report of Investigation for all completed investigations.

### **a. Final Report of Investigation for allegations of Sexual Harassment I**

The Final Report of Investigation for allegations of Sexual Harassment I will include a summary of the relevant evidence and will not include a finding or sanctions. Adjudication will occur at a live hearing. The Final Report of Investigation will be provided to each party and the party's advisor, if any, in an electronic format or a hard copy, at least 10 days prior to the required live hearing, for their review and written response.

### **b. Final Report of Investigation for all other Prohibited Conduct**

The final Report of Investigation for allegations of all other Prohibited Conduct will include a summary of the relevant evidence; 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. To determine the sanctions, the investigator may confer with the Director of the Office of Student Conduct and Community Standards regarding students; the Director of Employee Relations regarding staff and contractors; the Dean of the School/College and/or the Department Chair regarding faculty; or the Associate Vice President for Administration and Operations regarding hospital staff. When preparing the Final Report of Investigation, the investigator will confer with the Title IX Coordinator to ensure consistency in the application of this policy, including the rendering of any sanctions.

## **B. Adjudication**

### **1. Adjudication of Formal Complaints of Sexual Harassment I.**

#### **a. Live Hearing with Cross-Examination**

The Title IX Coordinator will select an appropriate decision-maker or decision-makers for a panel; these individuals may be from within the campus community or may be from outside the campus community and are neutral factfinders. The University has the sole discretion to determine whether a sole decision-maker or panel of decision-makers will be utilized, and whether the decision-maker(s) will be individuals from the University community or external decision-makers. Decision-makers will have the requisite training. While the Title IX Coordinator has oversight and coordination responsibilities for the

hearing and may serve as the hearing facilitator, the Title IX Coordinator may not serve as a decision-maker. The investigator also may not be a decision-maker.

At the live hearing, the decision-maker(s) must permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Cross-examination at the live hearing must be conducted directly, orally, and in real time by the party's advisor and never by a party personally. If the party does not have an advisor of their own choosing to conduct cross-examination, the University will provide an advisor to the party of the University's choice. When the University provides an advisor, the University is not obligated to provide an attorney or an individual with legal training, even if the other party has such an advisor.

Only relevant cross-examination and other questions may be asked of a party or witness. The decision-maker(s) has the sole discretion to determine relevancy during the live hearing. Before a Complainant, Respondent, or witness answers a cross-examination or other question, the decision-maker(s) must first determine whether the question is relevant and explain any decision to exclude a question as not relevant. If a party or witness does not attend the live hearing or does not submit to cross-examination at the live hearing, the decision-maker(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility, including those contained in the Final Report of Investigation. However, if the statements of the party who is refusing to submit to cross-examination or refuses to attend the hearing are the subject of the allegation itself (e.g., verbal harassment or a quid pro quo offer), then those statements are not precluded from consideration by the decision-maker(s).

Any evidence that the decision-maker(s) determine(s) is relevant and credible may be considered. However, the following will not be considered: 1) incidents not directly related to the possible violation, unless they evidence a pattern; 2) the character of the parties; or 3) questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

Live hearings may be conducted with all parties physically present in the same location, or at the University's discretion, any or all parties, witnesses and other participants may appear at the live hearing virtually, with technology enabling participants to simultaneously see and hear each other. At the request of either party, the University will conduct the live hearing with the parties located in separate rooms with technology enabling the decision-maker(s) and parties to simultaneously see and hear the party or the witness answering the questions.

An audio or audiovisual recording, or transcript of the live hearing will be created and made available to the parties for inspection and review. The parties may not record the

proceedings in any manner and no other unauthorized recordings are permitted. The decision-maker(s), parties, advisors and other appropriate Administrators will be permitted to review the recording in a controlled environment, as determined by the Title IX Coordinator. No person will be given or be allowed to make a copy of the recording.

The Investigator(s) will be present at the live hearing and provide a summary of the Final Report of Investigation, including items that are contested and those that are not, and will be subject to questioning by the Decision-maker(s) and the parties (through their Advisors). The Investigator(s) will be present during the entire hearing process, but not during deliberations. Neither the parties nor the decision-maker(s) should ask the Investigator(s) their opinions on credibility, recommended findings, or sanctions.

## **b. Findings**

The decision-maker(s) will deliberate in closed session in order to make a determination regarding responsibility. The decision-maker(s) will use the preponderance of evidence standard. The hearing facilitator may be invited to attend the deliberations but is there only to facilitate procedurally and not to address the substance of the allegations or participate in the decision-making in any way.

The decision-maker(s) will issue a written determination regarding responsibility which includes:

- The identification of the allegations potentially constituting Sexual Harassment I;
- A description of the procedural steps taken from receipt of the notifications to the parties, interviews with parties and witnesses, site visits (if any), methods used to gather other evidence, and hearings held;
- Findings of fact supporting the determination;
- Conclusions regarding the application of the University's policy to the facts;
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any sanctions the institution imposes on the Respondent, and whether remedies designed to restore or preserve equal access to the education program or activity will be provided to the Complainant; and
- Procedures and permissible bases for parties to appeal.

## **c. Appeals**

Any party may request an appeal in writing from the determination regarding responsibility, including the sanctions imposed. The request for an appeal must be submitted within 5 days of receiving the determination. This right to appeal also applies to an appeal of the University's dismissal of a Formal Complaint, or any allegations therein.

The Provost serves as the decision-maker regarding all appeals. Appeals are limited to the following grounds that must be clearly stated in the written appeal submission:

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

If any of the grounds for appeal asserted do not meet the grounds stated in this policy, those grounds will not be considered.

The University will notify the other party in writing when an appeal is requested. The party will have an opportunity to review and respond in writing to the party's appeal request. Any response must be submitted to the Title IX Coordinator within 5 days after receiving a copy of the appeal request.

The Provost will issue a written decision describing the result of the appeal and the rationale for the result within 5 business days of receiving the appeal materials from the Title IX Coordinator. This written decision will be provided to the Title IX Coordinator and will be delivered promptly in person, via mail or via email to the parties. Once mailed, emailed and/or received in-person, notice of the decision will be presumed delivered.

Sanctions imposed as a result of the hearing are generally stayed during the appeal process. However, the University may still place a hold on the issuance of official transcripts or diplomas, or a hold on course registration, pending the outcome of an appeal when the original sanctions included separation from the University.

#### **d. Final Decision**

The determination regarding responsibility becomes final either on the date that the University provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

## **2. Adjudication of Complaints of All Other Prohibited Conduct.**

### **a. Findings Provided in the Final Report of Investigation**

As discussed above, the Final Report of Investigation prepared by the investigator will include the findings (determination of responsibility) and sanctions to be imposed, if any, based on the preponderance of the evidence standard.

## **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 (1) Procedural irregularity that affected the outcome of the matter; (2) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter;(3) the Title IX Coordinator or investigator(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter; 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. If any of the grounds for appeal asserted do not meet the grounds stated in this policy, those grounds will not be considered.

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.

## **c. Final Decision**

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 5 days of receipt of the Final 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 in person, via mail or email. Once mailed, emailed and/or received in-person, notice of the decision will be presumed delivered.

The decision becomes final either on the date that the University provides the parties with the written determination of the finding by the Provost, if a review by the Provost has been

requested, or if no review by the Provost was requested, the date on which the request for a review by the Provost would no longer be considered timely.

### **C. Sanctions**

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.

The policy prohibits a broad range of conduct, all of which are serious in nature. 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.

Factors considered when determining the appropriate sanction may include, but are not limited to:

- the nature and severity 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, and previous allegations or allegations involving similar conduct;
- maintenance of a safe and respectful campus environment;
- protection of the University community; and
- any other mitigating, aggravating, or compelling circumstances deemed relevant to reach a just and appropriate resolution in each case.

Sanctions may be imposed individually or in combination.

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 Coordinator, the appropriate University Officer is responsible for taking any recommended supportive measures 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.

## **1. Sanctions for Students**

Potential sanctions for students include, but are not limited to: academic and/or social probation, disciplinary probation, community service, restitution, suspension, expulsion, withholding a diploma, a campus-wide barring order, required training or education, and a requirement to receive counseling through the University Counseling Service.

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

Potential sanctions for faculty or staff include, but are not limited to: a verbal or written reprimand or warning, performance improvement plan, probation, demotion, reassignment, administrative leave without pay, restitution, suspension, requirement to receive counseling through the Employee Assistance Program, required training or education, 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 training before returning to the University's campus, a campus-wide barring order and/or a requirement to cease doing business with the University.

## **3. Additional Remedies**

Regardless of the outcome, additional remedies may be provided to the parties that are intended to ensure no effective denial of access or the benefits of the education program or activity.

Remedies may include, but are not limited to, the following:

- Training and/or education to the individual or the community
- Referral to counseling services
- Permanent change in housing assignment
- Permanent change in work arrangement for employees
- Adjustments to course schedules
- Adjustments to work schedules

## **XV. EXTERNAL REPORTING**

Students and employee complaints regarding sex and gender-based discrimination and sexual misconduct may be filed with:

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

U.S. Department of Health and Human Services  
Office for Civil Rights  
200 Independence Avenue, S.W.  
Room 509F HHH Bldg.  
Washington, D.C. 20201  
Email: [OCRComplaint@hhs.gov](mailto:OCRComplaint@hhs.gov)

Employees may also file complaints with:

U.S. Equal Employment Opportunity Commission  
131 M Street, NE  
Fourth Floor, Suite 4NWO2F  
Washington, DC 20507-0100  
1-800-669-4000  
EEOC Public Portal: <https://publicportal.eeoc.gov>

## **XVI. TRAINING**

### **A. 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.

### **B. Training for Individuals Involved in Sexual Harassment I Matters**

The Title IX Coordinator, investigators, decisions-makers and any person who facilitates an informal resolution process will receive training on the definition of Sexual Harassment I, the scope of the University's Education Program or Activity, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias. Training materials may not rely on sex stereotypes and must promote impartial investigations and adjudications of Formal Complaints of Sexual Harassment I.

Decision-makers will receive training on any technology that will be used at a live hearing and on issues of relevance of questions and evidence, including when questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant.

Investigators will receive training on issues of relevance in order to create investigative reports that fairly summarize relevant evidence.

## **XVII. RECORDKEEPING**

The University will maintain, for seven years, records of:

- Each investigation, including any determination regarding responsibility and any audio or audiovisual recording or transcript required, any disciplinary sanctions imposed on the Respondent, and any remedies provided to the Complainant designed to restore or preserve equal access to the education program or activity;
- Any appeal and the result thereof;
- Any informal resolution and the result therefrom; and
- All materials used to train the Title IX Coordinator, investigators, decision-makers, and any person who facilitates an informal resolution process.

The University will make training materials related to the investigation and adjudication of Sexual Harassment I available on its website.

The University will create and maintain for seven years records of any actions, including any Supportive Measures, taken in response to a report or Formal Complaint of Sexual Harassment I. Those records will document the basis for the University's response that it was not deliberately indifferent, and document that the University took measures designed to restore or preserve equal access to its education program or activity. If the Complainant was not provided with Supportive Measures, then the University will document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

## **XVIII. PERIODIC REVIEW**

This policy and its procedures supersede previous policies addressing sex and gender-based discrimination, sexual misconduct and retaliation and 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).

## **XIX. HYPERLINKS**

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

[Emergencies & Alerts](#)

[Howard University Title IX Office](#)

[Title IX: U.S. Department of Education](#)