

Appendix A: Investigating and Resolving Reports of Prohibited Conduct Committed by Students

The University follows these procedures to investigate any report alleging a student committed prohibited conduct under *University Policy 1202: Sexual and Gender-Based Harassment and Other Interpersonal Violence* (“Policy”). For purposes of these Procedures, the “Title IX Coordinator” means the Title IX Coordinator, any Deputy Title IX Coordinator, and/or any of their respective trained designees or investigators.

The University encourages anyone¹ who experiences or becomes aware of an incident of prohibited conduct involving a student to ***immediately*** report the incident to the University through the following reporting options:

By contacting the University’s Title IX Coordinator or any Deputy Title IX Coordinator by telephone, email, or in person during regular office hours:

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Compliance, Diversity and Ethics
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A Complainant may choose to make a report to the University to pursue resolution under these procedures and may also choose to make a report to law enforcement. A Complainant may pursue either or both of these options at the same time. As set forth in the Policy, a Complainant who wishes to pursue criminal action in addition to, or instead of, making a report under these Procedures should contact law enforcement directly:

- 911 (for emergencies in Virginia)
- 119 (for emergencies at Mason Korea)
- University Police ((703) 993-2800) (for non-emergencies)
- Fairfax County Police ((703) 691-2131) (for non-emergencies)
- City of Fairfax Police ((703) 385-7924) (for non-emergencies)
- Manassas Police ((703) 257-8000) (for non-emergencies)
- Arlington County Police ((703) 558-2222) (for non-emergencies)

¹ Pursuant to University policy, certain University employees, called “Responsible Employees,” are *required* to report to the Title IX Coordinator all information disclosed to them about an incident of Prohibited Conduct. See Policy 1202: *Sexual and Gender-Based Harassment and Other Interpersonal Misconduct*.

The University also offers access to confidential resources for individuals who are unsure about whether to report Prohibited Conduct or are seeking counseling or other emotional support in addition to (or without) making a report to the University. University Policy 1202 identifies confidential resources, both at the University and in the Fairfax community, and further explains options for reporting Prohibited Conduct to the University and to law enforcement.

Complainants are entitled to receive information, assistance and a broad range of support and remedial measures regardless of whether they choose to pursue criminal and/or University disciplinary resolution of Prohibited Conduct.

According to these procedures, Complainants and Respondents can expect the following from Compliance, Diversity and Ethics and the Office of Student Conduct:

- A. Prompt and equitable resolution of allegations of Prohibited Conduct;
- B. Privacy in accordance with the Policy and any legal requirements;
- C. Reasonably available interim remedial measures as described in these Procedures as determined by the Title IX Coordinator and/or the Title IX Review Committee;
- D. Freedom from Retaliation for making a good faith report of Prohibited Conduct or participating in any proceeding under the Policy;
- E. The responsibility to refrain from Retaliation directed against any person for making a good faith report of Prohibited Conduct or participating in any proceeding under the Policy;
- F. The responsibility to provide truthful information in connection with any report, investigation, or resolution of Prohibited Conduct under the Policy or these Procedures;
- G. The opportunity to articulate concerns or issues about proceedings under the Policy and these Procedures;
- H. Timely notice of any meeting or proceeding at which the party's presence is contemplated by these Procedures;
- I. The opportunity to choose an advisor, including the right to have that advisor attend any meeting or proceeding at which the student's presence is requested by these Procedures;
- J. Written notice of an investigation and the charge(s);
- K. The opportunity to challenge the Investigator or Vice President for bias or conflict of interest;
- L. The opportunity to offer information, present evidence, and identify witnesses during an investigation;

- M. The opportunity to be heard, orally and/or in writing, as to the determination of a Policy violation and the recommendation of any sanction(s);
- N. Timely and equal access to information that will be used during investigation and hearing proceedings and related meetings;
- O. Reasonable time to prepare any response contemplated by these Procedures;
- P. Written notice of any extension of timeframes for good cause; and
- Q. Written notice of the outcome of any investigative or hearing proceedings, including the determination of a Policy violation, recommendation of any sanction(s), and the rationale for each.

INITIAL ASSESSMENT

Upon receipt of a report of Prohibited Conduct committed by a Student, the Title IX Coordinator will make an initial assessment of the reported information and respond to any immediate health or safety concerns raised by the report. In this initial assessment, the Title IX Coordinator will:

- A. Assess the Complainant's safety and well-being and offer support and assistance as determined is warranted by the Title IX Coordinator;
- B. Inform the Complainant of the right to seek medical treatment, and explain the importance of obtaining and preserving forensic and other evidence;
- C. Inform the Complainant of the right to contact law enforcement, decline to contact law enforcement, and/or seek a protective order;
- D. Inform the Complainant about University and community resources, the right to seek appropriate and available remedial and protective measures, and how to request those resources and measures;
- E. Inform the Complainant of the right to seek Formal or Alternative Resolution under these Procedures; ascertain the Complainant's expressed preference (if the Complainant has, at the time of the initial assessment, expressed a preference) for pursuing Formal or Alternative Resolution, or neither; and discuss with the Complainant any concerns or barriers to participating in any University investigation and Resolution under these Procedures;
- F. Explain the University's prohibition against Retaliation and that the University will take prompt action in response to any act of Retaliation;
- G. Assess the nature and circumstances of the report, including whether it provides the names and/or any other information that personally identifies the Complainant, the Respondent, any witness, and/or any other third party with knowledge of the reported incident;

- H. Ascertain the ages of the Complainant and the Respondent, if known, and, if either of the parties is a minor (under 18), contact the appropriate child protective service agency; and
- I. Communicate with appropriate University officials to determine whether the report triggers any Clery Act obligations, including entry of the report in the daily crime log and/or issuance of a timely warning, and take steps to meet those obligations.

The Title IX Coordinator will ensure that the Complainant receives a written explanation of available resources and options and is offered the opportunity to meet to discuss those resources and options. When a decision is reached to initiate an investigation or to take any other action under these Procedures that impacts a Respondent (including the imposition of interim protective measures), the Title IX Coordinator will ensure that the Respondent is notified, receives a written explanation of available resources and options, and is offered the opportunity to meet to discuss those resources and options.

TITLE IX ASSESSMENT

Following the initial assessment, the Title IX Coordinator and/or the Title IX Review Committee will review all information then known about the reported incident of Prohibited Conduct. Such information includes, if known, the names and/or any other information that personally identifies the Complainant, the Respondent, any witnesses, and/or any other third parties with knowledge of the reported incident.

TITLE IX REVIEW COMMITTEE

The Title IX Review Committee will evaluate every report of sexual assault. The Title IX Review Committee will convene (in person, by telephone, or by e-mail) within 72 hours after receiving a reported incident of sexual assault. The Title IX Review Committee shall include, at a minimum: (1) the Title IX Coordinator, (2) a representative of the University Police Department (the “UPD Representative”), and (3) a representative from the Office of Student Conduct.

The Title IX Review Committee operates pursuant to Va. Code §23.1-806 (“Reporting acts of sexual violence) and has access, under Virginia law, to certain otherwise confidential information, including law enforcement records, criminal history record information, as provided in Va. Code §19.2-389 and §19.2-389.1; health records, as provided in Va. Code §32.1-127.1:03; University disciplinary, academic and/or personnel records; and any other information or evidence known to the University or to law enforcement. The Title IX Review Committee may seek additional information about the reported incident through any other legally permissible means.

HEALTH AND SAFETY ASSESSMENT

Risk Factors. The Title IX Coordinator is supported by the Title IX Review Committee. The Title IX Review Committee may determine whether the reported information and any other available information provides a rational basis for concluding that there is a threat to the health or safety of the Complainant or to any other member of the University community. The Title IX Review Committee will make this determination based upon a review of the totality of the known circumstances, and will be guided by a consideration of the following factors (the “Risk Factors”):

- Whether the Respondent has prior arrests, is the subject of prior reports and/or complaints related to any form of Prohibited Conduct, or has any history of violent behavior;
- Whether the Respondent has a history of failing to comply with any University No-Contact Directive, other University protective measures, and/or any judicial protective order;
- Whether the Respondent has threatened to commit violence or any form of Prohibited Conduct;
- Whether the Prohibited Conduct involved multiple Respondents;
- Whether the Prohibited Conduct involved the use of weapons or physical violence. “Physical violence” means exerting control over another person through the use of physical force. Examples of physical violence include hitting, punching, slapping, kicking, restraining, choking and brandishing or using any weapon;
- Whether the report reveals a pattern of Prohibited Conduct (e.g., by the Respondent, by a particular group or organization, around a particular recurring event or activity, or at a particular location);
- Whether the Prohibited Conduct was facilitated through the use of “date-rape” or similar drugs or intoxicants;
- Whether the Prohibited Conduct occurred while the Complainant was unconscious, physically helpless or unaware that the Prohibited Conduct was occurring;
- Whether the Complainant is (or was at the time of the Prohibited Conduct) a minor (under 18); and/or
- Whether any other aggravating circumstances or signs of predatory behavior are present.

Disclosure(s) of Information to Law Enforcement. Pursuant to the Virginia Reporting Statute, the Title IX Review Committee is *required* to disclose information about certain allegations of Prohibited Conduct to law enforcement in the following circumstances:

- a) If the Title IX Review Committee (or, in the absence of consensus within the Title IX Review Committee, the UPD Representative) concludes that there is a significant and articulable threat to the health or safety of the Complainant or to any other member of the University community and that disclosure of available information (including the names and any other information that personally identifies the Complainant, the Respondent, any witnesses, and/or any other third parties with knowledge of the reported incident) is necessary to protect the health or safety of the Complainant or other individuals, the UPD Representative will immediately disclose the information to the law enforcement agency that would be responsible for investigating the alleged act of Prohibited Conduct.² The Title IX Review Committee will make this determination based upon a review of the totality of the known circumstances and consideration of the list of Risk Factors, as described previously in these Procedures. The Title IX Coordinator will promptly notify Complainants that have requested anonymity whenever the Complainant’s name has been disclosed to the law enforcement agency.
- b) If the alleged act of Prohibited Conduct constitutes a felony violation of the Code of Virginia, the UPD Representative will so inform the other members of the Title IX Review Committee and will, within 24 hours, (i) consult with the appropriate Commonwealth’s Attorney or other prosecutor who would be responsible for prosecuting the alleged act of Prohibited

² Where the law enforcement agency that would be responsible for investigating the alleged act of Prohibited Conduct is located outside of the United States, this disclosure is not required by the Virginia Reporting Statute.

Conduct (the “Prosecuting Authority”), and (ii) disclose to the Prosecuting Authority the information then known to the Title IX Review Committee. This disclosure is required by the Virginia Reporting Statute where the alleged act of Prohibited Conduct would violate Article 7 (§18.2-61 et seq.) of Chapter 4 of title 18.2 of the Code of Virginia. Such disclosure will exclude the names and any other information that personally identifies the Complainant, the Respondent, any witnesses, and/or any other third parties with knowledge of the reported incident (the “Identifying Information”), unless the Identifying Information was disclosed to law enforcement under the health and safety exception described in paragraph (a), above, in which case the Identifying Information also will be disclosed to the Prosecuting Authority. If the UPD Representative declines to so consult with the Prosecuting Authority, any member of the Title IX Review Committee who individually concludes that the alleged act of Prohibited Conduct would constitute such a felony violation may consult with the Prosecuting Authority and make the required disclosure(s) in the manner and within the timeframe set forth above.

The Title IX Review Committee will reconvene as necessary to continue to evaluate whether any new or additional information received triggers any further obligation(s) under the Clery Act or with respect to any child protective service agency, and will direct the Title IX Coordinator to take such further actions, as necessary.

UNIVERSITY ACTIONS FOLLOWING HEALTH AND SAFETY ASSESSMENT

Upon completion of the health and safety threat assessment, the Title IX Coordinator, may consult with the Title IX Review Committee to determine the course of action under these Procedures, which may include, without limitation, Formal Resolution and/or Alternative Resolution (if available). Where the Complainant requests that personally identifying information not be shared with the Respondent, that no investigation be pursued, and/or that no further action be taken, the Title IX Coordinator will seek to honor the preferences of the Complainant wherever possible. In all cases, the initial report, the health and safety threat assessment, and the determinations of the Title IX Review Committee will be documented and retained by the University in accordance with applicable law.

Where the Complainant Wishes to Pursue Formal Resolution. Upon receipt of a report of sexual assault, the Title IX Coordinator or designee will notify the other members of the Title IX Review Committee, which shall meet within 72 hours in the case of a reported act of sexual assault, to:

- determine whether an investigation is warranted,
- implement interim measures, if appropriate, and
- make internal referrals as appropriate.

Where the Complainant Requests Anonymity, that an Investigation not be Pursued, and/or that No Disciplinary Action Be Taken. A Complainant may request that personally identifying information not be shared with the Respondent, that no investigation be pursued, and/or that no disciplinary action be taken. The Title IX Review Committee will consider the following factors in evaluating such request(s): (1) the totality of the known circumstances; (2) the presence of any Risk Factors, as described previously in these Procedures; (3) the potential impact of such action(s) on the Complainant; (4) any evidence showing that the Respondent made statements of admission or otherwise accepted responsibility for the Prohibited Conduct; (5) the existence of any independent information or evidence regarding the Prohibited Conduct; and (6) any other available and relevant information. The University will seek to honor the Complainant’s request(s) if it is possible to do so

while also protecting the health and safety of the Complainant and the University community.

- a) Determination that a Complainant's Request(s) **Can** be Honored. Where the Title IX Review Committee determines that a Complainant's request(s) (that personally identifying information not be shared with the Respondent, that no investigation be pursued, and/or that no disciplinary action be taken) can be honored, the University may nevertheless take other appropriate steps designed to eliminate the reported conduct, prevent its recurrence, and remedy its effects on the Complainant and the University community. Those steps may include offering appropriate remedial measures to the Complainant, providing targeted training or prevention programs, and/or providing or imposing other remedies tailored to the circumstances as a form of Alternative Resolution.

At any time, the Complainant may choose to pursue Alternative Resolution (if available) or Formal Resolution under these Procedures. The Title IX Coordinator also may request that a report be re-opened and pursued under these Procedures if any new or additional information becomes available.³

- b) Determination that a Complainant's Request(s) **Cannot** be Honored. Where the Title IX Coordinator and/or the Title IX Review Committee have determined that a Complainant's request(s) (that personally-identifying information not be shared with the Respondent, that no investigation be pursued, and/or that no disciplinary action be taken) cannot be honored (i.e., because honoring the Complainant's request(s) would impede the University's ability to ensure the health and safety of the Complainant and other members of the University community), the Title IX Coordinator will take appropriate University actions, which may include, without limitation, (i) No- Contact Directive or an Interim Disciplinary Suspension on the Respondent; (ii) causing the University Registrar to place a "hold" on the Respondent's University transcript; (iii) initiating an investigation and Formal Resolution under these Procedures; and/or (iv) arranging, imposing, or extending any other appropriate remedial and/or protective measures.

Where the Title IX Review Committee has determined that the University must proceed with an investigation despite a Complainant's request to the contrary, the Title IX Coordinator will make reasonable efforts to protect the privacy of the Complainant. However, actions that may be required as part of the University's investigation will involve speaking with the Respondent and others who may have relevant information, in which case the Complainant's identity may have to be disclosed. In such cases, the Title IX Coordinator will notify the Complainant that the University intends to proceed with an investigation, but that the Complainant is not required to participate in the investigation or in any other actions undertaken by the University.

Where a Complainant declines to participate in an investigation, the University's ability to meaningfully investigate and respond to a report may be limited. In such cases, the Title IX Coordinator may pursue the report if it is possible to do so without the Complainant's participation in the investigation or resolution (e.g., where there is other relevant evidence of the Prohibited Conduct, such as recordings from security cameras, corroborating reports from other witnesses, physical evidence, or any evidence showing that the Respondent made statements of admission or otherwise accepted responsibility for the Prohibited Conduct). In the absence of such other evidence, however, the University may only be able to respond to the report in limited and general ways (i.e., through the provision of remedial measures, targeted training or prevention programs, or other

³ Although a report may be re-opened at any time, the University will only be able to pursue disciplinary resolution and sanctions where the Respondent continues to be a University "Student" (i.e., continues to be registered or enrolled for credit- or non-credit-bearing coursework at the University).

remedies tailored to the circumstances).

NOTICE TO COMPLAINANT AND RESPONDENT OF UNIVERSITY ACTIONS

The Title IX Coordinator will promptly inform the Complainant of any action(s) undertaken by the University to respond to a threat to the health or safety of the Complainant or the University community, including the decision to proceed with an investigation. The Title IX Coordinator also will promptly inform the Respondent of any action(s) (including any interim protective measures) that will directly impact the Respondent, and provide an opportunity for the Respondent to respond to such action(s). The Title IX Coordinator retains the discretion to impose and/or modify any interim protective measures based on all available information. Interim protective measures will remain in effect until the resolution of the report by the Office of Student Conduct, unless new circumstances arise which warrant reconsideration of the protective measures prior to the determination by the Office of Student Conduct. A Complainant or Respondent may challenge interim protective measures or other actions, or failure to impose interim protective measures or take other actions, by contacting the Title IX Coordinator to address any concerns. A review of those concerns is conducted by the Vice President for Compliance, Diversity and Ethics.

NOTICE TO STUDENT GROUPS OR ORGANIZATIONS

If, upon completion of the health and safety assessment, the Title IX Coordinator or the Title IX Review Committee determines that a report of Prohibited Conduct reveals involvement of, or a pattern of behavior by, a particular Student group or organization (e.g., agency group, special status organization, fraternity, sorority, contracted independent organization, club sport, and/or athletic team), the Title IX Coordinator may initiate a formal investigation of the student group or organization, in addition to any investigation regarding the Respondent. The process for the formal investigation follows the same process as for an individual. The Title IX Coordinator may also impose any appropriate interim remedial or protective measures contemplated by these Procedures (e.g., stay-away orders, training and/or prevention programs targeted to Student members of the group or organization). The Title IX Coordinator will also consult with relevant University officials regarding any appropriate University action directed at the Student group or organization, including, but not limited to, modification, suspension or termination of the Student group's or organization's agreement or status with the University.

ALTERNATIVE RESOLUTION

The Complainant may request Alternative Resolution in place of a Title IX Investigation and Formal Resolution. The Title IX Coordinator, however, has the discretion to determine whether the nature of the reported conduct is appropriate for Alternative Resolution, to determine the type of Alternative Resolution that may be appropriate in a specific case, and to refer a report of Prohibited Conduct for Investigation at any time. Forms of Alternative Resolution that involve face-to-face meetings between the Complainant and the Respondent, are not available in cases involving Sexual Assault.

Participation in Alternative Resolution (including any specific form of Alternative Resolution) is voluntary. The University will not compel a Complainant or a Respondent to engage in Alternative Resolution, will not compel the parties to confront one another face-to-face, and will allow a Complainant or a Respondent to withdraw from the Alternative Resolution at any time. The Title IX Coordinator, or designee, may decline the request for Alternative Resolution in any particular case and may terminate an ongoing Alternative Resolution process at any time. Pursuing

Alternative Resolution does not preclude later use of Formal Resolution, if the Alternative Resolution fails to achieve a resolution acceptable to the parties and the University.

Alternative Resolution may include:

- **Resolution with the Assistance of a Third Party:** A Complainant may seek assistance in informally resolving a report of Prohibited Conduct during a facilitated meeting or meetings between the parties. The availability of this form of Alternative Resolution, and any resolution reached through such form of Alternative Resolution, is subject to the agreement of the Title IX Coordinator, the Complainant, and the Respondent. This form of Alternative Resolution may not be used where the alleged Prohibited Conduct involves Sexual Assault.
- **Interventions and Remedies:** Alternative Resolution agreements may involve a host of interventions and remedies, such as actions designed to maximize access to education, extracurricular and/or other University activities; increased monitoring, supervision and/or security on or around campus; targeted or broad-based educational programming or training for relevant individuals or groups; academic, workplace and/or University housing accommodations; restorative sanctions; and/or any other remedial or protective measures to help achieve the goals of this Policy.

If an agreement acceptable to the University, the Complainant, and the Respondent is reached through Alternative Resolution, the terms of the agreement are implemented and the matter is resolved and closed when the terms are completed. If an agreement is not reached, and the Title IX Coordinator determines that further action is necessary, or if the Respondent fails to comply with the terms of the Alternative Resolution agreement, the matter may be referred for an investigation and Formal Resolution under these Procedures.

FORMAL RESOLUTION

Formal Resolution is commenced when:

- A Complainant reports that a Student has engaged in one or more instances of Prohibited Conduct and requests, at any time, an investigation and disciplinary action and the Title IX Review Committee or Title IX Coordinator as appropriate decides that a formal investigation is warranted; or
- At the conclusion of the assessment process described in these procedures, the Title IX Review Committee has determined, based upon a review of the totality of the circumstances and guided by a consideration of the Risk Factors, that investigation of the reported conduct is necessary to ensure the health and safety of the Complainant and/or other members of the University community, notwithstanding the Complainant's request that personally-identifying information not be shared with the Respondent, that no investigation be pursued, and/or that no disciplinary action be taken.

If a Complainant requests that a formal investigation be conducted and the Title IX Coordinator and/or the Title IX Review Committee determines that a formal investigation is not warranted, the Title IX Coordinator shall communicate that decision to the Complainant. The Complainant shall have five days to appeal that decision to the Vice President for Compliance Diversity and Ethics, whose decision shall be final.

Investigation. Whenever Formal Resolution is commenced, the Title IX Coordinator will designate one or more Investigators from the University’s Office of Compliance, Diversity, and Ethics and/or an experienced external investigator to conduct a prompt, thorough, fair, and impartial investigation. All Investigators will receive annual training on issues related to sexual and gender-based harassment, sexual assault, dating violence, domestic violence, and stalking, and on how to conduct an investigation that is fair and impartial, provides parties with notice and a meaningful opportunity to be heard, and protects the safety of Complainants and the University community while promoting accountability.

- a) Notice of Investigation. The Title IX Coordinator will notify the Complainant and the Respondent, in writing, of the commencement of an investigation. Such notice will (1) identify the Complainant and the Respondent; (2) specify the date, time (if known), location, and nature of the alleged Prohibited Conduct; (3) identify potential Policy violation(s); (4) identify the Investigator; (5) include information about the parties’ respective expectations under the Policy and these Procedures; (6) explain the prohibition against Retaliation; (7) instruct the parties to preserve any potentially relevant evidence in any format; (8) inform the parties how to challenge participation by the Investigator on the basis of bias or a conflict of interest; and (9) provide a copy of the Policy and these Procedures.
- b) Other Forms of Discriminatory and/or Harassing Conduct. If a report of Prohibited Conduct also implicates other forms of discriminatory and/or harassing conduct prohibited by University Policy 1201: Non-Discrimination Policy and/or any other violation(s) of the University’s Code of Student Conduct, the Title IX Coordinator will evaluate all reported allegations to determine whether the alleged Prohibited Conduct and the alleged Policy 1201 violation(s) and/or alleged Code of Student Conduct violation(s) may be appropriately investigated together without unduly delaying the resolution of the report of Prohibited Conduct. Where the Title IX Coordinator determines that a single investigation is appropriate, the determination of responsibility for the violation of University Policy will be evaluated under the applicable policy (i.e., University Policy 1201, University Policy 1202, and/or the Code of Student Conduct), but the investigation and resolution will be conducted in accordance with these Procedures.
- c) Presumption of Non-Responsibility and Participation by the Parties. The investigation is a neutral fact-gathering process. The Respondent is presumed to be not responsible. Neither party is required to participate in the investigation nor any form of resolution under these Procedures. The Investigator will not draw any adverse inference from a decision by either of the parties not to participate.
- d) Acceptance of Responsibility. At any point during the investigation, the Respondent may admit responsibility for the alleged conduct by notifying the Title IX Coordinator or the Investigator. If the Respondent admits responsibility for all alleged conduct, the Title IX Coordinator shall prepare a referral to the Office of Student Conduct describing the nature of the admitted to conduct. The Office of Student Conduct shall follow its process for determining appropriate sanctions. If the Respondent admits to some but not all of the alleged conduct, the investigation shall continue as to allegations that the Respondent has not admitted responsibility. The Final Report shall identify the conduct in which the Respondent has admitted engaging.

- e) Timeframe for Completion of Investigation; Extension for Good Cause. The University will make every effort to resolve all reports of Prohibited Conduct within sixty (60) calendar days. This timeframe may be extended for good cause, which may exist if additional time is necessary to ensure the integrity and completeness of the investigation, to comply with a request by external law enforcement for temporary delay to gather evidence for a criminal investigation, to accommodate the availability of witnesses, to account for University breaks or vacations, to account for complexities of a case, including the number of witnesses and volume of information provided by the parties, or for other legitimate reasons. The Title IX Coordinator, or Investigator will notify the parties in writing of any extension of this timeframe and the reason for such extension.
- f) Overview of Investigation. During the investigation, the parties will have an equal opportunity to be heard, to submit information and corroborating evidence, to identify witnesses who may have relevant information, and to submit questions that they believe should be directed by the Investigator to each other or to any witness. The Investigator will notify and seek to meet separately with the Complainant, the Respondent, and third-party witnesses, and will gather other relevant and available evidence and information, including, without limitation, electronic or other records of communications between the parties or witnesses (via voice-mail, text message, email and social media sites), photographs (including those stored on computers and smartphones), and medical records (subject to the consent of the applicable party).
- g) Support Advisors. Throughout the investigation and resolution process, each party has the right to choose and consult with an advisor. 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 respective advisors at any meeting or proceeding related to the investigation and resolution of a report under these Procedures. While the advisors may provide support and advice to the parties at any meeting and/or proceeding, they may not speak on behalf of the parties or otherwise participate in, or in any manner disrupt, such meetings and/or proceedings.
- h) Prior or Subsequent Conduct. 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. Such prior or subsequent conduct may also constitute a violation of Policy 1201 and/or the Code of Student Conduct, in which case it may subject the Respondent to additional sanctions. 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.
- i) Prior Sexual History. The sexual history of a Complainant or Respondent will never be used to prove character or reputation. Moreover, evidence related to the prior sexual history of either of the parties is generally not relevant to the determination of a Policy violation and will be considered only in limited circumstances. For example, if the existence of Affirmative Consent is at issue, the sexual history between the parties may be relevant to help understand the manner

and nature of communications between the parties and the context of the relationship, which may have bearing on whether Affirmative Consent was sought and given during the incident in question. However, even in the context of a relationship, Affirmative Consent to one sexual act does not, by itself, constitute Affirmative Consent to another sexual act, and Affirmative Consent on one occasion does not, by itself, constitute Affirmative Consent on a subsequent occasion. In addition, prior sexual history may be relevant to explain the presence of a physical injury or to help resolve another question raised by the report. The Investigator will determine the relevance of this information and both parties will be informed if evidence of prior sexual history is deemed relevant.

- j) Relevance. The Investigator has the discretion to determine the relevance of any proffered information and to include or exclude certain types of information. Information is relevant if it makes a fact in question more or less likely to be true. In general, the Investigator will not consider statements of personal opinion or statements as to any party's general reputation for any character trait.
- k) Site Visit(s). The Investigator may visit relevant sites or locations and record observations through written, photographic, or other means.
- l) Expert Consultation(s). 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.
- m) Coordination with Law Enforcement. The Investigator will contact any law enforcement agency that is conducting its own investigation to inform that agency that a University investigation is also in progress; to ascertain the status of the criminal investigation; and to determine the extent to which any evidence collected by law enforcement may be available to the University in its investigation. At the request of law enforcement, the Investigator may delay the University investigation temporarily while an external law enforcement agency is gathering evidence. The Investigator will promptly resume the University investigation when notified that law enforcement has completed the evidence-gathering stage of its criminal investigation.
- n) Draft Investigation Report. At the conclusion of the investigation, the Investigator will prepare a Draft Investigation Report summarizing the information gathered and outlining the contested and uncontested information. The Draft Investigation Report will not include any recommendation regarding referral to the Office of Student Conduct, but will include information about any potential new charges, which come to light during the Investigation. The Complainant and the Respondent will have an opportunity to review the Draft Investigation Report; speak with the Investigator; submit additional comments and information to the Investigator; identify any additional witnesses or evidence for the Investigator to pursue; and submit any further questions that they believe should be directed by the Investigator to the other party or to any witness. The Title IX Coordinator or Investigator, will designate a reasonable time for this review and response by the parties, not to exceed five (5) calendar days. In the absence of good cause, information discoverable through the exercise of due diligence that is not provided to the Investigator during the designated review and response period will not be considered in the determination of responsibility for a violation of the Policy, and will not be considered by the Hearing Officer. Either party can request a review of the draft report to the Vice President for Compliance, Diversity and Ethics.

- o) Final Investigation Report. Unless there are significant additional investigative steps requested by the parties or identified by the Investigator, within five (5) calendar days after receipt and consideration of any additional comments, questions and/or information submitted by the parties during the designated review and response period, the Investigator will prepare a Final Investigation Report, which will include a recommendation as to whether there is sufficient evidence, by a Preponderance of the Evidence, to support a referral to the Office of Student Conduct for a potential violation of University Policy. The Final Investigative Report will also include a summary of the Investigator's rationale in support of the recommendation. The Investigator will deliver the Final Investigation Report to the Title IX Coordinator, who will review and approve it. The Title IX Coordinate may modify the recommendation and/or refer the investigation back to the Investigator for further investigation, if necessary.

If the recommendation of the Final Investigation Report is that there is sufficient evidence to support a referral to the Office of Student Conduct for a potential violation of University Policy, then the Title IX Coordinator shall send the Report to the Office of Student Conduct for review and determination of alleged policy violation and assignment of hearing officer for hearing. The Title IX Coordinator shall also inform the Complainant and Respondent of the recommendation and that the case has been referred to the Office of Student Conduct for review. Either party may request the opportunity to view the Final Investigation Report.

If the recommendation of the Final Investigation Report is that there is insufficient evidence to support a referral to the Office of Student Conduct for a potential violation of University Policy, both the Complainant and the Respondent will be notified in writing through a Letter of Determination of that outcome. Either party may request the opportunity to view the Final Investigation Report. Either party may appeal that decision to the Vice President for Compliance Diversity and Ethics within five days(5) calendar days of notification of the recommendation. The decision of the Vice President shall be final.