

## TITLE IX

**Policy Number:** 300

**Date Issued:** June 24, 2015

**Section:** Human Resources

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**Title:** Sex or Gender-Based Harassment,  
Discrimination, and Sexual Misconduct Policy

**Review Date:** Annually

**Effective Date:** August 14, 2020

**Responsible University Officer:** Provost and Vice President for Learning

**Responsible Office:** Office of the Provost

**Applies to:** Faculty, Staff, Administrators, Students, Visitors, Guests

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### I. Policy

#### A. Policy Statement

The University is committed to ensuring a safe environment free from all forms of sex or gender-based harassment, discrimination, and sexual misconduct. All members of the University community, including students, faculty, staff, guests, and visitors, are expected to conduct themselves in a manner that does not infringe upon the rights of others. The University takes the position of zero tolerance for sex and gender-based misconduct. Zero tolerance means that when an allegation of misconduct is brought to an appropriate administrator's attention, protective and other remedial measures will be used to reasonably ensure that such conduct ends, is not repeated, and the effects on the individual whose rights have been violated as well as the effects on the community are remedied, including serious sanctions when a responding party is found to have violated this policy. This policy has been developed to reaffirm these principles and to provide recourse for those individuals whose rights have been violated. This policy is intended to define community expectations and to establish a mechanism for determining when those expectations have been violated. Capital University uses preponderance of the evidence (also known as "more likely than not") as the standard of proof to determine whether a violation of this policy occurred. Legal terms, such as "guilt," "innocence," and "burdens of proof" are not applicable, as individuals are either found "responsible" or "not responsible" for a violation of this policy and it is neither party's burden to prove their case. The University never assumes a responding party is in violation of the University policy, and the University's objective is to provide a transparent, thorough, and fair process.

Only incidents falling within the narrow definition of sexual harassment under the Title IX Regulations of 2020 will be investigated and, if appropriate, brought to a live hearing through this policy. The University remains committed to addressing any violations of its policies, even those not meeting the narrow standards defined under the Title IX Final Rule. To the extent that alleged misconduct falls outside this policy, or misconduct falling outside this policy is discovered in the course of investigating covered Title IX misconduct, the University retains authority to investigate and adjudicate the allegations under the policies and procedures defined within the University's Nondiscrimination Policy and/or the Student, Faculty, or Staff handbooks.

## **B. Notice of Nondiscrimination**

The University is committed to providing a safe and nondiscriminatory environment for all students and employees. The University does not discriminate on the basis of race, color, national and ethnic origin, sexual orientation, religion, sex and gender, age, disability, veteran status, or any other characteristic protected by law in its admission policies, scholarship and loan programs, athletic and other university-administered programs or activities, in employment, or in its policy administration. The University reaffirms its long-standing philosophy and principles of non-discrimination, non-harassment and non-retaliation for protected characteristics for all members of the University community. This policy addresses discrimination on the basis of sex and gender under the Title IX regulations. Please refer to the University's [Nondiscrimination Policy](#) for all other forms of discrimination.

The University does not discriminate on the basis of sex in its educational, extracurricular, athletic, or other programs or in the context of employment. Sexual misconduct, including sexual harassment, as defined in this policy is a form of sex discrimination prohibited by Title IX of the Education Amendments of 1972, which requires that "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." Sexual harassment is also prohibited under Title VII of the Civil Rights Act of 1964.

## **C. Title IX Team**

The University's Title IX Coordinator oversees compliance with all aspects of the sex or gender-based harassment, discrimination, and sexual misconduct policy. The Title IX Coordinator reports directly to the Provost and Vice President for Academic and Student Affairs. The Title IX Deputy Coordinator supports the Title IX Coordinator in compliance efforts. Members of the University community are encouraged to contact a member of the Title IX team if they have any questions regarding Title IX or this policy. Confidential and non-confidential reporting options are outlined later in this policy.

Title IX Coordinator:

Dean of Engagement and Success and Title IX  
Coordinator  
Deanna N. Wagner  
[dwagner1453@capital.edu](mailto:dwagner1453@capital.edu)  
614.236.6904

Title IX Deputy Coordinator (Law School):

currently vacant

## **D. Summary of Process**

Upon receipt of a report of prohibited conduct under this policy, the University will take prompt and effective action that includes: notification and implementation of reasonably available supportive measures to individuals who make a report or seek assistance under this policy; conduct a review of the conduct reported; and, as appropriate, initiate a resolution through an Informal Resolution or Formal Resolution Process. Regardless of whether a complainant pursues a resolution through the Informal or Formal Resolution process, the University will offer reasonably available supportive measures to ensure safety and protect the parties involved.

Through the publication and dissemination of this policy, the University provides written notification to students and employees about existing counseling, health, mental health, survivor advocacy, and other services available both within the University and in the community for survivors of sexual misconduct.

## E. Scope of Policy

This policy applies to all students, faculty, staff, guests, and visitors, who experience prohibited sexual harassment in the University's education programs or activities. This includes locations, events, or circumstances over which the University exercised substantial control over both the Respondent and the context in which the sexual harassment occurs. The University has jurisdiction to investigate and remedy all types of misconduct that fall under this policy and that: occur on University premises; occur at University-sponsored or University-supervised events regardless of where they take place; that occur in any building owned or controlled by a student organization that is officially recognized by the University; or that concern any facet of the relationship between a student or employee and the University's off campus academic and other recognized programs.

Specifically, this includes academic, educational, extracurricular, athletic, and any other University programs, whether those programs take place in the University's facilities, on University provided transportation, at a class or training program sponsored by the University at another location, or elsewhere, including online. Additional examples include University-sponsored field trips, University-recognized theme houses, athletic team travel, debate team travel, moot court team travel, and events for University student organizations and extra-curricular activities that occur off campus.

If the incident does not occur in a covered program or activity, the University may still provide resources, reasonably available supportive measures, and support including counseling and assistance on how to file a criminal complaint with the appropriate law enforcement agency. The University has other policies and procedures that may be applicable if the conduct does not meet the definition of prohibited conduct under this policy or otherwise fall within the scope of this policy. Please refer to the University's Nondiscrimination policy and/or the [Student](#), [Faculty](#), or [Staff](#) Handbooks for non-Title IX complaint and grievance procedures.

## II. Definitions

### A. Definitions of Prohibited Conduct

In accordance with obligations under the Title IX Regulations of 2020, the University prohibits sexual harassment, which is conduct on the basis of sex that includes one or more of the following definitions:

1. **Quid Pro Quo Sexual Harassment.** An employee conditions the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct.
2. **Unwelcome Conduct.** Unwelcome conduct that is determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's education program or activity;
3. **Sexual assault.** Any sexual act directed against another person, without consent of the individual or where the individual is incapable of giving consent because of age or temporary or permanent mental incapacity.

- a. **Non-consensual sexual intercourse:** any sexual penetration (anal, oral or vaginal), however slight, with any body part or object by any person upon any person without consent.
  - b. **Non-consensual sexual contact/Fondling:** intentional touching of the intimate body parts of another person for the purpose of sexual gratification, without the consent of the individual.
  - c. **Incest:** sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law. In Ohio this means that individuals who are closer in relationship than second cousins cannot have sexual intercourse.
  - d. **Statutory Rape:** sexual intercourse with a person who is under the statutory age of consent. In Ohio, state law prohibits sex with any individual under the age of 13; additionally, individual over the age of 18 may not have sex with individuals under the age of 16.
4. **Dating violence.** violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the complainant, and where the existence of such a relationship is determined based on the following factors: length of the relationship, type of relationship, and frequency of interaction between the persons involved in the relationship.
5. **Domestic violence.** A felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the complainant, by a person with whom the complainant shares a child, by a person who is or was cohabitating with the complainant as a spouse or intimate partner, by a person similarly situated to a spouse of the complainant, and/or by any other person against an adult or youth victim who is protected from that person under the domestic or family violence laws
6. **Stalking.** Engaging in a course of conduct directed at a specific person, based on sex or gender that would cause a reasonable person to fear for their safety or the safety of others or suffer substantial emotional distress. For the purposes of this definition:
- a. **Course of conduct** means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property;
  - b. **Reasonable person** means a reasonable person under similar circumstances and with similar identifies to the complainant; or
  - c. **Substantial emotional distress** means significant mental suffering or anguish that may, but does not necessarily require medical or other professional treatment or counseling.

7. **Sexual Exploitation:** taking non-consensual, unjust, or abusive sexual advantage of another. Examples include, but are not limited to, prostituting another student or employee, non-consensual video or audio-taping of sexual activity, purposeful distribution or dissemination of sexual or intimate images or recordings of another person without that person's full knowledge or consent, going beyond the boundaries of consent (such as knowingly allowing another to surreptitiously watch otherwise consensual sexual activity), engaging in non-consensual voyeurism, and knowingly transmitting or exposing another person to a sexually transmitted infection (STI) without the knowledge of the person.
8. **Indecent Exposure:** the exposure of the private or intimate parts of the body in a lewd manner in public or in private premises when the accused may be readily observed.
9. **Sex or Gender-Discrimination:** Adverse action or other conduct directed at an individual or group because of the individual's or group's sex or gender that unreasonably interferes with the individual's or group's participation in the University's educational or work environment, including hiring, admissions, corrective action or discharge, promotions, job or educational opportunities, evaluation, employee compensation, or other terms and conditions of an individual's or group's education and/or employment.
10. **Hostile Environment:** Ordinarily exists when there are incidents of verbal or nonverbal behavior in the academic environment or workplace that focus on the gender of a person, that are unwelcome, that are severe or pervasive enough to adversely affect a person's academic environment or work, and that are outside the realm of appropriate academic study or work practices.

**Examples of "Hostile Environment" Sexual Harassment.** The following are examples of the types of conduct that, if severe or pervasive enough, can create a hostile work or educational environment on the basis of sex or gender:

- Inappropriate comments of a sexual nature, including sexually explicit comments, questions, or jokes.
- Persistent, unwelcome attempts to change a working or academic relationship into a romantic or sexual relationship.
- Inappropriate remarks about sexual activity or sexual experience.
- Abusive or derogatory remarks about individuals or classes of individuals on the basis of their gender.
- Persistent and unwelcome forms of attention toward another member of the University community such as requests for dates, flirtations, sexual advances, phone calls or other communications, or unwanted gifts.
- Touching, patting, hugging, brushing against an individual's body, or repeated or unwanted staring.
- Display of inappropriate sexually oriented or derogatory materials in a location where others can see them.

- Sexual violence or assault (can also be a criminal violation subject to the criminal justice system).
- i. Hostile Environment discrimination based on other protected characteristics is covered by the University's Nondiscrimination Policy.

**11. Retaliation:** Any form of intimidation, threat, coercion, or discrimination against any individual for the purpose of interfering with any right or privilege established by this policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this policy.

Retaliation also includes filing a complaint against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege under this Policy.

Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this policy does not constitute retaliation prohibited under of this section, provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

**B. Amnesty Policy:** The University is committed to facilitating an environment that supports reporting incidents of sexual misconduct. Individuals may be hesitant to report to University officials or participate in the resolution process because they fear that they themselves may be accused of a policy violation, such as underage drinking at the time of the incident. To encourage reporting, the University has an Amnesty provision, as delineated in Section 5: Safety Policies of the Student Handbook, in which the University will attempt to provide educational options rather than formal sanctions for minor policy violations related to the incident.

**C. Definition of Consent:** **Consent** is informed, freely and actively given, mutually understandable words or action, which indicate a willingness to engage in mutually agreed upon sexual activity.

- Consent is active, not passive.
- Silence, in and of itself, cannot be interpreted as consent.
- Consent can be given by words or actions, as long as those words or actions create mutually understandable clear permission regarding willingness to engage in the conditions of sexual activity: who, what, when, where, why, and how sexual activity will take place.
- Consent to any one form of sexual activity cannot automatically imply consent to any other forms of sexual activity.
- Consent can be withdrawn at any time by word or action.
- Previous relationships or prior consent cannot imply consent to current or future sexual acts.

To be effective, consent cannot be obtained by use of physical force, compelling threats, intimidating behavior, or coercion.

- Force is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation (implied threats) and coercion.
- Coercion is unreasonable pressure for sexual activity. When a person indicates by words or actions that they do not want to engage in sexual activity, wants to stop, or does not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.
- Intimidation is implied threats, including the exertion of perceived or actual power resulting from position or stature.
- A person must be of legal age (16) to give consent.

An incapacitated person cannot give consent. Sexual activity with someone who one should know to be mentally or physically incapacitated (by alcohol or other drug use, unconsciousness or blackout) is not consented sexual activity and therefore is a violation of this policy.

- Incapacitation is a state where someone cannot make rational, reasonable decisions.
- Incapacitation may result from mental disability, sleep, involuntary physical restraint, and alcohol or drug impairment, including taking “rape drugs.” A rape drug is any drug intentionally used to incapacitate another person to assist in the execution of drug facilitated sexual assault.
- Possession, use and/or distribution of any so-called “rape drug” is prohibited and administering these drugs to another person is a violation of this policy.
- Being under the influence of alcohol or other drugs will not excuse behavior that violates this policy.

**D. Supportive Measures:** At the time of a report of prohibited conduct under this policy, the University may implement supportive measures as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent. Supportive measures are designed to restore or preserve equal access to the University’s education programs and activities without unreasonably burdening the other party. Supportive measures are non-disciplinary, non-punitive individualized services and may include measures designed to protect the safety of all parties or the University’s educational environment, or to deter sexual harassment. Supportive measures are available to both the complainant and respondent regardless of whether the complainant chooses to file a formal complaint.

Supportive measures are services, accommodations, or other assistance that the University puts in place after receiving notice of alleged conduct prohibited under this policy but before any final outcomes —investigatory, disciplinary, or remedial—have been determined. The following are examples of interim measures and are not expected to be all-inclusive:

- Academic accommodations for Complainant or Respondent.
- Medical and mental health services, including counseling, for Complainant or Respondent.
- Change in university housing.
- Assistance in finding alternative housing.

- Assistance in arranging for alternative University employment arrangements and or changing work schedules.
- Mutual No Contact directive; such a directive serves as a notice to the parties that they must not have verbal, electronic, written, or third-party communication with one another.
- Provide escort so the individual can move safely between school programs and activities
- Respondent placed on administrative leave (employee) or interim suspension (student).
- Voluntary leave of absence.
- University-imposed leave or separation.

The Title IX Coordinator is responsible for coordinating the effective implementation of Supportive Measures. The University will maintain as confidential any accommodations or protective measures provided, to the extent that maintaining such confidentiality will not impair the ability of the University to provide the accommodations or protective measures.

**E. Definition/Identification of Parties as used in this Policy:**

1. **Complainant:** an individual who is alleged to have experienced conduct that could constitute prohibited conduct under this policy.
2. **Respondent:** an individual or organization who has been reported to have committed prohibited conduct under this policy.
3. **Reporter or Reporting Party:** an individual who notifies the University that a violation that prohibited conduct under this policy may have occurred.
4. **Advisor of Choice:** a person chosen by the Complainant or the Respondent, if desired, to provide assistance during the complaint and resolution process. The advisor may be someone else chosen by the individual and can be someone from inside or outside the University community. The advisor of choice may be, but is not required to be, an attorney. If a formal complaint is addressed through an Informal Resolution, the parties are encouraged but not required to have an advisor. If a formal complaint is addressed through a Formal Resolution, the complaint and respondent must have an advisor for the purposes of conducting cross-examination at the live hearing. If either party does not have an advisor for the live hearing of the Formal Resolution, an advisor of the University's choosing will be assigned at no cost to the party.
5. **Title IX Coordinator:** the University employee responsible for overseeing all grievance procedures related to prohibited conduct under this policy, to ensure prompt, fair, and impartial investigation and resolution. This person will coordinate the in-take, investigation, adjudication, and review of all complaints that fall within this policy. Investigation and review of complaints may be delegated to the **Title IX Deputy Coordinator, Title IX investigators, Decision Makers,** or other qualified individuals as deemed appropriate by the Title IX Coordinator.



**III. Reporting under this Policy:** Having an awareness of your resources and reporting incidents promptly is important to addressing prohibited conduct under this policy. This section outlines reporting options, including confidential and non-confidential reporting, to assist students and employees with making an informed decision about reporting violations of this policy.

**A. Confidential Reports**

**1. Confidentiality Generally**

The University will make every effort reasonably possible to preserve the privacy of an individual who makes an official report and to protect the confidentiality of the information reported. When a Complainant requests that no action be taken or that their name not be used, the Complainant will be advised that the University's ability to respond will be limited but that the University will take all appropriate action consistent with the request. However, there will be situations in which the University may decide to override a request for confidentiality or that no action be taken in light of the nature of the incident or perceived threat to the University community. Such considerations include the risk of additional attacks, the use of weapons or drugs, multiple attackers, past conduct, and whether the attack was accompanied by other crimes or threats. Therefore, Complainants desiring to make truly confidential reports should review the confidential reporting section below.

**2. Confidential Resources**

The degree to which confidentiality can be protected depends upon the professional role of the person being consulted. The professional being consulted should attempt to make every reasonable effort to clearly share these limits before any disclosure of facts. The individuals/offices below are recognized by the University as being able to receive confidential reports.

**Off-Campus Confidential Resources for Employees:**

Employee Assistance Program 800.854.1446  
(available to benefit-eligible employees)

**On-Campus Confidential Resources for Students:**

Center for Health and Wellness Mental Health Counselor 614.236.6114  
University Pastor 614.236.7737

**Off-Campus Confidential Resources for Employees and Students:**

SARNCO (Sexual Assault Response Network of Central Ohio) 614.267.7020  
CHOICES 24 Hour Domestic Violence Hotline 614.224.4663  
Buckeye Region Anti-Violence Organization (BRAVO) 614.294-7867  
Rape, Abuse, & Incest National Network (RAINN) 800.656.4673  
(National hotline that connects callers to their nearest rape crisis line.)

### **Anonymous Reporting for Employees and Students:**

The following resources provide anonymous reporting options. Anonymous reporting may limit the University's ability to fully investigate and resolve the complaint.

Campus Conduct Hotline (EthicsPoint)

888.238.1063

Or EthicsPoint reporting website:

[www.ethicspoint.com](http://www.ethicspoint.com)

As required by law, all disclosures to any Capital employee of an on-campus sexual assault are tabulated for statistical purposes without personal identifying information.

- B. Non-Confidential Reports:** The following options for reporting are not confidential in that the Title IX Coordinator or Title IX Deputy Coordinator have the authority to institute supportive measures and coordinate grievance procedures on behalf of the University. Employees and students are encouraged to report complaints to the Title IX Coordinator or Title IX Deputy Coordinator:

**Title IX Coordinator:**

Dean of Engagement and Success/Title IX  
Coordinator  
Deanna Wagner  
[dwagner1453@capital.edu](mailto:dwagner1453@capital.edu)  
614.236.6904

**Title IX Deputy Coordinator (Law School):**

currently vacant

1. Employees and students are encouraged to speak to University officials to make formal reports of incidents. All University employees are **required**, as Responsible Employees, to report details related to prohibited conduct under this policy to the Title IX Coordinator or Deputy Title IX Coordinator, unless employees fall under the "Confidential Reports" option outlined previously. Student employees who have responsibility for the welfare of other students, including Resident Assistants (RA), Orientation Leaders (OL), and Smooth Transition Mentors (ST), are required to report known conduct under this policy.
2. All members of the University community have the right to and should expect a prompt and equitable response to reports of prohibited conduct under this policy.
  - a. **Response to a Report to the Title IX Coordinator or Deputy Coordinator.** At the time of a report of prohibited conduct under this policy, the Title IX Coordinator will promptly and confidentially, contact the Complainant to discuss the availability of Supportive Measures, consider the Complainant's wishes with respect to Supportive Measures, inform the Complainant of the availability of Supportive Measures with or without the filing of a Formal Complaint, and explain to the Complainant the process for filing a Formal Complaint. Choosing to make a report, file a Formal Complaint, or not do either of these things is a process that can unfold over time. You do not have to decide whether to file a Formal Complaint or name the other party/ies at the time of the report.

- b. **Information Packet.** Upon a receipt of a report of prohibited conduct under this policy, the University shall provide an information packet that contains procedures to follow if a sex offense, domestic violence, dating violence, sexual assault, or stalking has occurred, including information in writing about:
  - i. The importance of preserving evidence as may be necessary to the proof of criminal domestic violence, dating violence, sexual assault, or stalking, or in obtaining a protection order;
  - ii. How and to whom the alleged offense should be reported;
  - iii. Options regarding law enforcement and campus authorities, including notification of the option to:
    - a. notify proper law enforcement authorities, including on-campus and local police;
    - b. be assisted by campus authorities in voluntarily notifying law enforcement authorities; and
    - c. decline to notify such authorities;
  - iv. Where applicable, their rights and the institution's responsibilities regarding orders of protection, no contact orders, restraining orders, or similar lawful orders issued by a criminal, civil, or tribal court;
  - v. Information about appropriate and available services both at the institution and in the community; and
  - vi. Options for, available reasonably available assistance and accommodations and how to request them.
- c. **Report Resolution.** A report to the Title IX Coordinator is not the same as a formal complaint. For resolution of a report, a formal complaint must be filed in writing alleging prohibited conduct under this policy against a respondent and request that the University officially investigate and resolve the allegation. The complaint may be resolved through either Informal Resolution (See Section IV, A) or Formal Resolution (See Section IV, B).
- d. **Formal Complaint.** A document filed by a Complainant or signed by the Title IX Coordinator alleging sexual harassment or misconduct against a Respondent and requesting that the University investigate the allegation of sexual harassment. At the time of filing a Formal Complaint, a Complainant must be participating in or attempting to participate in the education program or activity of the University with which the Formal Complaint is filed.
- e. **Emergency removal.** Nothing in this part precludes the University from removing a Respondent from University's education program or activity on an emergency basis, provided that the University undertakes an individualized safety and risk analysis, determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal, and

provides the Respondent with notice and an opportunity to challenge the decision immediately following the removal.

- f. **Administrative Leave.** The University reserves the right to place a non-student employee Respondent on administrative leave during the pendency of a grievance process.
- g. **Dismissal of a Formal Complaint.** The University shall investigate the allegations in a Formal Complaint, except as follows:
  - i. The University shall dismiss the Formal Complaint if the conduct alleged in the Formal Complaint:
    - a. would not constitute sexual harassment as defined by this policy, even if proved;
    - b. did not occur in University's education program or activity, or
    - c. did not occur against a person in the United States.
    - d. This dismissal does not preclude action under another policy or procedure of the University.
  - ii. The University may dismiss the Formal Complaint or any allegations therein, if at any time during the investigation or hearing:
    - a. A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations therein;
    - b. The Respondent is no longer enrolled or employed by the University; or
    - c. Specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.
  - iii. Upon a dismissal required or permitted under this section, the University shall promptly send written notice of the dismissal and reason(s) for dismissal simultaneously to the parties.
- h. **Consolidation of Formal Complaints.** The University may consolidate Formal Complaints as to allegations of sexual harassment against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances. Where a grievance process involves more than one Complainant or more than one Respondent, references in this section to the singular "party," "Complainant," or "Respondent" include the plural, as applicable.

### C. Reporting of Sexual Violence (Sexual Assault and Interpersonal Violence)

Survivors of sexual assault and sexual violence, such as domestic/dating violence and stalking, are encouraged to get to a safe place and obtain immediate medical treatment. Calling Capital

University Police or 911 is important to obtain immediate medical assistance and medical support, and to preserve evidence. Students and employees are encouraged to report sexual assaults to the Capital Police Department or the Columbus or Bexley Police Departments immediately following the incident if possible. If reported to Capital Police, an officer from the Capital Police Department will meet with the Reporting Party to take a report. On the Bexley Campus, Capital Police will typically involve the Bexley Police Department in the investigation. The Reporting Party can make decisions about their level of involvement in an investigation and potential criminal or University action, including declining to be involved. Capital Police will provide assistance in preserving relevant materials and may assist in obtaining, securing, and maintaining evidence needed for criminal and University proceedings.

Contact Information Includes:

Capital University Police 614.236.6666

Bexley City Police 614.559.4444 or 911

Columbus City Police 614.645.4545 or 911

Due to the sensitive nature of sexual misconduct, a Reporting Party may choose to turn to Residential Life staff or another staff/faculty member with whom they are comfortable. Information disclosed by a Reporting Party to any University faculty or staff or Residential Life employee must be shared with the Title IX Coordinator and/or Title IX Deputy Coordinator and possibly others to address the complaint.

Individuals with complaints of this nature also have the right to file a formal complaint with the United States Department of Education:

Office of Civil Rights (OCR)

400 Maryland Avenue, SW

Washington, DC 20202-1100

Customer Service Hotline: 800.421.3481

TDD# 877.521.2172

Email: [OCR@ed.gov](mailto:OCR@ed.gov)

Web: <http://www.ed.gov.ocr>

Any **false report** of behavior or incidents alleging sexual misconduct, with intent to mislead, is a violation of this policy. A good faith complaint that results in a finding of not responsible is not considered a false or fabricated report.

#### D. Employee Responsibility

**Responsible Employees:** For the purposes of this policy, a “responsible employee” is a University employee who is obligated to report incidents of sexual harassment and misconduct. **It is the policy of this University that all employees, who are not confidential reporting resources, are responsible employees.**

When an individual tells a responsible employee about an incident of sexual misconduct, that individual has the right to expect the University to take immediate and appropriate steps to investigate what happened and to resolve the matter promptly and equitably.

A responsible employee must report to the Title IX Coordinator or Deputy Title IX Coordinator all relevant details about the alleged prohibited conduct shared by the Reporting Party and that the University will need to determine what happened – including the names of the survivor and alleged perpetrator(s), any witnesses, and any other relevant facts, including the date, time and specific location of the alleged incident.

To the extent possible, information reported to a responsible employee will be shared only with people responsible for handling the University's response to the report. A responsible employee should not share information with law enforcement without the survivor's consent unless the survivor has also reported the incident to law enforcement.

Before a Reporting Party reveals any information to a responsible employee, the employee should make every reasonable effort to ensure that the Reporting Party understands the employee's reporting obligations – and, if the individual wants to maintain confidentiality, direct the individual to confidential resources as designated in this policy.

If the Reporting Party wants to tell the responsible employee what happened but also maintain confidentiality, the employee should tell the Reporter that the University will consider the request, but cannot guarantee that the University will be able to honor it. In reporting the details of the incident to the Title IX Coordinator, the responsible employee will also inform the Coordinator of the individual's request for confidentiality.

Responsible employees will not pressure an individual to request confidentiality, but will honor and support the individual's wishes, including for the University to fully investigate an incident. By the same token, responsible employees will not pressure an individual to make a full report if the individual is not ready to do so.

#### **E. Federal Statistical Reporting Obligations**

As required by the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (the Clery Act), Capital University Police and Law School security maintain a daily crime log that is available to the public for inspection. The crime log includes all incidents reported to the police department or security personnel. No personally identifying information of any party involved will be shared in the daily crime log.

Also pursuant to the Clery Act the University annually prepares and disseminates an Annual Security Report in which it shares aggregate data as required by the law. Certain campus officials – those deemed a Campus Security Authority (or CSA) – have a duty to report sexual assault, domestic violence, dating violence, and stalking for federal statistical reporting purposes. Statistical information must be passed along to campus law enforcement regarding the type of incident and its general location (on or off-campus, in the surrounding area, but no addresses

need to be given) for publication of the Annual Security Report. No personally identifying information is included in the Annual Security Report. This report helps to provide the community with a clear picture of the extent and nature of campus crime to ensure greater community safety. Mandated federal reporters (the CSAs) include: student/conduct affairs, campus law enforcement, local police, coaches, athletics directors, residence life staff, student activities staff, human resources staff, advisors to student organizations and any other official with significant responsibility for student and campus activities. The information to be shared includes the date, the location of the incident (using Clery location categories) and the Clery crime category.

#### **F. Federal Timely Warning Obligations**

Victims of sexual misconduct should be aware that University administrators must issue timely warnings for incidents reported to them that are confirmed to pose a substantial and on-going threat of bodily harm or danger to member of the campus community. The University will ensure that a victim's name and other personally identifying information are not disclosed, though still providing enough information for community members to make safety decisions in light of the danger.

#### **G. Duty to Report**

Ohio has a general reporting statute, Ohio Rev. Code § 2921.22, which states "no person, knowing that a felony has been or is being committed, shall knowingly fail to report such information to law enforcement authorities."

#### **H. Reporting of Instances Involving Minors**

Sexual harassment, sexual misconduct, or interpersonal violence involving a minor who is a student will be processed consistent with this Policy. Ohio has a reporting statute (Ohio Rev. Code § 2151.421) that requires anyone who knows, or has reasonable cause to suspect, abuse of child "under eighteen years of age, or a person, under twenty-one years of age with a developmental disability or physical impairment, has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of the child." Any violations should be reported to the Title IX Coordinator and the public children services agency or a municipal or county peace officer in the county in which the child resides or in which the abuse or neglect is occurring or has occurred.

### **IV. Procedures for Resolving Complaints of Prohibited Sexual Harassment**

#### **A. Informal Resolution**

The Informal Resolution may only be pursued after a formal complaint has been filed. The Informal Resolution may occur with voluntary and written consent of both parties and the Title IX Coordinator. Informal Resolution is not permitted to resolve allegations that an employee engaged in sexual harassment against a student.

Consistent with the requirements of this section, prior to initiating an Informal Resolution, the University will provide to the parties a written notice disclosing:

1. The allegations;

2. The requirements of and procedures for the Informal Resolution process, including the circumstances under which it precludes the parties from resuming a Formal Complaint arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the Informal Resolution process and resume the grievance process with respect to the Formal Complaint; and
3. Any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.

The University does not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of Formal Complaints of sexual harassment under this policy.

The Title IX Coordinator retains the discretion to determine the type of Informal Resolution that may be appropriate and may refer a complaint to a Formal Resolution at any time. The Informal Resolution process will be completed within 30 working days of receiving the Formal Complaint, unless unusual or complex circumstances exist. Informal Resolution agreements are signed by the parties and the Title IX Coordinator. Any violation of an Informal Resolution agreements will be referred by the Title IX Coordinator and may be referred to Formal Resolution or Student Conduct for further review. Informal Resolutions may result in agreed-upon disciplinary action, such as probation, suspension, or dismissal, against the respondent.

Informal Resolution is an administrative process and matters resolved through this method of resolution are not part of a student's conduct file, except that such records can be used in reviewing any additional sexual misconduct proceedings or developing sanctions in such proceedings, and would then become part of a student's conduct record. For employees, informal resolution records would be kept by the Title IX Coordinator in the same manner as findings from the formal investigation process.

## **B. Formal Resolution**

The Formal Resolution may only be pursued after a formal complaint has been filed.

### **Notice of Charges**

1. **Initial Notice of Charges.** Upon receipt of a Formal Complaint, but prior to commencing the investigation, the University shall provide the following written notice to the parties. The notice will be provided reasonably in advance of any interview with the investigators to allow sufficient time for meaningful preparation. The notice shall include:
  - a. The Title IX policy;
  - b. The specific section of the policy allegedly violated;
  - c. The specific conduct alleged to constitute potential violation under this policy;
  - d. The identities of the parties involved in the incident;
  - e. The date and location of the alleged incident;
  - f. 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 Formal Resolution;
  - g. Notification to the parties that they may have an advisor of their choice;



- h. Notification to the parties that they may inspect and review evidence, as set forth in this policy;
  - i. The names of the investigators and the ability to challenge their participation for conflict of interest or actual bias;
  - j. The appropriate policy language that prohibits a party from knowingly making false statements or knowingly submitting false information;
  - k. Notice of the preponderance of evidence standard;
  - l. List of all possible sanctions the institution may impose if there is a finding of responsibility; and
  - m. Notice that Retaliation is prohibited.
2. **Amended Notice of Charges.** If, in the course of an investigation, the University decides to investigate allegations about the Complainant or Respondent that are not included in the initial notice of charge, the University must provide notice of the additional allegations to the parties.
3. **Principles for the Grievance Process.** The University's Title IX Coordinator will appoint two investigators who will conduct a thorough, reliable, and impartial investigation of the reported allegation. Title IX investigators are employees of the University who have received training on how to conduct an investigation in a manner that is equitable and impartial. The University may engage external investigators as one or both of the assigned investigators. Under this grievance process, the University shall:
- a. Ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on the University and not on the parties;
  - b. A person's medical, counseling, or treatment records are privileged, and confidential documents are not required to be disclosed. Should a party wish to provide a confidential record as evidence, the party will provide written voluntary, consent to share the medical, counseling, or treatment record as part of the investigation, and the record should be limited to the portion directly related to the allegations raised in the Formal Complaint. The record will be included in the file for review by the other party and for use in the investigative process.
  - c. Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.
  - d. Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.
  - e. Provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, and not limit the choice or presence of advisor for either the Complainant or Respondent in any meeting or grievance proceeding; however, the University may establish restrictions regarding

the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties.

- f. Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate.
- g. Require an objective evaluation of all relevant evidence—including both inculpatory and exculpatory evidence— and provide that credibility determinations may not be based on a person’s status as a Complainant, Respondent, or witness.
- h. Include a presumption that the Respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.
- i. Use the preponderance of the evidence standard to determine responsibility for allegations in a Formal Complaint of prohibited conduct under this policy.

**4. Extensions of the Grievance Process.** The Title IX Coordinator may grant or deny requests from either party to temporarily delay the grievance process or may issue the limited extension of time frames for good cause with written notice to the Complainant and the Respondent of the delay or extension and the reasons for the action. Good cause may include considerations such as the absence of a party, a party’s advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.

**5. Investigation of Formal Complaints.** The University shall investigate within 60 working days of receiving the Formal Complaint, unless unusual or complex circumstances exist. When investigating the Formal Complaint, the University shall:

- a. Engage in fact-gathering of all relevant facts. Credibility resolutions and fact-finding shall be conducted in the live hearing phase of the grievance process.
- b. Provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a Formal Complaint, including the evidence upon which the University does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation.
- c. Prior to completion of the investigative report, send to each party and the party’s advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties have 10 days to submit a written response, which the investigator will consider prior to completion of the investigative report.
- d. Create an investigative report that fairly summarizes relevant evidence and, at least 10 days prior to a hearing or other time of determination regarding responsibility, send to each party and the party’s advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response.

- e. Make all such evidence subject to the parties' inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.

## **6. Pre-Hearing Conference**

- a. Each party will have their own pre-hearing conference. The Title IX Coordinator will communicate to the parties, their advisors, and the Hearing Chair the date, time, and format for their Pre-Hearing Conference. The Title IX Coordinator, the Hearing Chair, and the advisor must be in attendance. While the parties are strongly encouraged to attend, they are not required to do so.
- b. During the Pre-Hearing Conference, the advisors must share with the Hearing Chair their list of witnesses to appear at the hearing, the identity of any requested witnesses that were not questioned during the investigation, the request for any new evidence to be considered that was not submitted previously to the investigators, and the availability of the advisor and the party for hearing dates.
- c. Evidence and witnesses may only be presented at the hearing if they were submitted to the investigators and made available to the parties for review, unless they were unavailable at the time of the investigation or the relevance was unknown until the investigative report was submitted.
- d. The Hearing Chair will address any requests to present new evidence and new witnesses at the Pre-Hearing Conference.
- e. The advisor is strongly encouraged to discuss lines of questioning with the Hearing Chair at the Pre-Hearing Conference to obtain guidance from the Hearing Chair on relevancy prior to the hearing. The Hearing Chair will discuss the expectations and guidelines for appropriate behavior and decorum during the hearing.
- f. After reviewing each party's witness list, the Hearing Chair may, at their discretion, add names of other witnesses contained in the report for the purpose of appearing at the hearing and submitting to cross examination.
- g. After the conclusion of the Pre-Hearing Conferences, the Title IX Coordinator will provide each party and their advisor with written notice of the date, time, and manner for the hearing, which will typically occur no less than five (5) working days after the conclusion of the final pre-hearing conference.

## **7. Live Hearings Under the Grievance Process**

- a. **Requirement of a Live Hearing for Fact-Finding and Determining Responsibility**
  - i. Following the investigation, within 30 working days of sending the final investigative report to the parties, unless unusual or complex circumstances exist, the University shall conduct a live hearing for the purposes of determining responsibility for allegations of sexual harassment in the Formal Complaint.
  - ii. The decision-maker will not be the same individuals as the Title IX Coordinator or the Title IX investigators.

- iii. If a party does not have an advisor present at the live hearing, the University shall provide without fee or charge to that party, an advisor of the University's choice to conduct cross examination on behalf of that party. The University is obligated to ensure each Party has an advisor, either of the Party's or University's choice regardless of whether or not the Party is present at the hearing.
- iv. Live hearings may be conducted with all parties physically present in the same geographic 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 simultaneously to see and hear each other.
- v. At the request of either party, the University shall provide for the live hearing to occur with the parties located in separate rooms with technology enabling the decision-maker and parties to simultaneously see and hear the party or the witness answering questions.
- vi. The University shall create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection and review.

**b. Questioning at the Live Hearing**

- i. At the live hearing, the decisionmaker 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.
- ii. Only relevant cross examination and other questions may be asked of a party or witness.
- iii. Cross examination at the live hearing must be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally, notwithstanding the University's ability to otherwise restrict the extent to which advisors may participate in the proceedings.
- iv. Before the Complainant, Respondent, or witness answers a cross-examination or other question, the decision-maker must first determine whether the question is relevant. The decision-maker must explain to the party proposing the questions any decision to exclude a question as not relevant.
- v. Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, 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.

**c. Use of Witness Statements**

- i. If a party or witness does not submit to cross examination at the live hearing, the decision-maker must not rely on any statement of that party or witness in reaching a determination regarding responsibility; and
- ii. The decision-maker cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross examination or other questions.

**d. Decorum and Well-being of the Parties in the Live Hearing**

- i. The school will require all parties, advisors, and witnesses to maintain appropriate decorum throughout the live hearing. Participants at the live hearing are expected to abide by the decision-maker's directions and determinations, maintain civility, and avoid emotional outbursts and raised voices. Repeated violations of appropriate decorum will result in a break in the live hearing, the length of which will be determined by the decision-maker. The decision-maker reserves the right to appoint a different advisor to conduct cross-examination on behalf of a party after an advisor's repeated violations of appropriate decorum or other rules related to the conduct of the live hearing.
- ii. Parties and advisors may take no action at the hearing that a reasonable person would see as intended to intimidate that person (whether party, witness, or official) into not participating in the process or meaningfully modifying their participation in the process.

**8. Written Determination of the Decision-Maker**

- a. The decision-maker shall issue a written determination regarding responsibility within 15 working days following the conclusion of the live hearing. To reach this determination, the decision-maker shall apply the preponderance of evidence standard. The written determination will include:
  - i. Identification of the allegations potentially constituting violation of conduct as defined by this policy;
  - ii. A description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
  - iii. Findings of fact supporting the determination;
  - iv. Conclusions regarding the application of the University's policy to the facts;
  - v. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions imposed on the respondent, and whether remedies designed to restore or preserve equal access to the University's education program or activity will be provided to the complainant; and

- vi. The procedures and permissible bases for the Complainant and Respondent to appeal, as set forth in this policy.
        - b. The University shall provide the written determination to the parties simultaneously.
        - c. 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.
9. **Sanctions:** Sanctions are actions that the University will take against the Respondent that are proportionate to the violation(s). Sanctions may be issued individually, or a combination of sanctions may be imposed. The determination of sanctions is based upon a number of factors, including: the harm suffered by the Complainant; any ongoing risk to either the Complainant or the University community posed by Respondent; the impact of the violation on the University community, its members, or its property; any previous sexual misconduct violations; any pattern of sexual misconduct behavior; and any mitigating or aggravating circumstances.

When the Respondent is an employee, examples of sanctions include:

- Warning – Written or Verbal
- Performance Improvement Plan
- Mandatory Training or Education
- Probation
- Demotion
- Suspension (paid or unpaid)
- Termination (If for a faculty member, the additional procedures set forth in the *Faculty Handbook*, Section 7.5 Dismissal for Cause, will be followed.)

When the Respondent is a student, examples of sanctions include:

- Monetary Fines/Restitution
- Warning – Written or Verbal
- Mandatory Training or Education
- Restricted Access
- Restriction from extracurricular and/or co-curricular activities
- Alcohol/Drug/Anger Assessment
- Residence Hall Probation or Dismissal
- Disciplinary Probation
- Suspension
- Dismissal
- Withholding Diploma
- Revocation of Degree
- Organizational Sanctions

**First time student Respondents who are found responsible for nonconsensual sexual intercourse** may receive a sanction to include at minimum the following:

- Suspended from the University for a least one semester or up to dismissal;
- Not allowed on University property during the period of suspension, or permanent exclusion from University property if dismissed;
- Contact with the survivor is strictly forbidden;
- Must submit documentation of a qualified assessment of the student's ability to return to the University without threatening the safety of others.

**Second time student Respondents who are found responsible for nonconsensual sexual intercourse** may receive a minimum of the following sanction:

- Dismissal from the University;
- Permanent exclusion from University property.

Separate from the University process, individuals should be aware that criminal liability can be incurred from a sexual misconduct violation in penalties established in the Ohio Revised Code for all offenses deemed criminal.

## 10. Appeal

**a. Timeline for Appeal.** Either party may appeal the outcome, including a finding of responsibility or no responsibility and/or the sanction. The appealing party must submit the appeal within five (5) calendar days from the date the written decision is sent out. The appeal must be submitted in writing to the Title IX Coordinator. An appeal may not be filed on behalf of a Complainant or Respondent by a third party. If no appeal is submitted within the five (5) calendar days, the administrative disposition of the resolution becomes final and the sanctions/recommendations shall be implemented.

### b. Appeals Process

**i. Request for Appeal:** The written request for appeal must identify the reasons and evidence supporting the appeal, state the result sought, and be submitted to the Title IX Coordinator within the appeal timeline set forth in 10(a) above. The four possible grounds for appeal are as follows:

- 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, investigators, or decision-makers had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter; and
- 4) The sanctions imposed are substantially disproportionate to the severity of the violation.

- ii. Within three (3) calendar days, the Title IX Coordinator will provide a copy of the written appeal request to the non-appealing party, who may submit to the Title IX Coordinator a **written response** to the appeal request within five (5) working days from the date the appeal request was sent out.
- iii. The Title IX Coordinator will forward the report, the file, the request for appeal, and the response (if any) to the **Appeals Officer**.
- iv. The **Appeals Officer** will be a neutral and impartial decision maker. The parties shall be informed, in writing, of the specific Appeals Officer. Within one (1) calendar day from the date the notice was sent out with the identity of the Appeals Officer, the Complainant and Respondent may submit a written request to the Title IX Coordinator to replace the named Appeals Officer if there are reasonable articulable grounds to establish bias, conflict of interest, or an inability to be fair and impartial. The Title IX Coordinator may grant or deny requests from either party.
- v. **Final Outcome:** Typically, within ten (10) calendar days from receipt of the appeal documents, the Appeals Officer will issue the decision. Both the Complainant and Respondent will be advised in writing of the Appeal Officer's decision (**Notice of Final Outcome**) simultaneously. The following are the potential outcomes of the appeal process: determine whether the appeal satisfies the grounds for an appeal; affirm the findings from the Formal Resolution process; alter the findings from the Formal Resolution process; alter the sanctions from the Formal Resolution process; or request additional steps to be taken.

#### V. Required Trainings

The Title IX Coordinator, Title IX Investigators, Decision-Makers, and any person who facilitates an informal or formal resolution process (whether internal or external) shall receive training on the definition of sexual harassment under this policy, 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. These individuals shall receive annual training on the issues related to domestic violence, dating violence, sexual assault, and stalking and how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability. Title IX Investigators shall receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence.

Decisionmakers shall receive training on any technology to 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.

Any materials used to train Title IX Coordinators, Title IX Investigators, Decision-Makers, and any person who facilitates an informal resolution process, will not rely on sex stereotypes and will promote impartial investigations and adjudications of Formal Complaints of sexual harassment.



## VI: Prevention Programming

Capital University will offer prevention programming through online training tools, in person trainings, programming and events, in accordance with guidance from the Office of Civil Rights.

## VII. Records and Privacy

All proceedings under this policy are conducted in compliance with the requirements of FERPA, the Clery Act, Title IX, and University policy.

**Student Records:** The Title IX Coordinator will keep appropriate records of sexual misconduct complaints and outcomes. Access to these records will only be granted with the consent of the individual(s) involved, or as required by law in a legal proceeding, or to address a pattern of repeat behavior.

Complaints under this policy that result in a finding of responsibility are made part of a student's disciplinary conduct record. Such records shall be used in reviewing any further conduct, or developing sanctions. Student conduct files are confidential as they are protected under the Family Educational Rights and Privacy Act. In general, no information shall be released from the proceedings under this policy except as required or permitted by law and University Policy, or with the consent of the student(s). FERPA allows schools to disclose student records, without consent, in situations including, but not limited to: school officials with legitimate educational interest, other schools to which a student is transferring, to comply with a judicial order or lawfully issued subpoena, to parents when there is a health or safety emergency involving the student, to parents when the student has committed a disciplinary violation with respect to use or possession of alcohol or a controlled substance and the student is under 21 years of age at the time of the disclosure, to the victim of an alleged perpetrator of a crime of violence or a non-forcible sexual offense concerning the final results of a disciplinary hearing. Please see the University's Student Records policy for further information. Student conduct files are maintained in accordance with the University's Record Retention Policy, typically for a period of seven (7) years.

Students who declare an interest in studying abroad are subject to a conduct record check. Information that is shared with the International Education Office includes, but is not limited to, determinations of sexual misconduct violations. It is within the sole discretion of the University to determine whether a student who has violated University policy is eligible to study abroad. Consideration and qualification for study abroad are not disciplinary determinations but may be affected by a student's disciplinary record.

**Employee Records:** The University will keep appropriate records of complaints and outcomes. In order to protect the innocent and to assure Complainants and Respondents that there will be no recrimination or retaliation, these records will be closed and kept by the Human Resources Department and the Title IX Coordinator. Access to these records will only be granted with the consent of the individual(s) involved, or as required by law in a legal proceeding, or to address a pattern of repeat behavior.

**The Title IX Coordinator should be alert to repetitive patterns of documented harassment over time.**

Should a possible pattern of behavior be detected, the matter will be brought to the attention of the Title IX Team and a course of action determined after such consultation. A pattern of behavior may be considered in determining recommendations for sanctions.

## VIII. Previous Acts

The 2020 amendments took effect on August 14, 2020, and are not retroactive. This means Capital University must follow the requirements of the Title IX statute and the regulations that were in place at the time of the alleged incident; the 2020 amendments do not apply to alleged sexual harassment occurring before August 14, 2020.

## IX. Related University Policies

Nondiscrimination Policy

Student Records Policy

## X. History

This policy replaces the University's former Sexual Harassment Policy (1990) and the Student Sexual Misconduct Policy (Student Handbook 2014-15 and prior years).

June 24, 2015: Policy Approved by President's Cabinet as the University's interim Title IX policy on Sexual Misconduct pending faculty governance review and comment.

July 13, 2016: Policy revised by the University's Title IX team

August 23, 2017: Policy revised by the University's Title IX team

August 14, 2020: Policy revised by the University's Title IX team

July 29, 2021: Policy revised by the University's Title IX team

January 9, 2023: Policy revised by the University's Title IX team