

**ATIXA SEX/GENDER-BASED HARASSMENT,
DISCRIMINATION AND
SEXUAL MISCONDUCT
MODEL RESOLUTION PROCEDURES**

www.atixa.org

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ATIXA Model Civil Rights Investigation and Resolution Process

This universal resolution policy, process and investigation protocol may be applied to all reports of civil rights violations and discrimination reports, especially those governed by Title IX, including sexual violence, sexual harassment, intimate partner violence, stalking, and/or gender-based bullying or hazing.

Campuses are welcome to adapt this resolution process to use when an employee is the responding party, and some optional language is offered in brackets [] to do so.

Reporting Party: In this process, the person alleging a violation of policy is referred to as the reporting party.

Responding Party: In this process, the person who is alleged to have violated campus policy is referred to as the responding party.

Overview of Reports Concerning Discrimination and/or Harassment

The university does not permit discrimination or harassment in its programs and activities on the basis of race, color, national origin, sex, gender identity, gender expression, sexual orientation, disability, veteran status, predisposing genetic characteristic, age, religion, pregnancy status or any other characteristic protected by university policy or state, local, or federal law. Anyone who believes they have been subjected to discrimination or harassment in violation of this policy should follow the procedure outlined in this *Code* to report these concerns.

This process involves a prompt preliminary inquiry to determine if there is reasonable cause to believe the nondiscrimination policy has been violated. If so, the university will initiate an investigation that is thorough, reliable, impartial, prompt and fair. This investigation determines whether the university nondiscrimination policy has been violated. If so, the university will promptly implement an effective remedy designed to end the discrimination, prevent its recurrence and address its effects.

The university aims to bring all allegations to a resolution within a sixty (60) business day time period, which can be extended as necessary for appropriate cause by the [Title IX Coordinator] with notice to the parties. In overview, the timeline for resolution begins with notice to a mandated reporter. The Coordinator then engages in a preliminary inquiry that is typically 1-3 days in duration. From there, the allegation can lead to a formal investigation, which usually starts within days of the preliminary inquiry's

conclusion. Investigations range from days to weeks, depending on the nature and complexity of allegations, with the university commonly aiming for a 10-14 window to completion. The parties are regularly apprised of the status of the investigation as it unfolds. The process may then end or continue. If it continues, barring necessary extensions, the investigation leads to formal and informal resolution options, which the university aims to complete in 10-14 days from the end of the investigation. A failed informal resolution which triggers a formal resolution may require the university to extend this timeline accordingly. From there, appeals may be requested, with a three-day window to file appeal requests once a formal determination is reached, a three-day window to grant or deny the appeal request, and another 7-10 days for a final resolution to be reached. In rare cases where a remanded decision results in a new hearing, the results of that hearing can be appealed once, which would typically add another 10-14 days to final results.

Interim Remedies/Actions

The **Title IX/Equity/AA Coordinator** (or designee) may provide interim remedies intended to address the short-term effects of harassment, discrimination and/or retaliation, i.e., to redress harm to the alleged victim and the community and to prevent further violations. The university will keep interim remedies and actions as private as possible.

These remedies may include, but are not limited to:

- Referral to counseling and health services
- Referral to the Employee Assistance Program
- Education to the community
- Altering the housing situation of an the responding party (resident student or resident employee (or the alleged victim, if desired))
- Altering work arrangements for employees
- Providing campus escorts,
- Providing transportation accommodations
- Implementing contact limitations between the parties
- Offering adjustments to academic deadlines, course schedules, etc.

The **university** may interim suspend a student, employee or organization pending the completion of ERP investigation and resolution, particularly in when in the judgment of the **Title IX/Equity/AA Coordinator**, the safety or well-being of any member(s) of the campus community may be jeopardized by the presence on-campus of the responding party or the ongoing activity of a student organization whose behavior is in question. In all cases in which an interim suspension is imposed, the student, employee or student

organization will be given the opportunity to meet with the Title IX/Equity/AA Coordinator prior to such suspension being imposed, or as soon thereafter as reasonably possible, to show cause why the suspension should not be implemented. The Title IX/Equity/AA Coordinator has sole discretion to implement or stay an interim suspension under the policy on Equal Opportunity, Harassment and Nondiscrimination, and to determine its conditions and duration. Violation of an interim suspension under this policy is grounds for expulsion or termination.

During an interim suspension or administrative leave, a student or employee may be denied access to university housing and/or the university campus/facilities/events. As determined by the [appropriate administrative officer Title IX/Equity/AA Coordinator or designee], this restriction can include classes and/or all other university activities or privileges for which the student might otherwise be eligible. At the discretion of the [appropriate administrative officer Title IX/Equity/AA Coordinator or designee], alternative coursework options may be pursued to ensure as minimal an impact as possible on the responding party.

The institution will maintain as confidential any accommodations or protective measures, provided confidentiality does not impair the institution's ability to provide the accommodations or protective measures.

Formal and Informal Resolution Procedure for Reports of Misconduct

This procedure applies to any member of the university community (faculty, student, staff, administration) who engages in discrimination or harassment. Any person can report alleged harassment or discrimination, including faculty, students, staff, administration, guests, visitors, etc. All allegations of misconduct not involving harassment or discrimination will be addressed through the procedures elaborated in the respective student, faculty and employee handbooks.

Informal Resolution

Before pursuing the Formal Resolution Process, every reasonable effort should be made to constructively resolve conflict with students, faculty, staff, or administrators. The person impacted should keep a written log that can aid in later investigation and resolution. Whenever possible and safe, the problematic behavior, conflict or misconduct should first be discussed by the impacted person and the person engaged in the problematic behavior, conflict or misconduct. The Office of the Title IX Coordinator [Supervisors, Ombuds, etc.] will facilitate such conversations, upon request, and monitor them for safety. [Various conflict resolution mechanisms are available, including mediation. Mediation is not used when violent behavior is involved, when the Coordinator determines a situation is not eligible, or the parties are reluctant to participate in good faith]. The university does not require an impacted party to contact

the person involved or that person's supervisor if doing so is impracticable, or if the impacted party believes that the conduct cannot be effectively addressed through informal means. If informal efforts are unsuccessful, the formal resolution process may be initiated. Either party has the right to end the informal process and begin the formal process at any time prior to resolution.

Formal Resolution Process for Reports of Misconduct by Employees

The [Office of Human Resources] is designated to formally investigate reports or notice of discrimination and/or harassment by employees, to address inquiries and coordinate the university's compliance efforts regarding employee-related reports.

Any member of the community can give provide notice of discrimination and/or harassment in person, by phone, via email or in writing to [Human Resources]. The university strongly encourages submission of written reports to [Human Resources]..

The following are recommended elements of a report:

- Clear and concise description of the alleged incident(s) (e.g.: when and where it occurred);
- Any supporting documentation and evidence;
- Clear demonstration of all informal efforts, if any, to resolve the issue(s) with the person involved and the person's supervisor;
 - This includes names, dates and times of attempted or actual contact along with a description of the discussion and the manner of communication made in the course of each effort;
 - If contacting the person involved and/or the supervisor is impracticable, the reporting party should state the reasons why;
- The desired remedy sought;
- Name and all contact information for the reporting party;
- Signed by the reporting party.

If the reporting party wishes to pursue a formal resolution or if university, based on the alleged policy violation, wishes to pursue a formal resolution, then the Title IX Coordinator appoints trained investigators (typically using a team of two investigators), to conduct the investigation, usually within two business days of determining that a resolution should proceed. Investigations are completed expeditiously, normally within 10-14 business days of the completion of the preliminary inquiry by the Title IX Coordinator. Investigations may take longer when, for example, initial reports fail to provide direct first-hand information or in complex situations.

The university's resolution will not typically be altered or precluded on the grounds that civil or criminal charges involving the same incident have been filed or that charges have been dismissed or reduced. However, the university may undertake a short delay (several days to weeks) in its investigation or resolution process, to comply with a law enforcement request for cooperation (e.g.: to allow for criminal evidence collection) when criminal charges on the basis of the same behaviors that invoke this process are being investigated. The university will promptly resume its investigation and processes once notified by law enforcement that the initial evidence collection process is complete.

All investigations will be thorough, reliable and impartial, and will entail interviews with all relevant parties and witnesses, obtaining available evidence and identifying sources of expert information, if necessary.

The investigator will take the following steps (not necessarily in order):

- In coordination with campus partners (e.g.: the campus Title IX Coordinator), initiate any necessary remedial actions;
- Determine the identity and contact information of the reporting party;
- Identify the exact policies allegedly violated;
- Conduct an immediate initial inquiry to determine if there is reasonable cause to charge the responding party, and what policy violations should be alleged as part of the charge;
 - If there is insufficient evidence to support reasonable cause, the report should be closed with no further action;
- Meet with the reporting party to finalize their statement, and
- Prepare the notice of charges on the basis of the initial inquiry;
- Commence a thorough, reliable and impartial investigation by developing a strategic investigation plan, including a witness list, evidence list, intended timeframe, and order of interviews for all witnesses and the responding party, who may be given notice prior to or at the time of the interview;
- Complete the investigation promptly, and without unreasonable deviation from the intended timeline of 10-14 business days;
- Provide regular updates to both the reporting and responding parties, as appropriate, throughout the investigation;
- Make a finding, based on a preponderance of the evidence (whether a policy violation is more likely than not)
- [Some campuses prefer an interim step of sharing a draft report with the parties and allowing them a period of comment before a report is finalized];
- Share the findings and sanctions with the responding and reporting parties.

At any point during the investigation, if it is determined there is no reasonable cause to believe that university policy has been violated, the Title IX Coordinator has authority to terminate the investigation and end resolution proceedings.

Where the responding party is found not responsible for the alleged violation(s), the investigation will be closed. Where a violation is found, the university will act to end the discrimination, prevent its recurrence, and remedy its effects on the victim and the university community. All parties will receive written notification of the outcome, to the extent permitted by or mandated by law. In cases involving sexual misconduct, sexual harassment, stalking and/or intimate partner violence, the written notification includes the finding, any resulting responsive actions, and the rationale for the decision. This written notification of final decision is delivered to the parties without undue delay between the notifications [and explains appeals options, if any [and procedures for appeal, if there is an appeal option], and any changes to the results that could occur before the decision is finalized, and when it is finalized, if it is not, such as when subject to grievance procedures, appeal, tenure revocation proceedings, mandatory arbitration, union proceedings, etc.].

Formal Resolution Process for Reports of Misconduct by Students

The [Office of Student Conduct] is designated to formally investigate reports of discrimination and/or harassment by students, to address inquiries and to coordinate the university's compliance efforts regarding reports of misconduct by students, regardless of the university role of the reporting party, who may be another student, faculty, staff, guest or visitor.

Notice of a formal report can be made in person, by phone, via email or in writing to [insert the Office of Student Conduct, Title IX Coordinator(s) and appropriate resolution officers here]. Upon receipt of a report, the [Office of Student Conduct] will confer with the Title IX Coordinator on interim action, accommodations for the reporting party (at no cost to the reporting party where possible), or other necessary remedial short-term actions.

If the reporting party wishes to pursue a formal resolution or if university, based on the alleged policy violation, wishes to pursue a formal resolution, then the Title IX Coordinator appoints trained investigators (typically using a team of two investigators), to conduct the investigation, usually within two business days of determining that a resolution should proceed. Investigations are completed expeditiously, normally within 10-14 business days of notice to the Title IX Coordinator. Investigations may take

longer depending on their nature or complexity.

The university's resolution will not typically be altered or precluded on the grounds that civil or criminal charges involving the same incident have been filed or that charges have been dismissed or reduced. However, the university may undertake a short delay (several days to weeks) in its investigation or resolution process, to comply with a law enforcement request for cooperation (e.g.: to allow for criminal evidence collection) when criminal charges on the basis of the same behaviors that invoke this process are being investigated. The university will promptly resume its investigation and processes once notified by law enforcement that the initial evidence collection process is complete.

All investigations will be thorough, reliable and impartial, and will entail interviews with all relevant parties and witnesses, obtaining available evidence and identifying sources of expert information, if necessary.

The investigators will take the following steps (not necessarily in order):

- In coordination with campus partners (e.g.: the campus Title IX Coordinator), initiate any necessary remedial actions;
- Determine the identity and contact information of the reporting party;
- Identify the exact policies allegedly violated;
- Conduct an immediate initial inquiry to determine if there is reasonable cause to charge the responding party, and what policy violations should be alleged as part of the report;
 - If there is insufficient evidence to support reasonable cause, the inquiry should be closed with no further action;
- Meet with the reporting party to finalize their statement and
- Prepare the notice of charges on the basis of the initial inquiry;
- Commence a thorough, reliable and impartial investigation by developing a strategic investigation plan, including a witness list, evidence list, intended timeframe, and order of interviews for all witnesses and the responding party, who may be given notice prior to or at the time of the interview;
- Complete the investigation promptly, and without unreasonable deviation from the intended timeline of ten (10) business days;
- Provide regular updates to both the reporting and responding parties, as appropriate, throughout the investigation;
- Make a finding, based on a preponderance of the evidence (whether a policy violation is more likely than not)

- [Some campuses prefer an interim step of sharing a draft report with the parties and allowing them a period of comment before a report is finalized];
- Present the findings to the responding party, who may accept the findings, accept the findings in part and reject them in part, or may reject all findings;
- Share the findings and update the reporting party on the status of the investigation and the outcome.

At any point during the investigation, if it is determined there is no reasonable cause to believe that university policy has been violated, the Title IX Coordinator has authority to terminate the investigation and end resolution proceedings.

Where the responding party is found not responsible for the alleged violation(s), the investigation will be closed. [OPTIONAL: The reporting party may request from the Title IX Coordinator an extraordinary decision re-open the investigation or to refer the matter to a hearing, which should only be granted by the Coordinator in exceptional circumstances].

Where the responding party accepts the finding of the investigation, the [Office of Student Conduct] will impose appropriate sanctions for the violation, after consultation with the Title IX Coordinator, when applicable. The university will act to end the discrimination, prevent its recurrence, and remedy its effects on the victim and the university community.

The parties will receive written notification of the outcome, to the extent permitted or mandated by law. In cases involving sexual misconduct, sexual harassment, stalking and/or intimate partner violence, the written notification includes the finding, any resulting sanctions, and the rationale for the decision. This written notification of final decision is delivered to the parties without undue delay between the notifications, explains appeals options and procedures, and any changes to the results that could occur before the decision is finalized.

In the event that the responding party rejects the findings in part or entirely, the [Office of Student Conduct] will convene a hearing under its respective procedures to determine whether the responding party is in violation of the contested aspects of the report. At the hearing, the findings of the investigation will [will not] be admitted, [but are not binding on the decider(s) of fact]. The investigator(s) may give evidence. The hearing will determine whether it is more likely than not that the responding party violated the policies forming the basis of the charge. The goal of the hearing is to provide an equitable resolution via an equitable process, respecting the civil and legal rights of all participants.

[insert or link Title IX and VAWA Section 304/Clery-compliant hearing procedures from student handbook here, if desired].

The [Office of Student Conduct] has final decision-making authority with regard to formal reports, subject to appeal. Where the responding party is found in violation as the result of a hearing¹, the [Office of Student Conduct] will impose appropriate sanctions for the violation², after consultation with the Title IX Coordinator, when applicable. The university will act to end the discrimination, prevent its recurrence, and remedy its effects on the victim and the university community. Appeal proceedings as described below apply to all parties to the report. The parties will receive written notification of the outcome of the hearing, to the extent permitted or mandated by law. In cases involving sexual misconduct, sexual harassment, stalking and/or intimate partner violence, the written notification includes the finding, any resulting sanctions, and the rationale for the decision. This written notification of final decision is delivered to the parties without undue delay between the notifications, explains appeals options and procedures, and any changes to the results that could occur before the decision is finalized.

Participation of Advisors [or Advocates] in the Resolution Process

All parties are entitled to an advisor [or advocate] of their choosing to guide and accompany them throughout the campus resolution process. The advisor [or advocate] may be a friend, mentor, family member, attorney or any other supporter a party chooses to advise them who is both eligible and available. People who will be called as witnesses may not serve as advisors [or advocates]. The university maintains a pool of trained (non-attorney) advisors [or advocates] who are available to the parties. The parties may choose advisors [or advocates] from outside the pool, or outside the campus community, but those advisors may not have the same level of insight and training on the campus process as do those trained by the university. Outside advisors [or advocates] are not eligible to be trained by the university.

The parties are entitled to be accompanied by their advisor in all meetings and interviews at which the party is entitled to be present, including intake, interviews, hearings and appeals. Advisors [or advocates] should help their advisees prepare for each meeting, and are expected to advise ethically, with integrity and in good faith. The university cannot guarantee equal advisory rights, meaning that if one party selects an

¹ Preferably in the form of a recommendation of finding and sanction to the Director of Student Conduct.

² If your policies or procedures have not yet listed all available sanctions, we encourage you to do so in this section. Our listing of available sanctions is contained in the ATIXA model policy.

advisor [or advocate] who is an attorney, but the other party does not, or cannot afford an attorney, the university is not obligated to provide one. However, the university maintains a listing of local attorneys who may offer their services pro bono.

[Additionally, responding parties may wish to contact organizations such as:

- FACE (<http://www.facecampusequality.org>)
- SAVE (<http://www.saveservices.org>),

Reporting parties may wish to contact organizations such as:

- The Victim Rights Law Center (<http://www.victimrights.org>), or the
- The National Center for Victims of Crime (<http://www.victimsofcrime.org>), which maintains the Crime Victim's Bar Association.]

All advisors [or advocates] are subject to the same campus rules, whether they are attorneys or not. Advisors [or advocates] may not present on behalf of their advisee in a meeting, interview or hearing and should request or wait for a break in the proceeding if they wish to interact with campus officials. Advisors [or advocates] may confer quietly with their advisees as necessary, as long as they do not disrupt the process. For longer or more involved discussions, the parties and their advisors should ask for breaks or step out of meetings to allow for private conversation. Advisors [or advocates] will typically be given a timely opportunity to meet in advance of any interview or hearing with the administrative officials conducting that interview or meeting. This pre-meeting will allow advisors [or advocates] to clarify any questions they may have, and allows the university an opportunity to clarify the role the advisor is expected to take.

Advisors [or advocates] are expected to refrain from interference with the university investigation and resolution. Any advisor [or advocate] who steps out of their role in any meeting under the campus resolution process will be warned once and only once. If the advisor [or advocate] continues to disrupt or otherwise fails to respect the limits of the advisor role, the advisor [or advocate] will be asked to leave the meeting. When an advisor [or advocate] is removed from a meeting, that meeting will typically continue without the advisor present. Subsequently, the [Title IX Coordinator or a deputy] will determine whether the advisor [or advocate] may be reinstated, may be replaced by a different advisor [or advocate], or whether the party will forfeit the right to an advisor [or advocate] for the remainder of the process.

The university expects that the parties will wish the university to share documentation related to the allegations with their advisors [or advocates]. The university provides a consent form that authorizes such sharing. The parties must complete this form before

the university is able to share records with an advisor [or advocate]. The parties are not otherwise restricted from discussing and sharing information relating to allegations with others who may support them or assist them in preparing and presenting. Advisors [or advocates] are expected to maintain the privacy of the records shared with them by the university. These records may not be shared with 3rd parties, disclosed publicly, or used for purposes not explicitly authorized by the university. The university may seek to restrict the role of any advisor [or advocate] who does not respect the sensitive nature of the process or who fails to abide by the university's privacy expectations.

The university expects an advisor [or advocate] to adjust their schedule to allow them to attend university meetings when scheduled. The university does not typically change scheduled meetings to accommodate an advisor's [or advocate's] inability to attend. The university will, however make provisions to allow an advisor [or advocate] who cannot attend in person to attend a meeting by telephone, video and/or virtual meeting technologies as may be convenient and available.

A party may elect to change advisors during the process, and is not locked into using the same advisor [or advocate] throughout.

Where an employee is a member of a union and entitled to a union representative in the process, that employee may be accompanied by the union representative as their advisor [or advocate] or may choose an advisor [or advocate] in addition to their union representative. In such cases, the other party may have two advisors [or advocates] as well.

The parties must advise the investigators of the identity of their advisor [or advocate] at least two (2) business days before the date of their first meeting with investigators. The parties must provide subsequent timely notice to the investigators if they change advisors [or advocates] at any time. No audio or video recording of any kind other than as required by institutional procedure is permitted during meetings with campus officials.

Requesting an Appeal

In the event that the responding party accepts the findings of the investigation, those findings cannot be appealed. Sanctions imposed by the [Office of Student Conduct] post-investigation can be appealed by any party according to the grounds, below. Post-hearing, any party may appeal the findings and/or sanctions only under the grounds described, below.

All sanctions imposed by the original hearing body will be in effect during the appeal. A request may be made to the [Director of Student Conduct] to delay implementation of the sanctions until the appeal is decided, but the presumptive stance of the institution is that the sanctions will go into effect immediately. Graduation, study abroad, internships/ externships, etc. do NOT in and of themselves constitute exigent circumstances, and students may not be able to participate in those activities during their appeal. In cases where the appeal results in reinstatement to the university or resumption of privileges, all reasonable attempts will be made to restore the student to their prior status, recognizing that some opportunities lost may be irreparable in the short term.

The decision of the [Office of Student Conduct] may be appealed by petitioning [the designated appeals committee or officer]. Any party who files an appeal request must do so in writing to the [Office of Student Conduct (OSC)], within [3-5]³ business days⁴ of receiving the written decision, for a review of the decision or the sanctions imposed. The written decision will be provided 1) in person and/or mailed to the local mailing address of the respective party as indicated in university records and emailed to the parties' university-issued email accounts. If there is no local address on file, mail will be sent to the parties' permanent address. Once received in person, mailed or emailed, the notice of decision will be deemed presumptively delivered.

The [OSC] will share the appeal request with the other party (e.g., if the responding party files an appeal, the appeal is shared with the reporting party, who may also wish to file a response and/or bring their own appeal on separate grounds; this response or appeal will be shared with the initial appealing party). Based on the written requests/responses or on interviews as necessary, the [appeals officer or panel] will send a letter of outcome for the appeal to all parties. The [appeals officer or panel] can take one of three possible actions. The appeal may dismiss an appeal request as untimely or ineligible, may grant an appeal and remand the finding and/or sanction for further investigation or reconsideration at the hearing level, or may modify a sanction.

The original finding and sanction will stand if the appeal request is not timely or substantively eligible, and that decision is final. The party requesting appeal must show clear error as the original finding and/or a compelling justification to modify a

³ We recommend keeping the appeal window very short, as it does not take long to know if you want to appeal, and considerable anxiety for the parties results from a drawn-out appeals timeline.

⁴ Business day is defined to mean normal operating hours, Monday through Friday, excluding recognized national holidays. In cases where additional time is needed in the investigation of a report, students will be notified accordingly. The university reserves the right to make changes and amendments to this policy and procedure as needed, with appropriate notice to the community.

sanction, as both finding and sanction are presumed to have been decided reasonably and appropriately during the original hearing.

The ONLY grounds for appeal are as follows:

1. A procedural [or substantive] error occurred that significantly impacted the outcome of the hearing (e.g. substantiated bias, material deviation from established procedures, etc.)⁵;
2. To consider new evidence, unavailable during the original hearing or investigation, that could substantially impact the original finding or sanction. A summary of this new evidence and its potential impact must be included;
3. The sanctions imposed fall outside the range of sanctions designated for this offense and the cumulative conduct history of the responding party.

If remanded to re-open the investigation, the results of a revised investigation can be subsequently forwarded for reconsideration at the hearing level, at the discretion of [OSC]. If the appeal remands to the hearing body for review, the reconsideration of the hearing body is not appealable.

In rare cases where a procedural [or substantive] error cannot be cured by the original hearing officers (as in cases of bias), the appeals [officer or panel] may order a new hearing with a new body of hearing officers. The results of a reconvened hearing cannot be appealed. The results of a new hearing can be appealed, once, on any of the three applicable grounds for appeals.

The procedures governing the hearing of appeals include the following:

- All parties should be timely informed of the status of requests for appeal, the status of the appeal consideration, and the results of the appeal decision;
- Every opportunity to return the appeal to the original hearing body for reconsideration (remand) should be pursued;
- Appeals are not intended to be full re-hearings of the allegation (de novo). In most cases, appeals are confined to a review of the written documentation or

⁵ Consider whether you wish to permit appeals on substantive grounds. We believe you can and should avoid this need by formulating your process as one where the original hearing body makes the finding a recommendation to the [Office of Student Conduct]. In this formulation, the [Director of Student Conduct] will be able to correct manifestly wrong findings prior to appeal by changing the recommendation of the original hearing body, and appeals on the basis of finding should therefore be unnecessary. If you include an appeal on finding, our concern is that it opens the door for appeal in every case, for appeals of appeals, and for rehearing on appeal, all of which we hope to avoid. It is also possible to view a manifestly wrong finding as a procedural error, thus mooted the need for finding as an explicit basis for appeal.

record of the original hearing, and pertinent documentation regarding the grounds for appeal;

- Appeals decisions are to be deferential to the original hearing body, making changes to the finding only where there is clear error and to the sanction only if there is a compelling justification to do so;
- An appeal is not an opportunity for appeals officers to substitute their judgment for that of the original hearing body merely because they disagree with its finding and/or sanctions.
- Sanctions imposed are implemented immediately unless the [Director of Student Conduct] stays their implementation in extraordinary circumstances, pending the outcome of the appeal.
- The appeals [officer or panel] will typically render a written decision on the appeal to all parties within five (5) business days from hearing of the appeal. The appeals [officer or panel's] decision to deny an appeal request is final.

Additional Notes

University students are responsible for knowing the information, policies and procedures outlined in this document.

The university reserves the right to make changes to this document as necessary and once those changes are posted online, they are in effect. Students are encouraged to check online [insert URL] for the updated versions of all policies and procedures. If government regulations change in a way that impacts this document, this document will be construed to comply with government regulations in their most recent form. Reports of misconduct made after the fact may raise issues of policy and procedure application, if policies and procedures have changed. Unless the parties accept current policies, all reports are governed by the policies that were in place at the time the alleged misconduct occurred. Procedures applicable are those that are in place at the time of resolution.

This document does not create legally enforceable protections beyond the protection of the background state and federal laws which frame such codes generally.

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Special Resolution Process Provisions

a. University-initiated proceedings

As necessary, university reserves the right to initiate a report and to initiate resolution proceedings without a formal report or participation by the victim of misconduct.

b. Notification of Outcomes

The outcome of a campus hearing is part of the education record of the responding party, and is protected from release under a federal law, FERPA. However, the university observes the legal exceptions as follows:

- Parties to non-consensual sexual contact/intercourse, sexual exploitation, sexual harassment, stalking, and intimate partner violence incidents have an absolute right to be informed of the outcome, essential findings/rationale, and any sanctions that may result, in writing, without condition or limitation, and without substantial delay between notifications to each party.
- The university may release publicly the name, nature of the violation and the sanction for any student who is found in violation of a university policy that is a “crime of violence,” including: arson, burglary, robbery, criminal homicide, sex offenses, assault, destruction/damage/vandalism of property, intimate partner violence, stalking and kidnapping/abduction. In doing so, the university will not release any information that could lead to the identification of the reporting party.

c. Alternative Testimony Options

For sexual misconduct reports, and other reports of a sensitive nature, whether the alleged victim is serving as the reporting party or as a witness, alternative testimony options will be given, such as placing a privacy screen in the hearing room, or allowing the alleged victim to testify outside the physical presence of the responding party, such as by Skype or phone. While these options are intended to help make the reporting party more comfortable, they are not intended to work to the disadvantage of the responding party.

d. Past Sexual History/Character

The past sexual history or sexual character of a party will not be admissible by the other party in the investigation or hearing unless such information is determined to be highly relevant by the Chair, [pertaining only to past or subsequent interactions between the

parties that offer context⁶]. All such information sought to be admitted will be presumed irrelevant, and any request to overcome this presumption by the parties must be reviewed in advance of the hearing by the [Director of Student Conduct]. While previous conduct violations by the responding party are not generally admissible as information about the present allegation, the [Director of Student Conduct] may supply previous reports of good faith allegations and/or findings to the investigators, the hearing officers, and [appeals officer or panel] to consider as evidence of pattern and/or predatory conduct.

e. Witness participation in an investigation

Witnesses are expected to cooperate with and participate in the university's investigation. Any witness who declines to participate in or cooperate with an investigation will not be permitted to offer evidence or testimony later in a hearing. Witnesses may provide written statements in lieu of interviews during the investigation and may be interviewed remotely by phone, Skype (or similar technology), if they cannot be interviewed in person. Parties who elect not to participate in the investigation will have the opportunity to offer evidence during the hearing and/or appeal stages of the process, though failure to offer evidence prior to an appeal does not constitute grounds for appeal on the basis of new evidence. Any witness scheduled to participate in a hearing must have been interviewed first by investigators (or have proffered a written statement), unless all parties consent to the participation of that witness in the hearing.

f. Training for those implementing these procedures

Personnel tasked with implementing these procedures, e.g.: Title IX Coordinator, investigators, hearing officers, appellate officers, etc.) will be trained at least annually. This training will include, but is not limited to: how to appropriately remedy, investigate, render findings and determine appropriate sanctions in reference to sexual harassment and discrimination allegations; the university's Sex/Gender-based Discrimination and Sexual Misconduct Policies and Procedures; confidentiality and privacy; and applicable laws, regulations and federal regulatory guidance.

g. Conflicts of Interest and Bias

⁶ [Note: a recent (spring 2015) OCR resolution agreement indicated that the institution's procedures should "disallow...evidence of the Complainant's past relationship with anyone other than the accused." ATIXA has worked on a number of cases where the complainant's sexual history with others was relevant to the allegation – largely because the reporting party raised the issue by claiming they would never engage in certain behaviors (when evidence indicates otherwise). These cases are certainly the exception, but we are concerned with the outright prohibition language from OCR. Institutions will need to determine whether to include this optional language accordingly.

The university is committed to ensuring that its resolution processes (e.g.: investigation, hearing, appeal, etc.) are free from actual or perceived bias or conflicts of interest that would materially impact the outcome. Any party who feels that there is actual or perceived bias or conflict of interest that would materially impact the outcome may submit a written petition for the person's removal from the process. The petition should include specifics as to the actual or perceived bias or conflict of interest, as why the petitioner believes the bias or conflict could materially impact the outcome. When the allegation involves a responding party who is an employee, petitions should be submitted promptly to the [Director of Human Resources]. When the allegation involves a responding party who is a student, petitions should be submitted promptly to the [Director of Student Conduct]. Such petitions may also be made to the Title IX Coordinator, or to the university president in the event that the potential conflict or bias involves the Title IX Coordinator.

h. Recordkeeping

In implementing these procedures, records of all allegations, investigations, and resolutions will be kept by the Title IX Coordinator indefinitely in the electronic Title IX Coordinator database.

STATEMENT OF THE RIGHTS OF THE REPORTING PARTY

- The right to investigation and appropriate resolution of all credible reports or notice of sexual misconduct or discrimination made in good faith to university officials;
- The right to be informed in advance of any public release of information regarding the incident;
- The right of the reporting party not to have any personally identifiable information released to the public, without his or her consent.
- The right to be treated with respect by university officials;
- The right to have university policies and procedures followed without material deviation;
- The right not to be pressured to mediate or otherwise informally resolve any reported misconduct involving violence, including sexual violence.

- The right not to be discouraged by university officials from reporting sexual misconduct or discrimination to both on-campus and off-campus authorities.
- The right to be informed by university officials of options to notify proper law enforcement authorities, including on-campus and local police, and the option to be assisted by campus authorities in notifying such authorities, if the student so chooses. This also includes the right not to report, if this is the victim's desire;
- The right to have reports of sexual misconduct responded to promptly and with sensitivity by campus law enforcement and other campus officials.
- The right to be notified of available counseling, mental health, victim advocacy, health, legal assistance, student financial aid, visa and immigration assistance, or other student services for victims of sexual assault, both on campus and in the community;
- The right to a campus no contact order (or a trespass order against a non-affiliated 3rd party) when someone has engaged in or threatens to engage in stalking, threatening, harassing or other improper behavior that presents a danger to the welfare of the reporting party or others;
- The right to notification of and options for, and available assistance in, changing academic and living situations after an alleged sexual misconduct incident, if so requested by the victim and if such changes are reasonably available (no formal report, or investigation, campus or criminal, need occur before this option is available). Accommodations may include:
 - Change of an on-campus student's housing to a different on-campus location;
 - Assistance from university support staff in completing the relocation;
 - Transportation accommodations;
 - Arranging to dissolve a housing contract and pro-rating a refund;
 - Exam (paper, assignment) rescheduling;
 - Taking an incomplete in a class;
 - Transferring class sections;
 - Temporary withdrawal;
 - Alternative course completion options.
- The right to have the institution maintain such accommodations for as long as is necessary, and for protective measures to remain confidential, provided

confidentiality does not impair the institution's ability to provide the accommodations or protective measures.

- The right to be fully informed of campus policies and procedures as well as the nature and extent of all alleged violations contained within the report;
- The right to ask the investigators to identify and question relevant witnesses, including expert witnesses;
- The right to review all documentary evidence available regarding the allegation, including the investigative report, subject to the privacy limitations imposed by state and federal law, at least 48 hours prior to the hearing;
- The right to be informed of the names of all witnesses who will be called to give testimony, at least two business day prior to the hearing, except in cases where a witness' identity will not be revealed to the responding party for compelling safety reasons (this does not include the name of the alleged victim/reporting party, which will always be revealed);
- The right not to have irrelevant prior sexual history admitted as evidence in a campus hearing;
- The right to regular updates on the status of the investigation and/or resolution.
- The right to have reports heard by hearing and appeals officers who have received [at least eight hours of] annual sexual misconduct training;
- The right to a panel comprised of representatives of both genders, if a panel is to be used;
- The right to preservation of privacy, to the extent possible and permitted by law;
- The right to meetings, interviews and/or hearings that are closed to the public;
- The right to petition that any member of the conduct body be recused on the basis of demonstrated bias;
- The right to bring a victim advocate or advisor of the reporting party's choosing to all phases of the investigation and resolution proceeding;

- The right to provide evidence by means other than being in the same room with the responding party;
- [The right to have the university compel the presence of student, faculty and staff witnesses, and the opportunity (if desired) to ask questions, [directly or indirectly], of all present witnesses [including the responding party], and the right to challenge documentary evidence].
- The right to be present for all testimony given and evidence presented during any resolution-related hearing;
- The right to make or provide an impact statement in person or in writing to the hearing officers following determination of responsibility, but prior to sanctioning;
- The right to be informed of the outcome and sanction of the resolution process in writing, without undue delay between the notifications to the parties, and usually within 1 business day of the end of the process;
- The right to be informed in writing of when a decision of the university is considered final, any changes to the sanction to occur before the decision is finalized, to be informed of the right to appeal the [finding and] sanction of the resolution process, and the procedures for doing so in accordance with the standards for appeal established by the university;

STATEMENT OF THE RESPONDING PARTY'S RIGHTS

The rights of the responding party should also be prominently indicated. These should include, among others particular to your university:

- The right to investigation and appropriate resolution of all credible reports of sexual misconduct made in good faith to university administrators;
- The right to be informed in advance, when possible, of any public release of information regarding the report.
- The right to be treated with respect by university officials;
- The right to have university policies and procedures followed without material deviation;

- The right to be informed of and have access to campus resources for medical, health, counseling, and advisory services;
- The right to be fully informed of the nature, policies and procedures of the campus resolution process and to timely written notice of all alleged violations within the report, including the nature of the violation and possible sanctions;
- The right to a hearing on the report, including timely notice of the hearing date, and adequate time for preparation;
- The right to review all documentary evidence available regarding the allegation, including the investigative report, subject to the privacy limitations imposed by state and federal law, at least 2 business days prior to the hearing;
- The right to be informed of the names of all witnesses who will be called to give testimony, at least 2 business days prior to the hearing, except in cases where a witness' identity will not be revealed to the responding party for compelling safety reasons (this does not include the name of the reporting party, which will always be revealed);
- The right not to have irrelevant prior sexual history admitted as evidence in a campus resolution process;
- The right to have reports heard by hearing and appeals officers who have received [at least 8 hours of] annual training;
- The right to petition that any member of the conduct body be recused on the basis of demonstrated bias;
- The right to a panel comprised of representatives of both genders if a panel is to be used;
- The right to meetings, interviews and hearings that are closed to the public;
- [The right to have the university compel the presence of student, faculty and staff witnesses, and the opportunity to ask questions, [directly or indirectly], of all present witnesses, and the right to challenge documentary evidence].
- The right to have an advisor of their choice to accompany and assist in the campus resolution process.

- The right to a fundamentally fair resolution, as defined in these procedures;
- The right to make or provide an impact statement in person or in writing to the hearing officers board following any determination of responsibility, but prior to sanctioning;
- The right to a decision based solely on evidence presented during the resolution process. Such evidence shall be credible, relevant, based in fact, and without prejudice;
- The right to be informed of the outcome and sanction of the resolution process in writing, without undue delay between the notifications to the parties, and usually within 1 business day of the end of the process;
- The right to be informed in writing of when a decision of the university is considered final, any changes to the sanction to occur before the decision is finalized, to be informed of the right to appeal the [finding and] sanction of the resolution process, and the procedures for doing so in accordance with the standards for appeal established by the university.