

## **TITLE IX SEX NONDISCRIMINATION POLICY, GRIEVANCE PROCEDURE, AND PROCESS**

### **Purpose**

#### **General Statement of Policy**

The University of Mary (the “University”) does not discriminate on the basis of sex in its education programs or activities, and it is required by Title IX of the Education Amendments Act of 1972 and its implementing regulations not to discriminate in such a manner. The requirement not to discriminate in its education program or activity extends to admission and employment. The University is committed to maintaining an education and work environment that is free from discrimination based on sex, including sexual harassment.

The University prohibits sexual harassment that occurs within its education programs and activities. When the University has actual knowledge of sexual harassment in its education program or activity against a person in the United States, it shall promptly respond in a manner that is not deliberately indifferent.

This policy applies to sexual harassment that occurs within the University’s education programs and activities and that is committed by a university employee, student, or other member of the university community. This policy does not apply to sexual harassment that occurs in a private setting or outside the scope of the University’s education programs and activities. This policy does not apply to sexual harassment that occurs outside the geographic boundaries of the United States, even if the sexual harassment occurs in the University’s education programs or activities.

Any student, parent, or guardian having questions regarding the application of Title IX and its regulations and/or this policy and grievance process should discuss them with the Title IX Coordinator. The University’s Title IX Coordinator is:

Patricia McWilliams-Pfliger  
Benedictine Center for Servant Leadership, Room 316, 7500  
University Drive  
Bismarck, ND 58504  
(701) 355-8133  
[titleix@umary.edu](mailto:titleix@umary.edu)

In the event the Title IX Coordinator is a party to a complaint, the University’s General Counsel shall serve as the alternate Title IX Coordinator for the oversight of that specific complaint.

Questions relating solely to Title IX and its regulations may be referred to the Title IX Coordinator. Inquiries about Title IX and its implementing regulations may be referred to:

Office for Civil Rights  
U.S. Department of Education (Chicago Office)  
Citigroup Center  
500 W. Madison St., Suite 1475  
Chicago, IL 60661-7204  
(312) 730-1560  
[OCR-Chicago@ed.gov](mailto:OCR-Chicago@ed.gov)

Individuals always have the option to notify law enforcement. The University will assist in contacting the police or other agency if requested. Filing a police report is not required in order for the University to investigate a formal complaint. The criminal process is separate from action that occurs through the University. An individual may report an incident with the University and not with law enforcement and vice versa.

The effective date of this policy is the date the policy was approved or revised at the end of this document and applies to alleged violations of this policy occurring on or after that date.

## **Statement of Policy**

### **Definitions**

“Actual knowledge” means notice of sexual harassment or allegations of sexual harassment to the University’s Title IX Coordinator or to any employee of the University. Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge. This standard is not met when the only official of the University with actual knowledge is the respondent.

“Complainant” means a person who is alleged to be the victim of conduct that could constitute sexual harassment under Title IX. A Title IX Coordinator who signs a formal complaint is not a complainant unless the Title IX Coordinator is alleged to be the victim of the conduct described in the formal complaint.

“Consent” means the mutual understanding of words or actions freely and actively given by two informed people that a reasonable person would interpret as a willingness to participate in mutually agreed upon sexual activity.

“Day” or “days” means, unless expressly stated otherwise, business days (i.e. day(s) that the university office is open for normal operating hours, Monday–Friday, excluding state-recognized holidays).

“Deliberately indifferent” means clearly unreasonable in light of the known circumstances. The University is deliberately indifferent only if its response to sexual harassment is clearly unreasonable in light of the known circumstances.

“Education program or activity” means locations, events, or circumstances for which the University exercises substantial control over both the respondent and the context in which the sexual harassment

occurs and includes university education programs or activities that occur on or off of university property.

“Formal complaint” means a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the University investigate the allegation of sexual harassment.

- a. A formal complaint filed by a complainant must be a physical document or an electronic submission. The formal complaint must contain the complainant’s physical or digital signature or otherwise indicate that the complainant is the person filing the formal complaint, and it must be submitted to the Title IX Coordinator in person, by mail, or by email.
- b. A formal complaint shall state that, at the time of filing the formal complaint, the complainant was participating in or attempting to participate in an education program or activity of the University with which the formal complaint is filed.

“Incapacitation” means the physical and/or mental inability to make informed, rational judgments. A person is incapacitated if they lack the necessary judgment to give consent to sexual activity. Being intoxicated or under the influence of any substance at the time of sexual contact is never an excuse for sexual harassment.

“Informal resolution” means options for resolving a formal complaint that do not involve a full investigation and adjudication. Informal resolution may encompass a broad range of conflict resolution strategies, including mediation or restorative justice.

“Relevant questions” and “relevant evidence” are questions, documents, statements, or information that are related to the allegations raised in a formal complaint. Relevant evidence includes evidence that is both inculpatory and exculpatory. 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.

“Remedies” mean actions designed to restore or preserve the complainant’s equal access to education after a respondent is found responsible. Remedies may include the same individualized services that constitute supportive measures but need not be non-punitive or non-disciplinary, nor must they avoid burdening the respondent.

“Respondent” means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment under Title IX.

“Sexual harassment” means any of three types of misconduct on the basis of sex that occurs in a university education program or activity and is committed against a person in the United States:

- a. *Quid pro quo* harassment by a university employee (conditioning the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct);

- b. Unwelcome conduct that a reasonable person would find so severe, pervasive, and objectively offensive that it denies a person equal educational access; or
- c. Any instance of sexual assault (as defined in the Clery Act, 20 U.S.C. §1092(f)(6)A(v)), dating violence, domestic violence, or stalking (as defined in the Violence Against Women Act, 34 U.S.C. §12291).

“Supportive measures” mean individualized services provided to the complainant or respondent without fee or charge that are reasonably available, non-punitive, non-disciplinary, not unreasonably burdensome to the other party, and designed to ensure equal educational access, protect safety, and deter sexual harassment. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, alternative educational services, mutual restrictions on contact between the parties, changes in work locations, leaves of absence, increased security and monitoring of certain areas of the university buildings or property, and other similar measures.

“Title IX Personnel” means any person who addresses, works on, or assists with the University’s response to a report of sexual harassment or formal complaint and includes persons who facilitate informal resolutions. The following are considered Title IX Personnel:

- a. “Title IX Coordinator” means an employee of the University that coordinates the University’s efforts to comply with and carry out its responsibilities under Title IX. The Title IX Coordinator is responsible for acting as the primary contact for the parties and ensuring that the parties are provided with all notices, evidence, reports, and written determinations to which they are entitled under this policy and grievance process. The Title IX Coordinator is also responsible for effective implementation of any supportive measures or remedies. The Title IX Coordinator must be free from conflicts of interest and bias when administering the grievance process.
- b. “Investigator” means a person who investigates a formal complaint. The investigator of a formal complaint may not be the same person as the Decision-maker or the Appellate Decision-maker. The Investigator may be a university employee, university official, or a third party designated by the University.
- c. “Decision-maker” means a person who makes a determination regarding responsibility after the investigation has concluded. The Decision-maker cannot be the same person as the Title IX Coordinator, the Investigator, or the Appellate Decision-maker.
- d. “Appellate Decision-maker” means a person who considers and decides appeals of determinations regarding responsibility and dismissals of formal complaints. The Appellate Decision-maker cannot be the same person as the Title IX Coordinator, Investigator, or Decision-maker. The Appellate Decision-maker may be a university employee or a third party designated by the University.
- e. The President of the University may delegate functions assigned to a specific university employee under this policy, including but not limited to the functions assigned to the Title IX Coordinator, Investigator, Decision-maker, Appellate Decision-maker, and facilitator of informal resolution processes to any suitably qualified individual, and such delegation may be rescinded by the President at any time. The University may also, at its discretion, appoint suitably qualified persons who are not university employees to fulfill any function under this policy,

including but not limited to Investigator, Decision-maker, Appellate Decision-maker, and facilitator of informal resolution processes.

- f. In such case that the respondent is the Chair of the Board of Trustees, the President of the Board of Trustees shall serve as the Decision-maker. In such case that the respondent is the President of the Board of Trustees, a member of the Board of Trustees, or the President of the University, the Chair of the Board of Trustees shall serve as the Decision-maker. In all such cases, the Executive Committee of the Board of Trustees shall serve as the Appellate Decision-maker. A majority of the members of the Executive Committee (excluding a respondent and any member who served as the Decision-maker in a given process) shall constitute a quorum for the decision, and each member shall have one vote.

### Basic Requirements for Grievance Process

#### Equitable Treatment

The University shall treat complainants and respondents equitably. However, equality or parity with respect to supportive measures provided to complainants and respondents is not required.

The University will not impose any disciplinary sanctions or take any other actions against a respondent that do not constitute supportive measures until it has completed this grievance process and the respondent has been found responsible. (Notwithstanding, there is provision for “Emergency Removal of a Student,” below).

The University will provide appropriate remedies to the complainant any time a respondent is found responsible.

#### Objective and Unbiased Evaluation of Complaints

Title IX Personnel, including the Title IX Coordinator, Investigator, Decision-maker, and Appellate Decision-maker, shall be free from conflicts of interest or bias for or against complainants or respondents generally or a specific complainant or respondent.

Throughout the grievance process, Title IX Personnel will objectively evaluate all relevant evidence, inculpatory and exculpatory, and shall avoid credibility determinations based solely on a person’s status as a complainant, respondent, or witness.

Title IX Personnel will presume that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.

#### Confidentiality

The University will keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g, or FERPA's regulations, or as required by law, or to carry out the purposes of 34 C.F.R. §106,

including the conduct of any investigation, hearing, or judicial proceeding arising thereunder (i.e., the University's obligation to maintain confidentiality shall not impair or otherwise affect the complainants and respondents receipt of the information to which they are entitled with respect to the investigative record and determination of responsibility).

#### Right to an Advisor; Right to a Support Person

Complainants and respondents have the right, at their own expense, to be assisted by an advisor of their choice during all stages of any grievance proceeding, including all meetings and investigative interviews. The advisor may be, but need not be, an attorney. In general, an advisor is not permitted to speak for or on behalf of a complainant or respondent, appear in lieu of complainant or respondent, participate as a witness, or participate directly in any other manner during any phase of the grievance process.

A complainant or respondent with a disability may be assisted by a support person throughout the grievance process, including all meetings and investigative interviews, if such accommodation is necessary. A support person may be a friend, family member, or any individual who is not otherwise a potential witness. The support person is not permitted to speak for or on behalf of a complainant or respondent, appear in lieu of complainant or respondent, participate as a witness, or participate directly in any other manner during any phase of the grievance process.

#### Notice

The University will send written notice of any investigative interviews or meetings to any party whose participation is invited or expected. The written notice will include the date, time, location, participants, and purpose of the meeting or interview, and will be provided to allow sufficient time for the party to prepare to participate.

#### Consolidation

The University may, in its discretion, 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.

#### Evidence

During the grievance process, the University will not require, allow, rely upon, or otherwise use questions or evidence that constitute or seek disclosure of information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

The University shall not access, consider, disclose, or otherwise use a party's medical, psychological, and similar treatment records unless the University obtains the party's voluntary, written consent.



### Burden of Proof

The burden of gathering evidence and the burden of proof shall remain upon the University and not upon the parties.

The grievance process shall use a clear and convincing evidence standard (i.e. it is highly or substantially likely that the allegations in the complaint are true) for all formal complaints under Title IX.

### Timelines

Any informal resolution process must be completed within thirty (30) calendar days following the parties' agreement to participate in such informal process.

An appeal of a determination of responsibility or of a decision dismissing a formal complaint must be received by the University within five (5) days of the date the determination of responsibility or dismissal was provided to the parties.

Any appeal of a determination of responsibility or of a dismissal will be decided within thirty (30) calendar days of the day the appeal was received by the University.

The University will seek to conclude the grievance process, including any appeal, within 120 calendar days of the date the formal complaint was received by the University.

Although the University strives to adhere to the timelines described above, in each case the University may extend the time frames for good cause. Good cause may include, without limitation: the complexity of the allegations; the severity and extent of the alleged misconduct; the number of parties, witnesses, and the types of other evidence (e.g., forensic evidence) involved; the availability of the parties, advisors, witnesses, and evidence (e.g., forensic evidence); concurrent law enforcement activity; intervening university holidays, breaks, or other closures; the need for language assistance or accommodation of disabilities; and/or other unforeseen circumstances.

### Potential Remedies and Disciplinary Sanctions

The following is the range of possible remedies that the University may provide a complainant and disciplinary sanctions that the University might impose upon a respondent, following determination of responsibility: counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, mutual or unilateral restrictions on contact between the parties, changes in work locations, leaves of absence, monitoring of certain areas of the university buildings or property, warning, suspension, exclusion, expulsion, transfer, remediation, termination, or discharge.

If the Decision-maker determines an employee-respondent is responsible for violating this policy, the Decision-maker will recommend appropriate remedies, including disciplinary sanctions/consequences. The Title IX Coordinator will notify the Executive Vice President of

the recommended remedies, such that an authorized administrator can consider the recommendation(s) and implement appropriate remedies.

If the Decision-maker determines a student-respondent is responsible for violating this policy, the Decision-maker will recommend appropriate remedies, including disciplinary sanctions/consequences. The Title IX Coordinator will notify the Vice President for Student Development of the recommended remedies, such that an authorized administrator can consider the recommendation(s) and implement appropriate remedies.

#### Reporting Prohibited Conduct

Any student who believes they have been the victim of unlawful sex discrimination or sexual harassment, or any person (including the parent of a student) with actual knowledge of conduct which may constitute unlawful sex discrimination or sexual harassment toward a student, should report the alleged acts as soon as possible to the Title IX Coordinator.

Any employee of the University who has experienced, has actual knowledge of, or has witnessed unlawful sex discrimination, including sexual harassment, or who otherwise becomes aware of unlawful sex discrimination, including sexual harassment, must promptly report the allegations to the Title IX Coordinator without screening or investigating the report or allegations.

A report of unlawful sex discrimination or sexual harassment may be made at any time, including during non-business hours, and may be made in person, by mail, by telephone, or by email using the Title IX Coordinator's contact information or by [filling out the form](#) available online.

Sexual harassment may constitute both a violation of this policy and criminal law. To the extent the alleged conduct constitutes a crime, the University shall report the alleged conduct to law enforcement authorities. The University encourages complainants to report criminal behavior to the police immediately.

#### Initial Response and Assessment by the Title IX Coordinator

When the Title IX Coordinator receives a report, the Title IX Coordinator shall promptly contact the complainant confidentially 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.

The University will offer supportive measures to the complainant regardless of whether the complainant decides to make a formal complaint. The University must maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the University's ability to provide the supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

If the complainant does not wish to file a formal complaint, the allegations will not be investigated by the University unless the Title IX Coordinator determines that signing a formal complaint to initiate an



investigation over the complainant's wishes is not clearly unreasonable in light of the known circumstances.

Upon receipt of a formal complaint, the University must provide written notice of the formal complaint to the known parties with sufficient time to prepare a response before any initial interview. This written notice must contain:

1. The allegations of sexual harassment, including sufficient details known at the time, the identities of the parties involved in the incident (if known), the conduct allegedly constituting sexual harassment, and the date and location of the alleged incident, if known;
2. A statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility will be made at the conclusion of the grievance process;
3. A statement explaining that the parties may have an advisor of their choice, who may be but need not be an attorney;
4. A statement that the parties may inspect and review evidence gathered pursuant to this policy;
5. A listing of supportive measures available, enclosed in the notice both to the complainant and the respondent;
6. A statement informing the parties that the University prohibits knowingly making false statements or knowingly submitting false information;
7. A statement referring the parties to the "Retaliation Prohibited" section of this policy; and
8. A copy of this policy.

#### Status of Respondent during Pendency of Formal Complaint

##### Emergency Removal of a Student

The University may remove a student-respondent from campus residency or an education program or activity of the University on an emergency basis before a determination regarding responsibility is made if:

1. The University undertakes an individualized safety and risk analysis; and
2. The University 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 of the student-respondent.
  - a. If the University determines the student-respondent poses such a threat, it will so notify the student-respondent and the student-respondent will have an opportunity to challenge the decision immediately following the removal. In determining whether to impose emergency removal measures, the Title IX Coordinator shall consult related university policies.

##### Employee Administrative Leave

The University may place a non-student employee on administrative leave during the pendency of the grievance process of a formal complaint. Such leave will typically be paid leave unless circumstances justify unpaid leave in compliance with legal requirements. The University must take into consideration applicable requirements of Section 504 of the Rehabilitation Act of 1973

and the Americans with Disabilities Act prior to removing an individual with a qualifying disability.

#### Informal Resolution of a Formal Complaint

At any time prior to reaching a determination of responsibility, informal resolution may be offered and facilitated by the University at the University's discretion, but only after a formal complaint has been received by the University.

The University may not require as a condition of enrollment or continued enrollment, or of employment or continued employment, or enjoyment of any other right, the waiving of the right to a formal investigation and adjudication of formal complaints of sexual harassment.

The informal resolution process may not be used to resolve allegations that a university employee sexually harassed a student.

The University will not facilitate an informal resolution process without both parties' agreement and will obtain their voluntary, written consent. The University will provide to the parties a written notice disclosing the allegations; the requirements of the informal resolution process, including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations; the parties' right to withdraw from the informal resolution process; and any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.

At any time prior to agreeing to a resolution through the informal resolution process, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint.

#### Dismissal of a Formal Complaint

Under federal law, the University must dismiss a Title IX complaint, or a portion thereof, if the conduct alleged in a formal complaint or a portion thereof:

1. Would not meet the definition of sexual harassment, even if proven;
2. Did not occur in the University's education program or activity; or
3. Did not occur against a person in the United States.

*A complaint that would otherwise qualify under Title IX but for the conduct taking place outside the United States will be treated by the University under the same procedure and process of a Title IX complaint, although it would not technically be under the jurisdiction of Title IX.*

The University may, in its discretion, dismiss a formal complaint or allegations therein if:

1. The complainant informs the Title IX Coordinator in writing that the complainant desires to withdraw the formal complaint or allegations therein;
2. The respondent is no longer enrolled or employed by the University; or
3. Specific circumstances prevent the University from gathering sufficient evidence to reach a determination.

The University shall provide written notice to both parties of a dismissal. The notice must include the reasons for the dismissal.

Dismissal of a formal complaint or a portion thereof does not preclude the University from addressing the underlying conduct in any manner that the University deems appropriate.

#### Investigation of a Formal Complaint

If a formal complaint is received by the University, the University will assign or designate an Investigator to investigate the allegations set forth in the formal complaint.

If during the course of the investigation the University decides to investigate any allegations about the complainant or respondent that were not included in the written notice of a formal complaint provided to the parties, the University must provide notice of the additional allegations to the known parties.

When a party's participation is invited or expected in an investigative interview, the Investigator will coordinate with the Title IX Coordinator to provide written notice to the party of the date, time, location, participants, and purposes of the investigative interview with sufficient time for the party to prepare.

During the investigation, the Investigator must provide the parties with an equal opportunity to present witnesses for interviews, including fact witnesses and expert witnesses, and other inculpatory and exculpatory evidence.

Prior to the completion of the investigative report, the Investigator, through the Title IX Coordinator, will provide the parties and their advisors (if any) with an equal opportunity to inspect and review any evidence directly related to the allegations. The evidence shall be provided in electronic format or hard copy and shall include all relevant evidence, evidence upon which the University does not intend to rely in reaching a determination regarding responsibility, and any inculpatory or exculpatory evidence, whether obtained from a party or another source. The parties will have ten (10) days to submit a written response, which the Investigator will consider prior to completion of the investigative report.

The Investigator will prepare a written investigative report that fairly summarizes the relevant evidence. The investigative report may include credibility determinations that are not based on a person's status as a complainant, respondent, or witness. The University will send the parties and their advisors (if requested) a copy of the report in electronic format or hard copy for their review and written response at least ten (10) days prior to a hearing scheduled by the University.

#### Determination Regarding Responsibility

##### 1. Informal Resolution

Upon receipt of the final investigative report, the Decision-maker may opt to provide the parties with a proposed informal resolution. If both parties agree in writing to the proposed informal

resolution, the grievance process ends. If either party does not agree to the proposed informal resolution, the matter will proceed to a hearing.

## 2. Hearing

The purpose of the hearing is for the Decision-maker objectively to evaluate relevant evidence to determine whether or not the respondent is responsible for engaging in sexual harassment. If the Decision-maker determines that the respondent has committed sexual harassment, he or she is also responsible for determining appropriate sanctions.

### a. Preparation for the Hearing

The Title IX Coordinator or a designee will arrange the administrative details for the hearing, including: (1) arranging a time and place for the hearing, (2) making the investigative report and evidence that is directly related to the allegations raised in the formal complaint available at the hearing so that both complainant and respondent will have equal opportunity to refer to such evidence during the hearing, and (3) arranging for a complainant or respondent who does not have an advisor to be appointed one.

The hearing will occur with the complainant and respondent located in separate rooms, if requested by either party, with technology enabling the Decision-maker, complainant, respondent, and any advisor(s) simultaneously to see and hear any party or witness answering questions.

### b. Conduct of the Hearing

The Decision-maker is responsible for managing the conduct of the hearing and ensuring that procedures are followed. The Decision-maker facilitates all phases of the hearing and resolves all questions that arise during the hearing, including but not limited to procedural issues and issues regarding the propriety or relevance of specific questions, arguments and information presented. The Decision-maker will also seek to ensure an orderly and fair exchange of information during the hearing and may ask questions of any party or witness. If anyone attending the hearing acts without appropriate respect for decorum, including failure to comply with the Decision-maker's instructions, the Decision-maker may take appropriate action, including requiring that person to leave the hearing.

At the hearing both the complainant's advisor and the respondent's advisor will have the opportunity to ask the other party and any witness relevant questions and follow-up questions. Only relevant cross-examination and other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a question, the Decision-maker will determine whether the question is relevant. If the Decision-maker excludes a question as not relevant, they will orally explain their decision to do so.

Questions and evidence about a complainant's sexual predisposition or prior sexual behavior are not relevant questions unless: (1) they are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or (2) they concern specific

incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

If a complainant, respondent, or witness does not submit to cross-examination at the hearing, the Decision-maker will not rely on any statement of that party or witness in reaching a determination regarding responsibility, nor will the Decision-maker draw on inference about the determination regarding responsibility based solely on a party or witness's absence from the hearing or refusal to answer cross-examination or other questions.

An audio recording, audiovisual recording, or a transcription of the hearing will be made and provided to the complainant and respondent for review after the hearing.

### 3. Determination and Sanctions

Following the presentation of information at the hearing, the Decision-maker will determine whether the respondent engaged in sexual harassment. The Decision-maker will deliberate in private.

If the Decision-maker determines that the respondent engaged in sexual harassment, he or she will deliberate further to determine appropriate sanctions. The University may implement supportive measures at any time prior or subsequent to any finding of responsibility. However, disciplinary sanctions and remedies may only be implemented following a determination of responsibility. Such sanctions and remedies may range from a warning to expulsion or exclusion from the University to termination of employment. Other possible sanctions include required education or training, restrictions on participation in campus activities, change in work schedule or location, disciplinary probation, administrative leave, suspension with or without pay or with or without conditions for return, reassignment of duties, no-contact or limited-contact orders, chemical health assessments, restrictions on campus access, including housing or course enrollment, change of housing, and/or withdrawal or non-conferral of degree. Sanctions may be combined.

In determining appropriate disciplinary sanctions, the Decision-maker should consider the surrounding circumstances, the nature of the behavior, past incidents or past or continuing patterns of behavior, the relationships between the parties involved, and the context in which the alleged incident occurred.

The Decision-maker must issue a written determination regarding responsibility that applies the clear and convincing standard to the facts and circumstances of the formal complaint. The written determination of responsibility must include the following:

1. Identification of the allegations potentially constituting sexual harassment;
2. 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, and methods used to gather other evidence;
3. Findings of fact supporting the determination;

4. Conclusions regarding the application of the University's code of conduct to the facts;
5. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the University imposes on the respondent, and whether remedies designed to restore or preserve equal access to the recipient's education program or activity will be provided by the University to the complainant; and
6. The University's procedures and permissible bases for the complainant and respondent to appeal and the date by which an appeal must be made.

The written determination of responsibility must be provided to the parties simultaneously.

The Title IX Coordinator is responsible for the effective implementation of any remedies.

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.

### Appeals

The University shall offer the parties an opportunity to appeal a determination regarding responsibility or the University's dismissal of a formal complaint or any allegations therein on the following bases:

1. A procedural irregularity that affected the outcome of the matter (e.g., a material deviation from established procedures);
2. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made that could affect the outcome of the matter; and
3. The Title IX Coordinator, Investigator, or Decision-maker had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

If notice of an appeal is timely received by the University, the University will notify the parties in writing of the receipt of the appeal, assign or designate the Appellate Decision-maker, and give the parties a reasonable, equal opportunity to submit a written statement in support of or challenging the outcome.

After reviewing the parties' written statements, the Appellate Decision-maker must issue a written decision describing the result of the appeal and the rationale for the result.

The written decision describing the result of the appeal must be provided simultaneously to the parties.

The decision of the Appellate Decision-maker is final. No further review beyond the appeal is permitted.



### Retaliation Prohibited

Neither the University nor any other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX, its implementing regulations, or this policy, or because the individual 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. Intimidation, threats, coercion, or discrimination, including charges 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 secured by Title IX, its implementing regulations, or this policy, constitute retaliation. Retaliation against a person for making a report of sexual harassment, filing a formal complaint, or participating in an investigation constitutes a violation of this policy that can result in the imposition of disciplinary sanctions/consequences and/or other appropriate remedies.

Any person may submit a report or formal complaint alleging retaliation in the manner described in this policy, and it will be addressed in the same manner as other complaints of sexual harassment or sex discrimination.

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

### Training

The University shall ensure that Title IX Personnel receive appropriate training. The training shall include instruction on:

1. The Title IX definition of sexual harassment;
2. The scope of the University's education program or activity;
3. How to conduct an investigation and grievance process, appeals, and informal resolution processes, as applicable;
4. How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias;
5. For Decision-makers, training on issues of relevance of questions and evidence, including when questions and evidence about the complainant's prior sexual behavior are not relevant; and
6. For Investigators, training on issues of relevance, including the creation of an investigative report that fairly summarizes relevant evidence.

If the University chooses to appoint a third party to serve as Title IX Personnel for any case, that person is presumed to have been adequately trained and appointed for their expertise.

The training materials will not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints.

Resources used to train Title IX Personnel shall be listed on the University's website.

### Integrity of Mission

The University qualifies as “an educational institution controlled by a religious organization” as specified in 34 C.F.R. § 106.12. No provision of this policy, or of Title IX of the Education Amendments of 1972 or its implementing regulations, shall be applied in a way that is inconsistent with the University’s beliefs, including, but not limited to those points specified in the University’s *Statement of Mission and Identity* and the teachings of the Catholic Church as set forth by the magisterium.

### Dissemination of Policy

This policy shall be made available to all students, parents/guardians of students, and employees.

The University shall conspicuously post the name of the Title IX Coordinator, including office address, telephone number, and Title IX email address [on its website](#) and in the student and employee handbooks.

Furthermore, in the [same section of its website](#), referenced in student and employee handbooks, and on the applications for admission and employment, the University shall provide the following information to applicants for admission and employment, employees, students, and parents or legal guardians:

1. The name or title, office address, electronic mail address, and telephone number of the Title IX Coordinator;
2. Notice that the University does not discriminate on the basis of sex in the education program or activity that it operates and that it is required by Title IX not to discriminate in such a manner;
3. A statement that the requirement not to discriminate in the education program or activity extends to admission and employment and that inquiries about the application of Title IX may be referred to the Title IX Coordinator, to the Assistant Secretary for Civil Rights of the United States Department of Education, or both; and
4. Notice of the University’s grievance procedures and grievance process contained in this policy, including how to report or file a complaint of sex discrimination, how to report or file a formal complaint of sexual harassment, and how the University will respond.

### Recordkeeping

All records created and maintained pursuant to the Title IX Sex Nondiscrimination Policy, Grievance Procedure, and Process shall be retained indefinitely by the Title IX Office [in database, digital, and/or paper form] unless destruction or expungement is authorized by the Title IX Coordinator, who may act under his or her own discretion, in accordance with a duly executed and binding settlement of claim, and/or by court order.

### Approved

*28 September 2020 by the President’s Council*

*29 September 2020 by the President of the University*

*30 September 2020 by the Board of Trustees (EC)*

*22 October 2020 delivered to University Senate*

v. 09042024

[umary.edu/sites/default/files/2021-11/Title-IX-Sex-Nondiscrimination-Policy-Grievance-Procedure-and-Process-2021.pdf](http://umary.edu/sites/default/files/2021-11/Title-IX-Sex-Nondiscrimination-Policy-Grievance-Procedure-and-Process-2021.pdf)