

**Policy 1340
Sexual Misconduct**

**Date of Current Revision: August 2021
Responsible Office: Title IX Office**

1. PURPOSE

This policy sets out the university's commitment to providing a workplace and learning environment free from sexual misconduct.

The policy on nondiscrimination may be found in Policy [1302](#)-Equal Opportunity. The policy on Title IX sexual harassment may be found in Policy 1346-Title IX Sexual Harassment. The policy concerning all forms of discrimination other than sexual misconduct and Title IX sexual harassment may be found in Policy [1324](#)-Discrimination and Harassment (other than sexual harassment and misconduct). Sexual misconduct is not limited by gender, gender identity, gender expression, or sexual orientation of the complainant or the respondent.

2. AUTHORITY

The Board of Visitors has been authorized by the Commonwealth of Virginia to govern James Madison University. See Code of Virginia §§ 23.1-1301 and 23.1-1600. The Board has delegated the authority to manage the university to the president.

STATE OR FEDERAL STATUTE AND /OR REGULATION

This policy is written in accordance with Title VII of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000e), Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 et seq.) and its implementing regulations (34 CFR Part 106), the Clery Act (20 U.S.C. § 1092(f)), the Violence Against Women Act (42 U.S.C. § 13701), the Virginia Human Rights Act (Code of Virginia § 2.2-3900 et seq.) and §§ 23.1-806-808 of the Code of Virginia. Some behavior prohibited by this policy is also criminal activity under Title 18.2 of the Code of Virginia.

3. DEFINITIONS

Advisor of Choice

A person who the complainant or respondent chooses to provide support for them while they are participating in procedures under this policy. For purposes of this policy, an Advisor of Choice may also be referred to as a Support Person.

Complainant

An individual who is alleged to be the victim of conduct that could constitute sexual misconduct.

Confidential Resources

University employees who are exempt from responsible employee reporting obligations under this policy. Confidential Resources include employees who provide or support the provision of counseling, advocacy, health, mental health, or sexual assault-related services to members of

the university community who have experienced sexual misconduct. These include campus victim advocates, mental health counselors, social workers, psychologists, health center employees, and any other person with a professional license requiring confidentiality or an employee in the office who is supervised by such a person. Confidential Resources also include affiliates who are pastoral or religious counselors. Confidential Resources also include undergraduate student employees, with the exception of Office of Residence Life staff.

Consent

An outward demonstration through understandable words or actions that convey a knowing and voluntary agreement to engage in mutually agreed upon sexual activity. Consent cannot be obtained by physical or verbal coercion that is express or implied, which includes the use of intimidation, threats, force, or duress. Consent cannot be obtained by ignoring or acting in spite of the objections of another, by previous consent, or by taking advantage of another person's incapacitation or physical helplessness where one knows or reasonably should have known of such incapacitation or helplessness. An individual who is incapacitated because of age, disability, voluntary activity, or through the acts of others cannot give consent. Silence or absence of resistance does not imply consent. Consent is voluntary and may be withdrawn at any time by communicating the withdrawal through an outward demonstration of understandable words or actions.

Dating Violence

A form of sexual violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with another person, where the existence of such a relationship shall be determined based on a consideration of the following factors:

- The length of the relationship.
- The type of relationship.
- The frequency of interaction between the persons involved in the relationship.

Day

A calendar day. When a substantial portion of a specified period of days falls during a period of time when the university is closed, that portion of the time period shall not be counted, and the time period shall be extended by the number of days falling on days when the university is closed. Weekends are not considered substantial periods of time and will not be added to extend a deadline. If a time period is set to end on a day when the university is closed, the time period shall be extended to end on the next scheduled day when the university reopens. Examples: A specified time period will not end during winter break or on any day when the university is closed for inclement weather. A five-day time period set to begin on the first day of winter break will be extended by the number of days for the scheduled winter break, so that the time will actually begin to run upon the first day after winter break. A deadline that falls on a day when the university is closed for inclement weather will be extended until the next day the university opens for business. This extension does not apply to deadlines for electronic submissions.

Domestic Violence

Crimes of violence committed by any of the following:

- A current or former spouse or intimate partner of the victim
- A person with whom the victim shares a child in common

- A person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner
- A person similarly situated to a spouse of the victim under the domestic or family violence laws of the Commonwealth of Virginia
- Any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the Commonwealth of Virginia

Education Programs or Activities

All of the operations of the university.

Formal Complaint

A document filed by a complainant or signed by the Title IX Coordinator alleging sexual misconduct against a respondent and requesting that the university investigate the allegation of sexual misconduct. A "document filed by a complainant" means a document or electronic submission that includes the complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint. The complainant must be participating in or attempting to participate in an education program or activity at the time of filing a formal complaint.

Good Faith

Actions taken in the honest, sincere, and reasonable belief in the truth of the matters alleged and without any malice or the desire to defraud or maliciously harm others. An allegation made or testimony given in a proceeding is not in good faith if made with knowing or reckless disregard for the truth.

Hostile Environment

A hostile environment may be created by oral, written, graphic, or physical conduct that is sufficiently severe, persistent, or pervasive, and objectively offensive in a manner that interferes with, limits, or denies the person the ability to participate in or benefit from the institution's education programs or activities, including employment access, benefits or opportunities. Mere subjective offensiveness is not enough to create a hostile environment. In determining whether conduct is severe, persistent, or pervasive, and objectively offensive, and thus creates a hostile environment, the following factors will be considered: (a) the degree to which the conduct affected one or more individuals' education or employment; (b) the nature, scope, frequency, duration, and location of the incident(s); (c) the identity, number, and relationships of persons involved; (d) the perspective of a "reasonable person" in the same situation as the person subjected to the conduct; and (e) the nature of higher education.

Incapacitation

Physical or mental inability to make informed, rational judgments. States of incapacitation include, without limitation, sleep, blackouts, unconsciousness, and the inability to make such decisions due to the voluntary or involuntary use of alcohol or drugs. Incapacitation may occur because of age, disability, voluntary activity, or through the acts of others.

Non-Consensual Relationships

A sexual relationship between members of the university community is prohibited if it is influenced by any form of fear or coercion, such that it causes one party to believe that they must submit to unwelcome sexual conduct in order to accept or continue employment, achieve

an employment or educational benefit, or participate in a program or activity. A sexual relationship is prohibited between individuals where a power differential would imply or raise the inference of exploitation or raise the inference that an educational or employment decision will be based on whether or not there is submission to coerced sexual conduct. The university prohibits sexual relationships between faculty members and students in their classes or under their supervision, e.g., teaching or graduate assistants.

Preponderance of Evidence

Preponderance of the evidence will be the standard of proof used to make determinations for all alleged policy violation(s) of sexual misconduct for both the student and employee processes. Preponderance of the evidence means that there is greater than a fifty-percent likelihood that the respondent violated the policy.

Relevant Evidence

Evidence is relevant if it has any tendency to make a fact more or less probable than it would be without the evidence, and the fact is of consequence in determining the outcome of the case. Relevant evidence includes evidence concerning the credibility of a party or witness.

Report

An oral or written allegation received by the Title IX office that describes an alleged instance of sexual misconduct by a student, employee, affiliate, or visitor, whether or not a complainant or respondent is identified by name. A report of an alleged incident that is received by the Title IX office may be actionable under this policy and may lead to the initiation of a formal complaint process.

Respondent

A person who has been reported to be the perpetrator of conduct that could constitute sexual misconduct.

Responsible Employee

University employees who have a duty to disclose to the Title IX Office all reports of sexual misconduct that they receive within the course of their employment. All university employees (except Confidential Resources as defined in this policy) are Responsible Employees.

Retaliation

Intimidation, interference, threats, coercion, or discrimination against any individual for the purpose of interfering with any right or privilege under this policy, or because the individual has made a report or complaint, or has participated or refused to participate in any manner under this policy, constitutes retaliation. Retaliation also includes bringing charges against an individual for code of conduct violations that do not involve sex discrimination or sexual misconduct, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege under this policy.

Sexual Assault

A sexual act committed against another person without consent. For purposes of this policy, sexual assault includes any of the following offenses:

- Rape
Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim. Attempts to commit rape are included.
- Fondling
The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim.
- Incest
Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- Statutory rape
Sexual intercourse with a person who is under the statutory age of consent. The statutory age of consent in the Commonwealth of Virginia is 18 years old.

For purposes of this policy, sexual assault also includes any nonconsensual physical contact of a sexual nature that is forced on another person, including unwelcome sexual touching of any kind. This includes engaging, attempting to engage, or completing any kissing; intentional touching of another person's body part in a sexual manner, directly or through clothing; or forcing a person to touch oneself or another person's body part in a sexual manner, directly or through clothing.

Sexual Exploitation

Taking sexual advantage of another person without that individual's consent. Examples include, but are not limited to, prostituting another person; causing or attempting to cause the incapacitation of another person for a sexual purpose; recording, photographing, creating, or transmitting sexual utterances, sounds, or images, whether real or fake, of another person without that person's consent; allowing a third party to observe sexual activity without the consent of the participants; knowingly transmitting sexually transmitted infections or other diseases without the knowledge of the person's sexual partner; inducing another to expose their body for sexual purposes; intentionally altering, removing, or sabotaging contraceptive or prophylactic measures without the knowledge of the other party, including but not limited to condoms and/or birth control measures; and viewing another person's sexual activity, intimate body parts, or nakedness in a place where that person would have a reasonable expectation of privacy without that person's consent.

Sexual Harassment

Conduct consisting of unwelcome or offensive sexual advances, requests for sexual favors, or other conduct of a sexual nature that can be verbal (e.g., specific demands for sexual favors, sexually suggestive comments, sexual propositions, or sexual threats); non-verbal (e.g., sexually suggestive emails or other writings; objects or pictures; suggestive, obscene or insulting sounds or gestures); or physical (e.g., unwanted touching or other physical contact; or any unwelcome or coerced sexual activity), and that meets at least one of the following definitions:

- Term or condition of employment or education ("quid pro quo"). This type of sexual harassment occurs when the terms or conditions of employment, educational benefits, academic grades or opportunities, living environment, or participation in a university activity are conditioned upon, either explicitly or implicitly, submission to or rejection of

unwelcome sexual advances or requests for sexual activity, or such submission or rejection is a factor in decisions affecting that individual's employment, education, living environment, or participation in a university education program or activity.

- Hostile environment. Acts of sexual harassment that create a hostile environment, as defined herein.

Sexual Misconduct

Sexual misconduct encompasses sexual assault, sexual violence, sexual harassment, sexual exploitation, stalking, dating violence, domestic violence, and non-consensual relationships. Sexual misconduct can involve persons of the same or different sex, sexual orientation, gender, or gender identity.

Sexual Violence

Physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent (e.g., due to the person's age, mental state, use of drugs or alcohol, or because an intellectual or other disability prevents the person from having the capacity to give consent).

Sexual Violence Review Committee (SVRC)

A committee composed, at a minimum, of a representative of the university's Title IX Office, a member of the university's police department, and a member of the university's student affairs administration. The SVRC reviews information related to alleged acts of sexual violence reported to the Title IX Office to determine appropriate reports to be made to law enforcement units outside of the university. The SVRC is responsible for carrying out the university's obligations under Virginia Code § 23.1-806.

Stalking

Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others, or suffer substantial emotional distress.

Supportive Measures

Measures or interventions which may be taken by the university upon receipt of a report or formal complaint of sexual misconduct to ensure a safe environment for the parties and/or the university community. These may include, but are not limited to, no contact orders between the complainant and the respondent; modifications of assignments, classes, schedules, or jobs; changes to university-provided housing; transportation options; or any other measure that would provide a safe work and/or learning environment for both parties.

Title IX Coordinator

The individual designated by the university who is responsible for coordinating the university's compliance with Title IX, including overseeing the effective implementation of supportive measures. The Title IX Coordinator serves impartially, avoiding prejudgment of facts at issue, conflicts of interest, and bias.

Title IX Office

Refers to the individuals who are employed in the Title IX Office, including the university's Title IX Coordinator. The Title IX Office is responsible for receiving and responding to reports of sexual misconduct, investigating formal complaints of sexual misconduct in accordance with this policy, and identifying any patterns or systemic problems revealed by such reports and formal

complaints. The office participates in the coordination of the institution's compliance with Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 et seq.) through tracking the university's compliance efforts and consulting with and providing support to the university's various Title IX Officers. Contact information for the Title IX Office is available on the [Title IX website](#). Email for the Title IX Office is titleix@jmu.edu.

Title IX Officers

The individuals within the university who act as liaisons with the Title IX Office. Title IX Officers may be designated to carry out any of the following: conduct trainings, coordinate hearing procedures, or consult on provision of resources for involved parties.

4. APPLICABILITY

This policy prohibits sexual misconduct by any current student, employee, or affiliate against any current student, employee, affiliate, or applicant for admission or employment.

This policy applies on and off campus, including during study abroad programs.

At the time of filing a formal complaint, a complainant must be participating in, or attempting to participate in, a university education program or activity.

5. POLICY

5.1 Prohibition on Sexual Misconduct

This policy sets out the university's commitment to providing a workplace and learning environment free from sexual misconduct. The university prohibits sexual misconduct by or against any member of the university community.

5.2 Confidentiality

The university will respect and maintain confidentiality in carrying out procedures under this policy within the context of all applicable state and federal laws and university policies. The university does not restrict the First Amendment rights of participants in procedures under this policy.

A request for confidentiality regarding sexual misconduct that does not include sexual assault or sexual violence will be honored by the university, unless there is a valid reason for setting aside this request. A valid reason includes circumstances that suggest there is an increased risk to the safety of the university community, or if necessary in order to provide appropriate supportive measures.

Other factors that will be considered in assessing a request for confidentiality include whether the incident involved the presence or threat of a weapon, the age or vulnerability of the complainant, and whether the university possesses other means to obtain relevant evidence.

5.3 Good Faith

The university presumes individuals participating in procedures under this policy are acting in good faith. Failure to act in good faith in bringing an allegation under this policy, failure to act in

good faith in participating during the proceedings (i.e. intentionally providing false or misleading evidence), or in any other capacity concerning this policy constitutes a form of misconduct and may result in sanctions separate from, and not dependent on, the outcome of any report or formal complaint filed under this policy.

5.4 Reporting Obligations for Responsible Employees

All responsible employees must disclose any reports of sexual misconduct that they receive within the course of their employment to the Title IX Office using the procedures outlined in this policy.

Employees who are identified as confidential resources and who receive information in the course of their employment about sexual misconduct are not required to make such disclosures to the Title IX Office. Nothing in this policy, however, relieves Campus Security Authorities (CSAs) from crime reporting obligations pursuant to the Clery Act.

a. Exceptions to Responsible Employee Reporting Obligations

The reporting obligation does not apply to information disclosed at public events such as “Take Back the Night” rallies, personal accounts included in class assignments, or other similar instances where circumstances of the responsible employee’s receipt of information would not be reasonably expected to trigger the employee’s disclosure responsibilities under this policy. The reporting obligation does not apply when the information is disclosed to the responsible employee outside of the context of their employment.

5.5 Anonymous Reporting

Individuals may make anonymous reports but may not file anonymous formal complaints.

5.6 Reporting of Alleged Sexual Violence

Upon receipt of a report alleging sexual violence, the Title IX Office will notify the Sexual Violence Review Committee (SVRC) of the existence of the report. The SVRC will convene to determine appropriate actions in accordance with Virginia Code § 23.1-806.

5.7 Timeliness of Reporting

There is no time limit for reporting an alleged incident of sexual misconduct under this policy, but the breadth of options and resources available to the complainant may be impacted by the amount of time that has lapsed between when an alleged incident occurred and when it is reported to the Title IX Office.

5.8 Reporting to Law Enforcement and Filing Criminal Charges

A complainant may choose to make a report to the Title IX Office and may also choose to make a report to law enforcement. A complainant may pursue either or both of these options at the same time. A complainant who wishes to pursue criminal action should contact law enforcement directly. No responsible employee will dissuade complainants from exercising their right to report to law enforcement.

The existence of criminal proceedings will not unnecessarily delay or interrupt the procedures outlined in this policy, unless the law enforcement agency or prosecution advises that the university procedures be suspended, in which case the university will determine whether and for

how long to suspend its procedures. Evidence and information gathered during the university's investigation of a formal complaint may be shared with law enforcement agencies as permissible by law.

5.9 Supportive Measures

The university will offer appropriate and reasonably available supportive measures to assist and protect the complainant, the respondent and other members of the university community. Supportive measures may be implemented upon receipt of a report and will be reassessed on an ongoing basis. The Title IX Coordinator will coordinate the implementation of supportive measures.

5.10 Prohibition on Retaliation

The university prohibits retaliation against a group or individual exercising rights under and/or participating in, or refusing to participate in, any procedures under this policy. Retaliation constitutes a form of misconduct and may result in sanctions separate from, and not dependent on, the outcome of any report or formal complaint filed under this policy. Claims of retaliation will be adjudicated under procedures that are prompt and equitable.

Alleged claims of retaliation against students will be referred to the Office of Student Accountability and Restorative Practices (OSARP). If adjudicated, OSARP will use the Accountability Process. Procedures for the Accountability Process are published on OSARP's website in the Student Handbook section.

Alleged claims of retaliation against classified and wage employees, A&P faculty without tenure, and affiliates will be adjudicated through Human Resources according to procedures published on the Human Resources website.

Alleged claims of retaliation against instructional faculty and A&P faculty with tenure will be adjudicated according to procedures set forth in section III.A.26 of the Faculty Handbook.

5.11 Academic Freedom and Freedom of Speech

This policy does not restrict the rights of faculty members and students of the institution to academic freedom or impair the exercise of rights protected under the United States Constitution such as the right to free speech. See [Faculty Handbook, Section III.A.1](#). Academic freedom carries with it responsibilities, including the responsibility to refrain from harassment, discrimination, and misconduct. See [Faculty Handbook, Section III.A.8](#) and [Academic Affairs Policy 12, Disruption of Class](#).

5.12 Amnesty

The university will not pursue alleged policy violations of personal consumption of alcohol or drugs against students who are reporting sexual misconduct on their own behalf or against students who participate as witnesses in procedures under this policy, even if these substances were involved. (Va. Code Ann. § 23.1-808(B))

The university will not pursue alleged policy violations for personal consumption of alcohol or drugs against employees, affiliates, or visitors where such disclosure is made in conjunction with a good faith report of an act of sexual violence. (Va. Code Ann. § 23.1-808(B))

5.13 Resources

Any JMU community member who reasonably believes they have been subjected to sexual misconduct may contact the Title IX Office to inquire about resources and supportive measures that may be available through the university such as counseling, medical services, academic assistance, and survivor advocacy. The opportunity to inquire about resources and options is available to any JMU community member, regardless of eligibility to file a formal complaint.

6. PROCEDURES

6.1 Making a Report and/or Filing a Formal Complaint

a. Reporting Allegations of Sexual Misconduct

Reports of alleged sexual misconduct under this policy should be reported directly to the Title IX Office as soon as practicable. Reporting to the Title IX Office does not preclude an individual from reporting an alleged incident to law enforcement.

Any person may report alleged sexual misconduct. A report is not a formal complaint.

b. Filing a Formal Complaint

Formal complaints are filed directly with the Title IX Office. If a university employee is the respondent in the formal complaint, then the formal complaint can instead be filed directly with the Office of Human Resources. Filing a formal complaint with the Title IX Office or the Office of Human Resources does not preclude an individual from reporting an alleged incident to law enforcement.

A complainant must be participating in or attempting to participate in an education program or activity at the time of filing a formal complaint under this policy.

6.2 Responsible Employee Reporting Procedures

All responsible employees must inform any individual who has disclosed information concerning an alleged incident of sexual misconduct that as a responsible employee, they cannot keep the information confidential and are required to disclose the information to the Title IX Office. If the complainant or third-party reporter is requesting confidentiality or to remain anonymous, the responsible employee can share that request with the Title IX Office but cannot withhold the identity of the complainant or third-party reporter from the Title IX Office.

Referring an individual to confidential resources or reporting the incident to police does not relieve the employee of their duty to report the information to the Title IX Office.

Any responsible employee receiving information concerning alleged sexual misconduct under this policy must provide the Title IX Office with all relevant information concerning the report as soon as practicable. If possible, the responsible employee is encouraged to take appropriate steps to address the immediate needs of the person making the report.

Relevant information includes all details about the alleged incident that the complainant or third-party reporter has shared and that the Title IX Office will need to make an initial assessment, such as the names of the respondent, the complainant, and other individuals who are potential witnesses and the date, time, and location of any incidents that were disclosed to the responsible employee.

The responsible employee will not investigate allegations or pressure the complainant to disclose information not freely given to the responsible employee. Generally, the transfer of information will fulfill the obligations of the responsible employee.

6.3 Initial Actions Upon Receipt of Report

Upon receipt of a report, the Title IX Office will contact the complainant to discuss the availability of supportive measures and to explain the process for filing a formal complaint, should the complainant so choose. The Title IX Office will also identify any immediate health or safety concerns raised by the report. The Title IX Office is not assessing or determining responsibility. The presumption is that no policy violation has occurred unless proven otherwise in a campus adjudication process by a preponderance of the evidence.

If the report alleges sexual violence, then the Title IX Office will immediately inform the Sexual Violence Review Committee (SVRC). The SVRC will convene within 72 hours to determine if disclosure of the information, including personally identifiable information, to the law enforcement agency responsible for investigating and/or the attorney for the commonwealth responsible for prosecuting the alleged incident of sexual violence, is necessary to protect community safety and comply with state law. The provision will not apply if the law enforcement agency responsible for investigating the alleged act of sexual violence is located outside the United States. If a disclosure to law enforcement and/or the attorney for the commonwealth is deemed necessary, the Title IX Office representative on the SVRC will notify the complainant of the disclosure.

If the report alleges another form of conduct prohibited by university policy and/or law, the Title IX Office may refer the report directly to the university authority responsible for receiving and responding to those reports and/or law enforcement. The Title IX Office will ensure that the complainant is informed of any referrals. The Title IX Office will not discourage the filing of a formal complaint under this policy.

The Title IX Office will attempt to notify the complainant of resources and supportive measures potentially available to the complainant through the university and community, the right to contact law enforcement or to decline to contact law enforcement, the right to seek medical treatment, the importance of preserving evidence, the right to bring an advisor of their choice to meetings, the university's prohibition on retaliation, and contact information for the Title IX Office.

- The notification will include the option and procedures for filing a formal complaint and the process the university uses for adjudicating formal complaints.
- If the complainant is a student, the notification will also include information about amnesty.

Generally, the complainant will not be obligated to respond to the notification from the Title IX Office and the decision about what if any resources and options to utilize will rest with the complainant.

If the alleged report of sexual misconduct involves a university employee as the complainant and/or respondent, the Title IX Office may request assistance from the Office of Human Resources.

The Title IX Office or the Office of Human Resources will generally not contact a respondent until a formal complaint is filed unless a supportive measure is implemented that directly affects the respondent.

6.4 Formal Complaints

The decision to initiate a formal complaint will generally rest with the complainant. If the university determines there is an elevated risk to individual or campus safety, the university may elect to override the preference of a complainant and instruct the Title IX Coordinator to move forward with initiating a formal complaint and to conduct an investigation. In those circumstances, the complainant, if known, will be informed of the decision of the university and provided the opportunity to participate in the investigation and any subsequent campus adjudication proceedings.

At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the university.

In cases where a formal complaint is signed by the Title IX Coordinator instead of a complainant, the university will send parties notice of the allegations, including the identities of the parties, if known. The Title IX Coordinator may sign a formal complaint even if the identity of the complainant is unknown.

a. Formal Complaint Investigation Procedures

Investigations of formal complaints alleging sexual misconduct are generally carried out by the Title IX Office or Human Resources. The specific procedures for investigating formal complaints of sexual misconduct can be found on the Title IX website and the Human Resources website.

6.5 Dismissal of Formal Complaints

a. Mandatory Dismissal

If conduct alleged in a formal complaint, even if true, would not constitute sexual misconduct under the definition in this policy, the complaint must be dismissed as to that conduct.

If a formal complaint, or a portion thereof, is dismissed pursuant to this section, the Title IX Coordinator or designee will promptly send written notice of the dismissal, including the reason for the dismissal, to both parties. A mandatory dismissal under this section does not preclude action under another university policy for that conduct. If such conduct would constitute a violation of another university policy, the parties and/or university may proceed under the applicable policy and procedures.

Both parties have the opportunity to appeal a mandatory dismissal in accordance with Section 6.8 of this policy.

b. **Discretionary Dismissal**

The university may dismiss a formal complaint or any allegations therein, if at any time during the investigation or hearing:

- A complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein;
- The respondent is no longer enrolled or employed by the university; or
- Specific circumstances prevent the university from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

If a formal complaint, or a portion thereof, is dismissed pursuant to this section, the Title IX Coordinator or designee will promptly send written notice of the dismissal, including the reason for the dismissal, to both parties.

Both parties have the opportunity to appeal a discretionary dismissal in accordance with Section 6.8 of this policy.

6.6 Adjudication of Formal Complaints

Upon reaching a determination, the decision maker(s) will issue a written rationale for the result as to each allegation, including a determination regarding responsibility, and any disciplinary sanctions the university imposes on the respondent.

a. **Adjudication Process for Formal Complaints against Students**

Adjudication of alleged violation(s) of sexual misconduct for student respondents will be handled under the Sexual Misconduct Accountability Process in the Office of Student Accountability and Restorative Practices (OSARP). Procedures for OSARP's Sexual Misconduct Accountability Process are published on OSARP's website in the Student Handbook section.

b. **Adjudication Process for Formal Complaints against Classified and Wage Employees, A&P Faculty without Tenure, and Affiliates**

Adjudication of alleged violations of sexual misconduct for respondents who are classified or wage employees, A&P faculty without tenure, and affiliates will be handled under procedures published on the Human Resources website.

c. **Adjudication Process for Formal Complaints against Instructional Faculty and A&P Faculty with Tenure**

Adjudication of alleged violations of sexual misconduct for faculty respondents will be handled under procedures published on the Academic Affairs website.

6.7 Disciplinary Actions

- a. A classified employee who is found to have violated this policy may be disciplined or discharged under the terms of Policy [1317-Standards of Conduct and Performance for Classified Employees](#).
- b. A wage employee who is found to have violated this policy may be disciplined or discharged under the terms of Policy [1325-Wage Employment](#).
- c. An A&P faculty member without tenure who is found to have violated this policy may be disciplined or discharged under the terms of Policy [1335-Terms and Conditions of Employment for Administrative & Professional Faculty](#).
- d. An affiliate who is found to have violated this policy may have his/her status as affiliate removed under the terms of Policy [1337-Affiliates](#).
- e. A faculty member who is found to have violated this policy may be disciplined or discharged under the terms of the [Faculty Handbook, Section III.A.26](#).
- f. A student who is found to have violated this policy may be disciplined, suspended or expelled under the terms of the Student Handbook.

6.8 Appeals

Either party may appeal a determination regarding responsibility, or dismissal of a formal complaint, on any of the following bases:

- Procedural irregularity that affected the outcome of the matter;
- 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
- The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

Procedures for appeal in cases where a student is the respondent are published in the Sexual Misconduct Accountability Process in the Student Handbook section of the OSARP website.

Procedures for appeal in cases where a faculty member is the respondent are published on the Academic Affairs website.

Procedures for appeal in cases where a wage or classified employee, A&P faculty without tenure, or affiliate is the respondent are published on the Human Resources website.

6.9 Other Provisions

a. **Exceptions to Provisions**

A formal complaint procedure should substantially comply with the provisions of this policy. The Title IX Office, the appropriate vice president organizationally over the respondent, or the appropriate office to whom the case is referred may make exceptions to the provisions (including time deadlines) of this policy, provided that any exception is intended to bring about a just outcome and does not unreasonably or adversely affect another participant in the process.

b. **Education**

The Title IX Office will provide educational materials to appropriate university officials and community members to enable them to better fulfill their responsibilities under this policy.

c. **Interim Suspension Pending Outcome**

After the filing of a formal complaint and pending the outcome of a sexual misconduct investigation and adjudication process, any member of the university community under investigation for sexual misconduct may be temporarily suspended from employment, suspended from attendance and enrollment, and/or issued a no-trespass notice banning the person from campus.

d. **Emergency Removal**

If, after receiving a report and prior to the filing of a formal complaint, the university determines there is an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual misconduct, a respondent may be temporarily suspended from attendance and enrollment, suspended from any other education program or activity including employment, and/or issued a no-trespass notice banning the person from campus. The university will undertake an individualized safety and risk analysis to make this determination. For students, this analysis and determination will be made by a subset of members of the Behavioral Assessment Team (BAT). For employees and affiliates, this analysis and determination will be made by a subset of the Faculty Staff Assessment Team (FSAT) and the respondent's immediate supervisor, or a subset of the FSAT and another individual in the respondent's supervisory reporting structure if the immediate supervisor is the complainant.

A respondent will receive post-removal notice and an opportunity to challenge the decision. Students may challenge the decision in writing to the Vice President for Student Affairs. Instructional faculty members or A&P faculty members with tenure may challenge the decision in writing to the Provost. Wage or classified employees, A&P faculty members without tenure, or affiliates may challenge the decision in writing to their respective Vice President. Written challenges to an emergency removal must be filed within three calendar days.

e. **Record Keeping**

Records and such information shall be maintained as confidential information not to be disclosed, except as permitted by law. The university may use any information obtained in carrying out procedures under this policy to defend itself against any claims, complaints, or allegations brought against it.

f. **Legally Mandated Consequences for Students**

In cases where a student respondent is found responsible and suspended or expelled for sexual violence, defined as physical sexual acts perpetrated against a person's will or against a person incapable of giving consent, a notation will be placed on the student respondent's transcript for the duration of the suspension or expulsion. If a student respondent withdraws while under investigation for an allegation of sexual violence, a notation will be placed on the student respondent's transcript until a final decision in the case is rendered. Such notations will read, as applicable:

- Expelled for violation of Student Standards of Conduct
- Suspended for violation of Student Standards of Conduct
- Withdrew while under investigation for violation of Student Standards of Conduct

Student respondents receiving a transcript notation for a suspension will have it automatically removed by the Office of the Registrar once the suspension period has ended; notations in cases of expulsion are permanent.

g. **Alternative Resolution**

The University does not require complainants to initiate or participate in an alternative resolution process. In certain cases, parties may elect to participate in an alternative resolution process in lieu of the formal complaint process to resolve allegations that are within the scope of this policy. The availability of an alternative resolution process is at the discretion of University. A decision regarding the availability of an alternative resolution process is not appealable.

h. **Application of Policy 1340 and Policy 1346**

If conduct is within the scope and jurisdiction of both Policy 1340-Sexual Misconduct and Policy 1346-Title IX Sexual Harassment, Policy 1346-Title IX Sexual Harassment will govern. However, if a complaint or portions thereof are dismissed under Policy 1346-Title IX Sexual Harassment, they may still be investigated and adjudicated under Policy 1340-Sexual Misconduct if the allegations remain within the scope of this policy.

Some incidents may involve conduct that is prohibited under Policy 1346-Title IX Sexual Harassment, and other conduct that is prohibited under Policy 1340-Sexual Misconduct. When both policies apply for different conduct arising out of the same incident or pattern of incidents, the university may investigate and adjudicate all allegations simultaneously under each policy. If the university consolidates the investigation and adjudication under both policies, then the adjudication procedures applicable to Policy 1346-Title IX Sexual Harassment will apply. Alternatively, the university may choose to investigate and adjudicate the conduct separately under each policy.

Formal complaints alleging (1) sexual harassment on the basis of hostile environment under Policy 1340-Sexual Misconduct (conduct that is sufficiently severe, persistent, or pervasive, and objectively offensive in a manner that interferes with, limits, or denies the person the ability to participate in or benefit from the institution's education programs or activities) and (2) sexual harassment under Policy 1346-Title IX Sexual Harassment on

the basis of unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the university's education program or activity, may be investigated and adjudicated simultaneously under both policies. If the university consolidates the investigation and adjudication under both policies, then the adjudication procedures applicable to Policy 1346-Title IX Sexual Harassment will apply. The decision maker will make a decision on the allegations under both Policies 1340 and 1346, providing a written rationale for allegations under each policy. Alternatively, the university may choose to investigate and adjudicate the conduct separately under each policy.

7. RESPONSIBILITIES

University community members and visitors are responsible for abiding by the terms of this policy.

Responsible Employees are responsible for reporting information on conduct that would constitute sexual misconduct to the Title IX Office.

The Title IX Office is responsible for overseeing the Title IX compliance of the university and maintaining the accuracy of this policy.

The Office of Student Accountability and Restorative Practices, in dealing with respondents who are students, is responsible for following the terms of adjudication as dictated by this policy and specified in the [Sexual Misconduct Accountability Process](#).

The Office of Human Resources, in dealing with respondents who are classified or wage employees or AP faculty members without tenure, is responsible for administering the process for formal complaints as dictated by this policy and specified on the Human Resources [website](#).

The Title IX Officer for Faculty or designee, in dealing with respondents who are instructional faculty members and AP faculty members with tenure, are responsible for administering the process for formal complaints as dictated by this policy and specified on the Academic Affairs [website](#).

The sponsoring department is responsible for determining whether an affiliate's status should be revoked for violation of this policy.

All departments, offices and employees that generate, receive, or maintain public records under the terms of this policy are also responsible for compliance with Policy [1109](#)-Records Management.

8. SANCTIONS

Sanctions will be commensurate with the severity and/or frequency of the offense and may include employee discipline up to and including termination of employment, student sanctions up to and including suspension or expulsion, and affiliate sanctions up to and including removal of affiliate status.

9. EXCLUSIONS

This policy only applies to discrimination or harassment in the form of sexual misconduct. For other claims of discrimination or harassment on the basis of legally protected classifications, see Policy [1324](#)-Discrimination and Harassment (Other than Sexual Harassment and Misconduct) and Policy 1346-Title IX Sexual Harassment.

10. INTERPRETATION

The authority to interpret this policy rests with the president and is generally delegated to the Title IX Office.

Previous version: February 2020

Approved by the president: August 2016