

**TITLE IX**

**GRIEVANCE POLICY**

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## **TITLE IX GRIEVANCE POLICY**

Title IX of the Educational Amendments of 1972 prohibits any person in the United States from being discriminated against on the basis of sex in seeking access to any educational program or activity receiving federal financial assistance. The U.S. Department of Education, which enforces Title IX, has long defined the meaning of Title IX's prohibition on sex discrimination broadly to include various forms of sexual harassment and sexual violence that interfere with a student's ability to equally access our educational programs and opportunities.

On May 19, 2020, the U.S. Department of Education issued a Final Rule under Title IX of the Education Amendments of 1972, 85 Fed. Reg. 30026 (May 19, 2020), ("Final Rule") that:

- Defines the meaning of "sexual harassment" (which includes forms of sex-based violence)
- Addresses how the University must respond to reports of misconduct falling within that definition of sexual harassment, and
- Mandates a grievance process that the University must follow in these specific covered cases before issuing a disciplinary sanction against a person accused of sexual harassment.

Based on the Final Rule, Hofstra University has implemented the following Title IX Grievance Policy, effective August 14, 2020.

## **OTHER UNIVERSITY POLICIES ADDRESSING SEX DISCRIMINATION**

Only incidents falling within the Final Rule's definition of Covered Sexual Harassment, defined below, will be investigated and, if appropriate, brought to a live hearing through this Title IX Grievance Policy.

To the extent that alleged misconduct falls outside the Title IX Grievance Policy, or misconduct falling outside the Title IX Grievance Policy is discovered in the course of investigating covered Title IX misconduct, the University retains authority to investigate and adjudicate the allegations under the appropriate University policies and procedures. See the *Student Policy Prohibiting Sexual Assault, Domestic Violence, Dating Violence, and Stalking*, and the *Prohibited Bias and Discriminatory Harassment Policy*.

This Policy is intended to provide a process to address, respond to, and adjudicate reports of sexual harassment covered by Title IX, where such conduct is alleged to have been committed by a Hofstra student. For reports of sexual harassment or sexual violence against a faculty member, other University employee, or other non-student, consult the procedures set forth in the *Harassment Policy*, available at **hofstra.edu/harassment**. Students should report these matters to the Chief Human Resources Officer, who is the Title IX Coordinator for Employee Matters, and who can be reached at **516-463-6859**, via email at **HumanResources@hofstra.edu** or through the University's online reporting hotline at **hofstra.edu/ethicspoint**.

## **EFFECTIVE DATE**

This Title IX Grievance Policy became effective on August 14, 2020, and will only apply to reports of Covered Sexual Harassment alleged to have occurred on or after August 14, 2020.

## **IMPACT OF MODIFICATION OF FINAL RULE**

Should any portion of the Final Rule be stayed or held invalid by a court of law, or should the Final Rule be withdrawn or modified to not require the elements of this policy, this policy, or the invalidated elements of this policy, will be deemed revoked as of the publication date of the opinion or order and for all reports after that date, as well as any elements of the process that occur after that date if a case is not complete by that date of opinion or order publication. Should the Title IX Grievance Policy be revoked in this manner, any conduct that would have been covered under the Title IX Grievance Policy shall be investigated and adjudicated under the existing *Student Policy Prohibiting Sexual Assault, Domestic Violence, Dating Violence, and Stalking* or the *Prohibited Bias and Discriminatory Harassment Policy*.

## **NONDISCRIMINATION IN APPLICATION**

The requirements and protections of this policy apply equally regardless of sex, sexual orientation, gender identity, gender expression, or other protected classes covered by federal or state law. All requirements and protections are equitably provided to individuals regardless of such status or status as a Complainant, Respondent, or Witness.

### **Definitions**

#### **Covered Sexual Harassment**

For the purposes of this Title IX Grievance Policy, “Covered Sexual Harassment” includes any conduct on the basis of sex that satisfies one or more of the following:

1. Unwelcome conduct that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University’s education program or activity.
2. Sexual Assault, which includes any sexual act directed against another person, without the affirmative consent of the victim, including instances where the victim is incapable of giving affirmative consent.
3. Dating Violence, which includes any violence committed by a person: (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) The length of the relationship; (ii) The type of relationship; (iii) The frequency of interaction between the persons involved in the relationship.
4. Domestic Violence, which includes any felony or misdemeanor crimes of violence committed by a current or former spouse of the student, by someone who is or has cohabitated with the student as a spouse, by someone with whom the student has a child, by others to whom the student is related by consanguinity (blood) or affinity (marriage), or by unrelated persons who are (or have been in the past) continually living in the same household.
5. Stalking, meaning engaging in a course of conduct directed at a specific person that would cause a reasonable person to: (A) fear for their safety or the safety of others; or (B) suffer substantial emotional distress.

#### **Affirmative Consent**

Affirmative Consent is a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Affirmative Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent. The definition of Affirmative Consent does not vary based upon a participant’s sex, sexual orientation, gender identity, or gender expression.

- Affirmative Consent to any sexual act or prior consensual sexual activity between or with any party does not necessarily constitute Affirmative Consent to any other sexual act.
- Affirmative Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.
- Affirmative Consent may be initially given but withdrawn at any time.
- Affirmative Consent cannot be given when a person is incapacitated, which occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation may be caused by the lack of consciousness or being asleep, being involuntarily restrained, or if an individual otherwise cannot consent. Depending on the degree of intoxication, someone who is under the influence of alcohol, drugs, or other intoxicants may be incapacitated and therefore unable to consent. Students who are charged with initiating sexual activity without consent cannot use as a defense that they themselves were under the influence of drugs and/or alcohol at the time they committed the violation.
- Affirmative Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm.
- When Affirmative Consent is withdrawn, or can no longer be given, sexual activity must stop. It is the responsibility of the student who initiates sexual contact to obtain this Affirmative Consent; in other words, to confirm that the person with whom the student is involved has consented to engage in a sexual activity.

Lack of Affirmative Consent exists where the respondent knew, or a reasonable person in the position of the respondent should have known, of the other person's inability to consent. For example, there is no Affirmative Consent where the respondent knew, or a reasonable person in the position of the respondent should have known, that the other individual was unable to make an informed rational judgment due to the individual's use of alcohol or other drugs.

### **Education Program or Activity**

For the purposes of this Title IX Grievance Policy, the University's "education program or activity" includes:

- Any on-campus premises.
- Any off-campus premises that the University has substantial control over.
- Activity occurring within computer and internet networks, digital platforms, and computer hardware or software owned or operated by, or used in the operations of University's programs and activities over which the University has substantial control.

### **Formal Complaint**

For the purposes of this Title IX Grievance Policy, "Formal Complaint" means a document – including an electronic submission – filed by a complainant with a signature or other indication that the complainant is the person filing the Formal Complaint, or signed by the Title IX Coordinator for Student Issues, alleging sexual harassment against a respondent about conduct within the University's education program or activity and requesting initiation of the procedures consistent with the Title IX Grievance Policy to investigate the allegation of sexual harassment.

### **Complainant**

For the purposes of this Title IX Grievance Policy, Complainant means any individual who has reported being or is alleged to be the victim of conduct that could constitute Covered Sexual Harassment as defined under this Policy.

## **Relevant Evidence**

“Relevant” evidence is evidence that tends to make an allegation of Covered Sexual Harassment more or less likely to be true.

“Relevant” evidence does not include the following types of evidence, which are deemed “irrelevant” at all stages of the Title IX Grievance Process:

- Evidence about the complainant’s sexual predisposition or prior sexual behavior unless:
  - It is offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or
  - It concerns specific incidents of the complainant’s prior sexual behavior with respect to the respondent and is offered to prove consent.
- Evidence that constitutes, or seeks disclosure of, information protected under a legally recognized privilege (e.g., attorney-client privilege)
- Any party’s medical, psychological, and similar records unless the party has given voluntary, written consent.

## **Respondent**

For the purposes of this Title IX Grievance Policy, Respondent means any individual who has been reported to be the perpetrator of conduct that could constitute Covered Sexual Harassment as defined under this policy.

## **Title IX Coordinator for Student Issues**

The Title IX Coordinator for Student Issues has oversight responsibility for the University’s student-related efforts to comply with and carry out responsibilities under Title IX. In this regard, the Title IX Coordinator for Student Issues is responsible for overseeing the University’s response to reports and Formal Complaints by students against students under this policy of Covered Sexual Harassment; and for addressing any patterns or systemic problems revealed by such reports and Formal Complaints against students. The Title IX Coordinator for Student Issues is responsible for maintaining data about reports of Covered Sexual Harassment against students. The Title IX Coordinator for Student Issues is also responsible for referring any reports of Covered Sexual Harassment against employees or other nonstudents to the Chief Human Resources Officer, who serves as the Title IX Coordinator for Employee Matters. The Title IX Coordinator for Student Issues, Brittany Rhoden, is available to meet with students as needed. She can be reached at **StudentTitleIX@hofstra.edu**, **516-463-5841**, Room 127 Wellness and Campus Living Center, Hempstead, NY 11549.

There are also designated Deputy Title IX Coordinators, who are available to students to receive reports of violations and to discuss issues related to this Policy and its procedures:

Comila Shahani-Denning, Senior Vice Provost for Academic Affairs,  
**comila.shahani-denning@hofstra.edu**, **516-463-6343**, Room 225 West Library Wing

Jennifer Boscarino-Green, Senior Associate Dean for Strategic Outreach and Retention Initiatives, Center for University Advising, **jennifer.boscarino-green@hofstra.edu**, **516-463-4961**, Room 101F Memorial Hall

Jodi Langsfeld, Associate Dean for Student Affairs (Medical School),  
**jodi.langsfeld@hofstra.edu**, **516-463-7145**, Room 227A Zucker School of Medicine

Cindy Lewis, Senior Associate Director of Athletics, [cindy.lewis@hofstra.edu](mailto:cindy.lewis@hofstra.edu), **516-463-6748**, Room 207 Mack Sports Complex

Lisa Monticciolo, Dean of Students and Diversity and Inclusion Officer (Law School),  
[lisa.monticciolo@hofstra.edu](mailto:lisa.monticciolo@hofstra.edu), **516-463-4809**, Room 204A Maurice A. Deane School of Law

Zaibis Muñoz-Isme, Associate Dean of Students, [zaibis.munoz@hofstra.edu](mailto:zaibis.munoz@hofstra.edu), **516-463-6558**, Room 243D Mack Student Center

Russ Smith, Director of Residential Education for Residence Life, [russ.d.smith@hofstra.edu](mailto:russ.d.smith@hofstra.edu), **516-463-6931**, Room 126 Wellness and Campus Living Center

## **AMNESTY**

The health and safety of every student at Hofstra University is of utmost importance. The University recognizes that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) at the time that domestic violence, dating violence, stalking, sexual assault, or other violence occurs, may be hesitant to report such incidents due to fear of potential consequences for their own conduct. Hofstra University strongly encourages students to report domestic violence, dating violence, stalking, or sexual assault to University officials. A bystander acting in good faith or a reporting individual acting in good faith that discloses any incident of domestic violence, dating violence, stalking, or sexual assault to University officials or law enforcement will not be subject to the University's code of conduct action for violations of alcohol and/or drug use policies occurring at or near the time of the commission of the domestic violence, dating violence, stalking, or sexual assault.

## **REPORTING OPTIONS**

*Reporting a Violation.* Students who wish to report Covered Sexual Harassment should contact the Title IX Coordinator for Student Issues, a Deputy Title IX Coordinator, or the Department of Public Safety.

Students may also report a violation through the University's online reporting hotline. Students making a report may ask to remain anonymous and may also request that a Formal Complaint not be pursued, and the University will weigh that request against its obligation to provide a safe, nondiscriminatory environment for the community.

If a reporting individual reports Covered Sexual Harassment but elects not to pursue a Formal Complaint, the University shall assist with academic, housing, transportation, employment, and other reasonable and available supportive measures, as listed below in *Non-Investigatory Measures Available under the Title IX Grievance Policy*, regardless of the student's reporting choice.

*Pursuing a Formal Complaint.* Students who wish to make a Formal Complaint to begin the disciplinary process should file a Formal Complaint with Public Safety, as described in the section Filing a Formal Complaint.

*Confidentiality.* Students who want to keep information strictly confidential may speak to Confidential Resources. These are University employees, such as counselors in Student Counseling Services, who are required to maintain confidentiality and will not share information with school administration or other parties. See Confidential Resources section. All other University employees who receive information about Covered Sexual Harassment are encouraged to report all relevant information (including the identities of both the student complaining and the respondent) to the Title IX Coordinator for Student Issues.

Even Hofstra offices and employees who cannot guarantee confidentiality will maintain a student's privacy to the greatest extent possible. The information students provide to a non-confidential resource will be relayed only as necessary for the University to respond.

#### *Confidential Resources*

Where a violation is reported to individuals at the University who serve in a professional role in which communication is protected under applicable federal, state, or local law or regulation or licensing authority – including counselors in Student Counseling Services and medical professionals in Student Health Services, and clergy in the Interfaith Center – such reports will not be further disclosed to the extent the communication is protected by law. *In other words, when a student talks to one of these Confidential Resources about an incident of Covered Sexual Harassment, that individual will not share the information with school administration or any other parties without the student's permission except in rare, extreme circumstances required by law.*

A student who speaks to one of these Confidential Resources must understand that, if the student wants to maintain confidentiality, the University will be unable to conduct an investigation into the particular incident or pursue disciplinary action against the alleged perpetrator. Where a student notifies any such Confidential Resource of conduct prohibited by this policy – i.e., where the communication is protected by law – the University will not be on notice of such Covered Sexual Harassment.

*Note:* Those students who are not sure whether the person to whom they are reporting will keep their report confidential should ask the person before disclosing the information.

#### *University Disclosure – Clery Act and FERPA*

Statistics generated from student reports of certain crimes occurring in certain geographic locations are included in the University's *Clery Act Annual Security and Fire Safety Report* in an anonymous manner that does not identify the specifics of the crime or the identity of the reporting student.

The University is obligated to issue timely warnings of Clery Act crimes occurring within relevant geography that represent a serious or continuing threat to students and employees (subject to exceptions when potentially compromising law enforcement efforts and when the warning itself could potentially identify the reporting individual). A reporting individual will not be identified in a timely warning.

The Family Educational Rights and Privacy Act (FERPA) allows institutions to share information with parents when (1) there is a health or safety emergency, (2) the student is a dependent on either parent's prior year federal income tax return, or (3) the student has filed a waiver of FERPA protections. Generally, the University will not share information about a report of domestic violence, dating violence, stalking, or sexual assault with parents without the permission of the reporting student.

## **NON-INVESTIGATORY MEASURES AVAILABLE UNDER THE TITLE IX GRIEVANCE POLICY**

Upon receipt of a report of a violation, the University will take steps to protect reporting individuals and the larger University community as necessary pending the outcome of the conduct process. Reporting individuals will be provided with reasonable and available supportive measures, and accommodations that may include a change in academic, housing, employment, transportation, or other applicable arrangements in order to help ensure safety, prevent retaliation, and avoid an ongoing hostile environment, consistent with the University's policies and procedures. Supportive measures may also include counseling, extensions of deadlines or other course-related adjustments, modifications of work and class schedules, campus escort services, and increased security and monitoring of certain areas of campus. The Title IX Coordinator for Student Issues or designee will contact the reporting individual to discuss the availability of supportive

measures, consider the reporting individual's wishes and inform the reporting individual of the availability of supportive measures with or without the filing of a Formal Complaint, and explain the process for filing a Formal Complaint. Supportive measures will be provided without unreasonably burdening the other party.

*No-Contact Orders.* Mutual no-contact orders may be issued. Once a no-contact order is issued and has been sent to a party in person or via their University email address, it is considered to be in effect regardless of whether the party signs the no-contact order.

*Review Process:* Either student shall, upon written request to the Associate Vice President for Student Affairs or designee at **StudentAffairs@hofstra.edu**, be afforded a prompt review, reasonable under the circumstances, of the need for and terms of any no-contact order, supportive measure or accommodation that directly affects the student, including potential modification of such protection or accommodation, and shall be allowed to submit evidence in support of the student's request. The other student will be notified of and entitled to review any such request and evidence submitted and will have the opportunity to oppose any such request in writing to the Associate Vice President for Student Affairs or designee. The other student's opposition must be sent within two (2) business days of being sent a copy of the request.

*Emergency Removal.* The University retains the authority to remove a respondent from the University's program or activity on an emergency basis, where the University (1) undertakes an individualized safety and risk analysis and (2) determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of Covered Sexual Harassment justifies a removal. If the University determines such removal is necessary, the respondent will be provided notice and an opportunity to challenge the decision immediately following the removal, through the review process described above.

*Assistance with Orders of Protection:* Orders of protection are issued by New York state courts. The University does not issue orders of protection, but will ensure that students are referred to the appropriate officials to assist in obtaining a New York state court order of protection or an out-of-state equivalent. If the University receives a copy of an order of protection, the reporting individual will also have the right to receive a copy. In all instances where students obtain orders of protection, they will have an opportunity to be referred by the Title IX Coordinator for Student Issues to an appropriate individual, who can explain the order and answer questions about it, including information from the order about the accused's responsibility to stay away from the protected person or persons, and an explanation of the consequences for violating these orders, including but not limited to arrest, additional conduct charges, and interim suspension. Public Safety will also provide assistance to complainants in calling on and assisting local law enforcement in effecting an arrest for violation of an order of protection.

## **NO RETALIATION**

No individual shall be penalized or retaliated against by a member of the University community for their participation in the investigation or disciplinary process related to a report made under this Policy.

Retaliation is defined by applicable federal laws, including Title IX of the Education Amendments of 1972. Any such retaliation constitutes Covered Sexual Harassment and a further violation of this Policy, to be adjudicated under these procedures.

# THE TITLE IX GRIEVANCE PROCESS

## Filing a Formal Complaint

The timeframe for the Title IX Grievance Process begins with the filing of a Formal Complaint. The Grievance Process will be concluded in a reasonably prompt manner, with the entire process (not including appeals) to be not longer than 90 business days provided that the Process (including any of the individual time frames listed below) may be extended for good cause.

Students who wish to pursue a Formal Complaint of a violation of this Policy using these Grievance Procedures should make a Formal Complaint regarding the Covered Sexual Harassment through the Department of Public Safety by calling **516-463-6606** or by visiting the Mack Public Safety and Information Center located on the southeast corner of Hempstead Turnpike and California Avenue. Formal complaints can also be filed with the Title IX Coordinator for Student Issues by calling **516-463-5841**, visiting Room 127 Wellness and Campus Living Center, or emailing **StudentTitleIX@hofstra.edu**. A Formal Complaint under this Policy must allege Covered Sexual Harassment, and request that the University investigate the allegations.

Public Safety is available 24 hours a day. Public Safety can assist in connecting students with counseling, medical, and other support services, and in notifying the law enforcement authorities, if such assistance is requested. Students may choose to proceed through both criminal and University disciplinary processes simultaneously, or may choose to decline to notify outside authorities. For additional information, please refer to the “Safety and Security Policies” section of the *Guide to Pride* or call **516-463-6606**.

Complainants are only able to file a Formal Complaint under this Policy if they are currently participating in, or attempting to participate in, the education programs or activities of the University, including as an employee.

If a complainant does not wish to make a Formal Complaint, the Title IX Coordinator for Student Issues may still determine a Formal Complaint is necessary. The University will inform the complainant of this decision in writing, and the complainant need not participate in the process further but will receive all notices issued under this Policy and Process.

## Informal Resolution

At any time after the filing of a Formal Complaint but before any determination regarding responsibility is reached, an informal resolution may be pursued where the Complainant and the Respondent so desire and the University deems it to be appropriate. Informal resolution, which is optional, is designed to obtain an expedient, mutually acceptable solution without the necessity for conducting further formal proceedings.

Prior to any informal resolution process, both parties will be provided a written notice containing the allegations of the Formal Complaint and other pertinent information regarding the process, and both parties must provide voluntary, written consent to the informal resolution process before it can proceed. Upon such consent, the formal Title IX Grievance Process, including the time frame for the Grievance Process set forth above, stops and the informal resolution process begins. If the parties are not able to enter into an informal resolution within 15 business days after both parties have provided consent, the parties will be notified that the Grievance Process will resume within 5 business days. At any point prior to the hearing, the parties may again request to pursue an informal resolution, and the procedures in this section will apply. Before an informal resolution is finalized, any party or the University has the right to withdraw from the informal resolution process, and the formal process shall resume.

Upon the signing of the written statement of informal resolution, the matter will be deemed closed, and no party will be permitted to appeal, contest, reopen, or otherwise attempt to set aside the terms of the informal resolution as long as the terms are adhered to, unless agreed to by both parties and the University in writing.

### **Multi-Party Situations**

The University may consolidate Formal Complaints alleging Covered 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 Covered Sexual Harassment arise out of the same facts or circumstances.

### **Determining Jurisdiction**

The University will determine if this Title IX Grievance Process should apply to a Formal Complaint. The Process will apply when all of the following elements are met, in the reasonable determination of the University:

1. The conduct is alleged to have occurred in the United States;
2. The conduct is alleged to have occurred in the University's education program or activity; and
3. The alleged conduct, if true, would constitute Covered Sexual Harassment as defined in this policy.

If all the elements are met, the University will investigate and adjudicate the allegations according to the Grievance Process.

### **Mandatory Dismissal**

If any one of these elements are not met, the University will notify the parties that the Formal Complaint is being dismissed for the purposes of the Title IX Grievance Policy. Each party may appeal this dismissal using the procedure outlined in "Appeals," below.

### **Discretionary Dismissal**

The University may dismiss a Formal Complaint brought under the Title IX Grievance Policy, or any specific allegations raised within that Formal Complaint, at any time during the investigation or hearing, if:

- A complainant notifies the Title IX Coordinator for Student Issues in writing that they would like to withdraw the Formal Complaint or any allegations raised in the Formal Complaint;
- The respondent is no longer enrolled at the University; or,
- Specific circumstances prevent the University from gathering evidence sufficient to reach a determination regarding the Formal Complaint or allegations within the Formal Complaint.

Any party may appeal a dismissal determination using the process set forth in "Appeals," below.

### **Notice of Dismissal**

Upon reaching a decision that the Formal Complaint will be dismissed, the University will promptly send written notice of the dismissal of the Formal Complaint or any specific allegation within the Formal Complaint, and the reason for the dismissal, simultaneously to the parties.

Upon dismissal for the purposes of Title IX, the University retains discretion to address alleged violations under the *Student Policy Prohibiting Sexual Assault, Domestic Violence, Dating Violence, and Stalking*, or other applicable policies within the Code of Community Standards. In such cases, the applicable parties will be promptly notified.

## **Advisors**

Both the Complainant and the Respondent may be accompanied by an Advisor of Choice who may assist and advise the student throughout the conduct process under this Policy, including during all meetings and hearings relating to the process. It is the student's responsibility to retain their own Advisor of Choice and notify the Advisor of Choice of meetings and hearings.

The University has a longstanding practice of requiring students to participate in the process directly and not through an advocate or representative. The Advisor of Choice is not an advocate. Except where explicitly stated by this Policy, as consistent with the Final Rule, Advisors of Choice shall not participate directly in the process as per standard policy and practice of the University.

As described in *Hearing Process*, below, parties are not permitted to conduct their own cross-examination. Cross-examination will be conducted by the Advisor of Choice. If a party has not retained their own Advisor of Choice, the University will provide a Hearing Advisor for the limited purpose of conducting cross-examination during the hearing on behalf of that party.

The University's obligations to investigate and adjudicate in a prompt timeframe under Title IX and other University policies apply to matters governed under this Policy, and the University cannot agree to extensive delays solely to accommodate the schedule of an Advisor of Choice. The University will not be obligated to delay a meeting or hearing under this process more than five (5) days due to the unavailability of an Advisor of Choice.

## **Annual Training**

All Title IX Coordinators, investigators, and members of an Administrative Board or appeal panel that is adjudicating cases under this Policy, as well as any individual who facilitates an alternative resolution under this Policy will receive annual training in the following: conducting investigations and grievance processes for allegations of Covered Sexual Harassment, including hearings, appeals, and informal resolution processes, as applicable, in accordance with a process that protects the safety of victims, ensures due process protections for all parties, and promotes accountability; the effects of trauma; the scope of the University's education program or activity; how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias; the rights of the respondent, including the right to a presumption that the respondent is "not responsible" until a finding of responsibility is made pursuant to this Policy; and other issues relating to sexual harassment, domestic violence, dating violence, sexual assault, and stalking, including the definition of the offenses. Decision makers will receive training on any technology to be used at a live hearing and on issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant. Investigators will receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence.

## **Conflicts of Interest**

Any individual who has been designated by the University as Title IX Coordinator, investigator, Administrative Hearing Board member, or any person designated to facilitate an alternative resolution process, must not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.

Upon being notified of the members of the board and the Hearing Officer, the parties have the right to request the removal of a member of the board or the Hearing Officer if a conflict of interest exists. The request must be made to the Dean of Students or designee, and the party must be prepared to substantiate this contention. Removal of a member of the board or the Hearing Officer may be granted or denied based on the Dean of Students or designee's determination as to whether or not there is just cause.

## **Notice of Allegations**

A Notice of Allegations of the Covered Sexual Harassment will be sent to both parties as soon as practicable after receipt of a Formal Complaint, if there are no extenuating circumstances, and prior to the initial investigatory interview. If, in the course of an investigation, allegations about the complainant or respondent that are not included in the Notice of Allegations and are otherwise Covered Sexual Harassment are discovered, the parties whose identities are known will be notified of the additional allegations.

## **Investigations**

Investigations of Formal Complaints will be prompt, thorough, and impartial.

Evidence available for inspection and review by the parties will be any evidence that is directly related to the allegations raised in the Formal Complaint. It will include any:

1. Evidence that is relevant, even if that evidence does not end up being relied upon by the institution in making a determination regarding responsibility;
2. Inculpatory or exculpatory evidence (i.e., evidence that tends to prove or disprove the allegations) that is directly related to the allegations, whether obtained from a party or other source.

All parties must submit any evidence they would like the investigator to consider prior to when the parties' time to inspect and review evidence begins.

The University will send the evidence made available for each party and each party's advisor, if any, to inspect and review. The University is not under an obligation to use any specific process or technology to provide the evidence and shall have the sole discretion in terms of determining format and any restrictions or limitations on access.

The parties will have up to ten (10) calendar days to inspect and review the evidence and submit a written response by email to the investigator. The investigator will consider the parties' written responses before completing the Investigative Report.

Any evidence subject to inspection and review will be available at any hearing, including for purposes of cross-examination.

The parties and their advisors may not disseminate any of the evidence subject to inspection and review or use such evidence for any purpose unrelated to the Title IX grievance process. The parties and their advisors must sign an agreement to this effect.

## **Investigative Report**

The University will create an Investigative Report that fairly summarizes relevant evidence, and will provide that Report to the parties at least ten (10) calendar days prior to the hearing for each party's review and written response.

The Investigative Report is not intended to catalog all evidence obtained by the investigator, but only to provide a fair summary of that evidence.

## **Informational Meeting**

Both the respondent and complainant will schedule separate informational meetings, and will receive reasonable written or electronic notice, provided in advance, of this meeting and any other meeting under this policy that they are required or eligible to attend.

Both the respondent and the complainant will be given the opportunity during their individual informational meeting to discuss and review the charges. During the informational meeting, students will have the

opportunity to ask and answer questions regarding the allegation(s) and the disciplinary process under this policy.

For documented emergencies and other documented extenuating circumstances, a student may request one (1) postponement of the student's informational meeting, provided that the Office of Community Standards is notified at least one business day in advance of the scheduled meeting. Failing or refusing to sign any forms does not absolve the student of the responsibility for following all directives outlined.

## **Options for Resolution**

Following the informational meeting, there are two possible options for resolution:

1. Informal Resolution. See the Informal Resolution section, above.
2. Hearing. The matter will proceed to a formal hearing where it will be determined whether it is more likely than not that the respondent violated this Policy. The hearing will be conducted according to the procedures set forth below.

## **Rights of the Respondent**

The respondent shall be entitled to a presumption that the respondent is not responsible for Covered Sexual Harassment unless and until a determination regarding responsibility is made at the conclusion of the process set forth in this Policy.

## **Administrative Board and Hearing Preparation**

Only an Administrative Board will adjudicate proceedings under this Policy; student board hearings are not available for these proceedings. The Administrative Board shall consist of three administrators/faculty assigned by the Vice President for Student Affairs or designee. The Administrative Board shall include at least one male and one female member. The Hearing Officer will serve as the Chairperson of the hearing and shall conduct the hearing in accordance with this Policy.

The Administrative Board will engage in an objective evaluation of all relevant evidence – including both inculpatory and exculpatory evidence. Credibility determinations may not be based on a person's status as a complainant, respondent, or witness.

## **Rights/Obligations of the Parties**

When an administrative hearing is conducted under this policy, the parties have the rights and obligations listed below.

1. **Notice of Hearing.** The parties shall be informed by the Office of Community Standards, in writing, of the date, time, and place of the hearing. The hearing will be scheduled reasonably promptly following the initiation of the Formal Complaint. The hearing shall be held no less than 10 days after receipt of the investigative report.
2. **Witnesses and Other Evidence.** The complainant and respondent shall each have the right to speak for themselves, to present witnesses and other evidence, and to challenge the evidence.

### *Witnesses*

- i. The parties may propose witnesses with knowledge of the facts to speak on their behalf. Each party must submit a final written list of all their proposed witnesses to the Office of Community Standards for approval at least five (5) business days prior to the hearing. All witness names proposed on this list must have been previously submitted during the initial investigation as set forth under Investigation.
- ii. All witnesses must be deemed relevant by the University to be approved.

- iii. The Office of Community Standards will send each party a written list of all approved witnesses prior to the hearing date and will notify all University employee or student witnesses of the hearing time, date, and place to appear via their University email address.
- iv. It is the responsibility of each party to notify their approved witnesses of the hearing time, date, and place to appear, unless their approved witnesses are Hofstra students or Hofstra employees, in which case the Office of Community Standards will notify as set forth in (iii) above.

*Other Evidence*

- i. Parties may present and challenge all evidence that has been made part of the Investigation, as described above.
- 3. **Postponing the Hearing.** The University reserves the right to postpone or adjourn a hearing in its discretion. Each party shall be entitled to postpone the hearing one (1) time with just cause, as long as the request is made at least one (1) business day prior to the hearing. The Office of Community Standards will determine if a postponement is warranted. Any additional postponements may be granted or denied at the University's discretion.
- 4. **Failure to Appear.** If a party fails to appear, the hearing may proceed in that party's absence, and the University may reach a determination of responsibility in their absence, including through any evidence gathered that does not constitute a "statement" by that party.

### **Hearing Process**

The usual format of a hearing is set forth below. The Hearing Officer has the discretion to change the order, as he or she deems appropriate. Any evidence introduced at the hearing shall be part of the hearing record ("Hearing Record").

The Hearing Officer will conduct the hearing in an orderly manner, state the charges, rule on the relevancy of matters discussed and evidence presented, call witnesses, and coordinate and lead the questioning process. The Hearing Officer shall obtain affirmations from parties and witnesses of their obligation to testify truthfully.

1. Cases will be introduced and charge(s) read by the Hearing Officer.
2. Opening statement by complainant.
3. Opening statement by respondent.
4. Questions for witness(es) on behalf of complainant from members of the board, the complainant/complainant's advisor, and/or the respondent's advisor.
5. Questions for witness(es) on behalf of respondent from members of the board, the respondent/respondent's advisor, and/or the complainant's advisor.
6. Questions for the respondent from members of the board and the complainant's advisor.
7. Questions for the complainant from members of the board and the respondent's advisor.
8. Closing statement from respondent.
9. Closing statement from complainant and/or University

*Note: Each party's advisor will be permitted to ask the other party and any witnesses relevant questions and follow-up questions, including those challenging credibility. Such cross-examination must be conducted*

*directly, orally, and in real time by the party's Advisor of Choice or Hearing Advisor. At the request of either party, the parties may be located in separate rooms with technology enabling the Board and parties to simultaneously see and hear the party or the witness answering questions. The Board cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.*

*Note: Only relevant cross-examination and other questions may be asked of a party or witness. 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.*

Before any cross-examination question is answered, the Hearing Officer will determine if the question is relevant. Cross-examination questions that are duplicative of those already asked, including by the Administrative Board, may be deemed irrelevant if they have been asked and answered.

Neither party may 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.

All evidence that was made available for review during the investigation will be made available for the parties to refer to during the hearing, including for the purposes of cross-examination.

All individuals participating in the hearing shall be subject to any rules of decorum set forth by the University.

### **Deliberation and Decision**

Following the close of the hearing, the Administrative Board shall deliberate, and the Hearing Officer shall serve as a non-voting facilitator for the deliberations. The Board may not take into account as evidence of culpability the mere fact that a criminal investigation or prosecution is pending in relation to the events complained of.

The Administrative Board shall determine responsibility by choosing one of the following options using the preponderance of the evidence standard:

1. Responsible. The Administrative Board finds that it is more likely than not that the respondent violated the Policy.
2. Not Responsible.

### **Sanctions and Remedies**

If the respondent is found Responsible, the Hearing Officer or designee determines the sanctions. Each party shall have the opportunity to make a written impact statement before the sanction determination is made. Potential sanctions are set forth in detail in the Code of Community Standards section on "Sanctions," and include probation, residence hall removal and/or ban, suspension, and expulsion.

In determining an appropriate sanction, the Hearing Officer or designee shall consider aggravating factors, including (a) any record of past violations, (b) the nature and severity of such past violations, and (c) premeditation/intent to commit a violation.

The following should also be considered in determining the sanction: whether the sanction will (a) bring an end to the violation in question, (b) reasonably prevent a recurrence of a similar violation, and (c) remedy the effects of the violation on the complainant and the University community.

In accordance with the University's policy on "Minimum Sanctions," as set forth in the Code of Community Standards, for certain serious breaches of University policy that constitute a serious threat to other individuals or the community, a minimum penalty of suspension from the University (including removal from the residence halls) for at least one full semester to permanent expulsion may be imposed. This includes but is not limited to conduct in violation of New York state criminal law or federal law that poses a serious threat to the University community, a serious physical attack upon another person, and sexual violence.

The University will offer counseling and academic support services, as necessary and appropriate, to any student involved in proceedings under this policy. The University will also take additional steps, as appropriate, which could include training sessions and other measures, to prevent recurrence of violations, and remedy their effects. The University will offer appropriate remedies to the complainant where a respondent has been found responsible for Covered Sexual Harassment.

Sanctions will be held in abeyance until a decision is rendered in a final appeal under the process described below, or the time to appeal has expired without an appeal being submitted, unless the University determines that sanctions should go into effect sooner in order to protect the health or safety of the University community. Where sanctions are held in abeyance, interim protections may continue in effect.

After the conclusion of the final appeal, or where the time for appeal has expired, the University may issue a mutual no-contact order, where a respondent is found not responsible, if it determines such a no-contact order is in the best interest of the parties and/or the University. Such a no-contact order is not considered a sanction, shall not be part of the disciplinary record of either party, and shall not burden one party more than the other.

## **Decisions**

Both parties shall be sent concurrent notification in writing by the Office of Community Standards of the decision of the Administrative Board.

The respondent shall be notified of any sanctions, and, to the extent consistent with FERPA or other applicable law, the complainant will be notified of the sanctions as well. Complainants may be notified of sanctions that directly relate to the complainant, including that the respondent have no contact with the complainant or that the respondent is prohibited from attending school for a period of time, has been transferred out of classes shared with the complainant, or has been relocated away from a residence hall shared with complainant.

The written decision will be issued simultaneously to all parties and will include information regarding the allegations, the procedural steps taken in the case, the facts supporting the decision, the section of the Policy that was violated, if any, a statement of, and rationale for the determination regarding responsibility and any disciplinary sanctions, and information about remedies, as well as information about the University's appeal process.

The complainant shall also be notified as to any individual remedies offered or provided to the complainant, and other steps the school has taken to eliminate any hostile environment and prevent recurrence, if applicable. The respondent will not be notified of any individual remedies offered or provided to the complainant.

## **Appeals**

Either party may request an appeal of the decision (responsible or not responsible) and/or sanction(s) by submitting a written petition for an appeal to the Dean of Students within seven (7) calendar days of receiving the decision letter, on any of the following grounds:

1. Procedural irregularity that affected the outcome of the matter;
2. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter;

3. The Title IX Coordinator, investigator(s), or Board Members 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.
4. The severity of the sanction is inappropriate given the details of the case.

Dissatisfaction with the outcome of the hearing alone is not sufficient grounds for appeal.

The student(s) must submit the written petition for appeal to the Dean of Students specifying one or more of the above grounds. A request on any of these grounds must clearly explain, in detail, the basis for the appeal, and should include any available documentation. The appeal is limited to an inquiry of the issue or issues raised in the Notice of Allegations. The appeal is not intended to be a rehearing of the original hearing.

The Office of Community Standards will notify the party who did not request the appeal in writing and that party will have five (5) calendar days from the date of notification to submit a response to the appeal. The appeal will be decided by the Assistant Vice President/Dean of Students (“Dean of Students”) or designee. (All references in this section to the “Dean of Students” include the Dean of Students or designee). The party who did not submit the response will receive a copy of the response.

The appeal will be conducted by a three-person panel that includes the Dean of Students, and two other individuals designated by the Vice President for Student Affairs. Each party will receive notice of the names of the members of the panel and the right to request the removal of a member of the panel if a conflict of interest exists. The request must be made to the Dean of Students, and the party must be prepared to substantiate this contention. Removal of a member of the appeals panel may be granted or denied based on the Dean of Students’ determination as to whether or not there is a conflict of interest.

In addition to filing a written appeal or response, either party may request a hearing before the Dean of Students or appellate panel, as applicable, which request may be granted or denied in the discretion of the panel/Dean of Students. If such a hearing request is granted, both parties will be notified and each party will be permitted to present their position orally (limited to thirty (30) minutes or an appropriate length of time as determined in the discretion of the Dean of Students/panel) and may be questioned by the panel or Dean of Students, as applicable.

All appeals will be conducted in a fair and impartial manner. The panel or Dean of Students, as applicable, will decide whether to modify or uphold the original sanction or decision. Modification of the sanction may include either raising or lowering of the sanction. Appellate decisions will be based solely on the three grounds for appeal; appellate decision maker(s) will not substitute their judgment for the judgment of the Administrative Board.

Both parties will be sent concurrent notification in writing of the result of the appeal. The appeal will be concluded within fifteen (15) business days after receipt of the appeal.

In situations where new evidence is introduced, the appeals panel or Dean of Students, as applicable, may decide, based on its discretion, to reopen the case with the original hearing board. Based on the new evidence heard, the original hearing board may uphold or modify its decision, and the sanction may be upheld or modified.

Modification of the sanction may include either raising or lowering of the sanction.

#### *Final Appeal to Vice President for Student Affairs*

Within five (5) calendar days of the date of the written appellate decision, either party may submit written objections to the decision to the Vice President for Student Affairs. Such written objections should set forth, in detail, the reasons the objecting party believes the appellate decision should not be affirmed or the recommended penalty should not be adopted by the Vice President for Student Affairs. A copy of the written objections will be provided to the other party in interest, who may file a written response within five (5)

calendar days of the date the objections were sent. The party who did not submit a response will receive a copy of the response.

Either party may request a hearing before the Vice President for Student Affairs, which may be granted or denied in the Vice President's discretion. If such hearing is granted, both parties will be notified and each party will be permitted to present their position orally (limited to thirty (30) minutes or an appropriate length of time as determined in the discretion of the Vice President) and may be questioned. The decision of the Vice President for Student Affairs shall be final, and shall be issued within fifteen (15) business days of receipt of the appeal.

### **Records**

To ensure the integrity of the hearing process and maintain an accurate record of the proceedings, Hofstra University records the administrative hearings conducted under this policy. Originals or copies of these recordings will not be released, unless pursuant to a lawfully issued subpoena or court order. Students may request to listen to recordings or view transcripts, as applicable, and may take notes on their prior proceedings to the extent permitted by FERPA. The University reserves the right to have a University representative present during any review of recordings or transcripts. As with other hearing materials, only those individuals directly involved in an appeal (the Dean of Students, Associate Dean of Students or designee, Assistant Dean for Community Standards or designee, Title IX Coordinator for Student Issues or designee, the respondent and the respondent's advisor, the complainant and the complainant's advisor, and hearing board and appellate hearing board members) may request to listen to any part of the recording. The complainant and accused student will have the right to access the recording or transcript for seven years from the date of the hearing at a time and place determined by the University. Copying of the hearing materials or transcript by students or their advisors by any means is strictly prohibited.

*Note: Only the chairperson of the hearing is allowed to record the hearing on a University recording device or through a court reporter. All other recording devices and/or cell phones are not permitted during the hearing.*

The Office of Community Standards is responsible for maintaining the Hearing Record together with the audio recording of the hearing pursuant to the University's Record Retention Policy.

Any publicly available recordkeeping, such as crime statistics reported as part of the University's *Annual Security and Fire Safety Report*, will be accomplished without the inclusion of identifying information about any reporting individual, to the extent permissible by law.

Students will have the right to choose whether to discuss or disclose the outcome of the processes under this policy, and will have the right to have all information obtained during the course of the process under this policy protected from public release until the appeals panel makes a final determination, unless otherwise required by law. Even after the appeals panel makes a final determination, FERPA protections will still apply to the information as applicable.