



# Policies and Procedures

---

## Accountability and Compliance Procedures

### UMB Procedures for Resolving Sexual Misconduct Complaints Under the Jurisdiction of Title IX of the Education Amendment of 1972 "Title IX Procedures"

ADMINISTRATION, ACCOUNTABILITY AND COMPLIANCE | *Approved August 14, 2020*

#### Purpose

To describe how UMB will act on any formal or informal notice/complaint of violation of the UMB Policy on Sexual Misconduct ("the Policy") that is received by the Title IX Coordinator or any other Official with Authority by applying these procedures, known as "Title IX Procedures".

#### Applicability

The procedures below apply only to Qualifying Allegations of sexual harassment that are subject to the federal regulations implementing Title IX of the Education Amendment of 1972 (Title IX) (including sexual assault, dating violence, domestic violence, and stalking) involving students, staff, administrator, or faculty members.

#### Procedure

##### 1. Overview

UMB will act on any formal or informal notice/complaint of violation of the UMB Policy on Sexual Misconduct ("the Policy") that is received by the Title IX Coordinator or any other Official with Authority by applying these procedures, known as "Title IX Procedures".

The procedures below apply only to Qualifying Allegations of sexual harassment that are subject to the federal regulations implementing Title IX of the Education Amendment of 1972 (Title IX) (including sexual assault, dating violence, domestic violence, and stalking) involving students, staff, administrator, or faculty members.

Allegations of Prohibited Sexual Misconduct that violate the Policy that do not fall under the scope of Title IX are not Qualifying Allegations and will be resolved following UMB Procedures for Resolving Sexual Misconduct Complaints Outside the Title IX of the Education Amendments of 1972 (Non-Title IX Procedures). The UMB Title IX Coordinator is responsible for determining if an allegation is a Qualifying Allegation. An allegation pertaining to Sexual Misconduct that occurred outside the United States and an allegation pertaining to Sexual Misconduct that does not satisfy the definition of Sexual Harassment under Title IX are not Qualifying Allegations.

The procedures below may be used to resolve non-sexual misconduct violations of UMB policy if the collateral misconduct arises from the investigation of or occurring in conjunction with the alleged discriminatory sexual conduct. Other allegations of misconduct, unrelated to sexual misconduct allegations covered by the UMB Policy will be addressed through other appropriate UMB procedures. This procedure incorporates by reference the definitions in the UMB Policy.

## **2. Notice/Complaint**

Upon the Title IX Coordinator's receipt of a complaint or notice alleging violation of the UMB Policy, the Title IX Coordinator will initiate a prompt Initial Assessment to determine the next steps UMB will take.

If a Complainant does not wish to disclose their personally identifiable information (i.e. wishes to remain anonymous) and/or does not wish to proceed, the Complainant may make such a request to the Title IX Coordinator. Regardless of their choice, the Title IX Coordinator, or their designee, will offer Supportive Measures to the Complainant as appropriate.

## **3. Initial Assessment**

Following receipt of notice or a complaint of an alleged violation of the Policy, the Title IX Coordinator engages in an initial assessment, typically within one to five business days. The steps in an initial assessment can include:

If notice is given, the Title IX Coordinator seeks to determine if the person impacted wishes to make a Formal Complaint, and will assist them to do so, if desired.

If they do not wish to do so, the Title IX Coordinator determines whether to initiate a complaint because a violence risk assessment indicates a compelling threat to health and/or safety.

If a Formal Complaint is received, the Title IX Coordinator assesses its sufficiency and works with the Complainant to make sure it is correctly completed.

The Title IX Coordinator reaches out to the Complainant to offer supportive measures.

The Title IX Coordinator works with the Complainant to ensure they are aware of the right to have an Advisor.

The Title IX Coordinator works with the Complainant to determine whether the Complainant prefers a supportive and remedial response, an informal resolution option, or a formal investigation and grievance process.

If a supportive and remedial response is preferred, the Title IX Coordinator works with the Complainant to identify their wishes, assesses the request, and implements accordingly. No Formal Grievance Process is initiated, though the Complainant can elect to initiate one later, if desired.

If an informal resolution option is preferred, the Title IX Coordinator assesses whether the complaint is suitable for informal resolution, and may seek to determine if the Respondent is also willing to engage in informal resolution. Either party may terminate the informal resolution process and proceed through the formal grievance process at any time up until an agreement is entered.

If a Formal Grievance Process is preferred, the Title IX Coordinator determines if the misconduct alleged falls within the scope of Title IX,

The alleged conduct would constitute Sexual Harassment within an Education Program or Activity against a person in the United States if substantiated; and

The Complainant is participating or attempting to participate in an Education Program or Activity, including the admissions or hiring process, at the time the Complainant files a Formal Complaint.

If it does, the Title IX Coordinator will initiate the formal investigation and grievance process under the Title IX Procedures, directing the investigation to address:

an incident, and/or

a pattern of alleged misconduct, and/or

a culture/climate issue, based on the nature of the complaint.

If it does not, the Title IX Coordinator determines that Title IX does not apply (and will "dismiss" that aspect of the complaint, if any), assesses which policies may apply and refers the matter for resolution under Non-Title IX Procedures or other relevant resolution process.

Please note that dismissing a complaint under Title IX is solely a procedural requirement under Title IX, and does not limit UMB's authority to address a complaint with an appropriate process and remedies.

At the discretion of the Title IX Officer or designee, multiple reports may be consolidated into one Informal Resolution and/or investigation if the information related to each incident is relevant in reaching a resolution. Matters may be consolidated where the matters involve multiple Complainants, multiple Respondents, or related facts and circumstances involving the same Parties, including those arising out of the same or different events(s).

#### **a. Violence Risk Assessment**

In many cases, the Title IX Coordinator may determine that a Violence Risk Assessment (VRA) should be conducted by the UMB Behavioral Awareness and Threat Assessment (BETA) team as part of the initial assessment. A VRA can aid in ten critical and/or required determinations, including:

Emergency removal of a Respondent on the basis of immediate threat to physical health/safety;

Whether the Title IX Coordinator should pursue/sign a Formal Complaint absent a willing/able Complainant;

Whether to put the investigation on the footing of incident and/or pattern and/or climate;

To help identify potential predatory conduct;

To help assess/identify grooming behaviors;

Whether it is reasonable to try to resolve a complaint through Informal Resolution, and what modality may be most successful;

Whether to permit a voluntary withdrawal by the Respondent;

Whether to impose transcript notation or communicate with a transfer about a Respondent;

Assessment of appropriate sanctions/remedies (to be applied post-hearing); and/or

Whether a Clery Act Timely Warning/Trespass order/Persona-non-grata is needed.

Threat assessment is the process of evaluating the actionability of violence by an individual against another person or group following the issuance of a direct or conditional threat. A VRA is a broader term used to assess any potential violence or danger, regardless of the presence of a vague, conditional, or direct threat.

A VRA authorized by the Title IX Coordinator should occur in collaboration with the UMB BETA team. Where a VRA is required by the Title IX Coordinator, a Respondent refusing to cooperate may result in a charge of failure to comply within the appropriate student or employee conduct process.

A VRA is not an evaluation for an involuntary behavioral health hospitalization (e.g., 5150 in California, Section XII in Massachusetts, Baker Act in Florida), nor is it a psychological or mental health assessment. A VRA assesses the risk of actionable violence, often with a focus on targeted/predatory escalations, and is supported by research from the fields of law enforcement, criminology, human resources, and psychology.

UMB's Policy XI-3.00(A) UMB Behavioral Evaluation and Threat Assessment Policy can be found [here](#).

#### **b. Dismissal (Mandatory and Discretionary)**

UMB must dismiss a Formal Complaint or any allegations therein if under the Title IX Procedures, at any time during the investigation or hearing, it is determined that:

- 1) The conduct alleged in the formal complaint would not constitute sexual harassment as defined in UMB's Policy on Sexual Misconduct, even if proved; and/or
- 2) The conduct did not occur in an educational program or activity controlled by the UMB (including buildings or property controlled by recognized student organizations), and/or UMB does not have control of the Respondent; and/or
- 3) The conduct did not occur against a person in the United States; and/or

4) At the time of filing a formal complaint, a Complainant is not participating in or attempting to participate in the education program or activity of the UMB.

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

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

Upon any dismissal, UMB will promptly send written notice of the dismissal and the rationale for doing so simultaneously to the parties. The written notice of dismissal will also include, if the Formal Complaint was dismissed due to falling outside the scope of Title IX, if the allegations will be addressed using Non-Title IX Procedures. For complaints that will be addressed using Non-Title IX Procedures, Alleged Violations of the Policy on Sexual Misconduct: Non-Title IX Procedures (“Non-Title IX Procedures”).

This dismissal decision is appealable by any party under the procedures for appeal below. A Complainant who decides to withdraw a complaint may later request to reinstate it or refile it.

#### **4. Counterclaims**

UMB is obligated to ensure that the grievance process is not abused for retaliatory purposes. UMB permits the filing of counterclaims but uses an initial assessment, described above, to assess whether the allegations in the counterclaim are made in good faith. Counterclaims by a Respondent may be made in good faith, but are, on occasion, made for purposes of retaliation, instead. Counterclaims made with retaliatory intent will not be permitted.

Counterclaims determined to have been reported in good faith will be processed using the grievance procedures below. Investigation of such claims may take place after resolution of the underlying initial allegation, in which case a delay may occur.

Counterclaims may also be resolved through the same investigation as the underlying allegation, at the discretion of the Title IX Coordinator. When counterclaims are not made in good faith, they will be considered retaliatory and may constitute a violation of this policy.

#### **5. Right to an Advisor**

The parties may each have an Advisor of their choice present with them for all meetings, interviews, and hearings within the resolution process, if they so choose. The parties may select whoever they wish to serve as their Advisor as long as the Advisor is eligible and available.

Choosing an Advisor who is also a witness in the process creates potential for bias and conflict-of-interest. A party who chooses an Advisor who is also a witness can anticipate that issues of potential bias will be explored by the hearing Decision-maker(s).

UMB may permit parties to have more than one Advisor upon request to the Title IX Coordinator. The decision to grant this request is at the sole discretion of the Title IX Coordinator and will be granted equitably to all parties.

As a public entity, UMB fully respects and accords the Weingarten rights of employees. For parties who are entitled to union representation, UMB will allow the unionized employee to have their union representative (if requested by the party) as well as an Advisor of their choice present for all resolution-related meetings and interviews. To uphold the principles of equity, the other party (regardless of union membership) will also be permitted to have two Advisors. Witnesses are not permitted to have union representation or Advisors in grievance process interviews or meetings.

##### **a. Who Can Serve as an Advisor**

The Advisor may be a friend, mentor, family member, attorney, or any other individual a party chooses to advise, support, and/or consult with them throughout the resolution process. The parties may choose Advisors from inside or outside of the UMB community.

The Title IX Coordinator will also offer to assign a trained Advisor for any party if the party so chooses. If the parties choose an Advisor from the pool available from UMB, the Advisor will be trained by UMB and be familiar with UMB's resolution process.

If the parties choose an Advisor from outside the pool of those identified by UMB, the Advisor may not have been trained by UMB and may not be familiar with UMB policies and procedures.

Parties also have the right to choose not to have an Advisor in the initial stages of the resolution process, prior to a hearing.

#### ***b. Pre-Interview Meetings***

Advisors may request to meet with the administrative officials conducting interviews/meetings in advance of these interviews or meetings. This pre-meeting allows Advisors to clarify and understand their role and UMB's policies and procedures.

#### ***c. Advisor's Role in Meetings and Interviews***

The parties may be accompanied by their Advisor in all meetings and interviews at which the party is entitled to be present, including intake and interviews. Advisors should help the parties prepare for each meeting and are expected to advise ethically, with integrity, and in good faith.

UMB cannot guarantee equal Advisory rights, meaning that if one party selects an Advisor who is an attorney, but the other party does not or cannot afford an attorney, UMB is not obligated to provide an attorney.

#### ***d. Advisors in Hearings/UMB-Appointed Advisor***

Under U.S. Department of Education regulations under Title IX, a form of indirect questioning is required during the hearing, but must be conducted by the parties' Advisors. The parties are not permitted to directly question each other or any witnesses. If a party does not have an Advisor for a hearing, UMB will appoint a trained Advisor for the limited purpose of conducting any questioning of the other party and witnesses.

A party may reject this appointment and choose their own Advisor, but they may not proceed without an Advisor. If the party's Advisor will not conduct questioning, UMB will appoint an Advisor who will do so thoroughly, regardless of the participation or non-participation of the advised party in the hearing itself. Extensive questioning of the parties and witnesses will also be conducted by the Decision-maker(s) during the hearing.

#### ***e. Advisor Violations of UMB Policy***

All Advisors are subject to the same UMB policies and procedures, whether they are attorneys or not. Advisors are expected to advise their advisees without disrupting proceedings. Advisors may not address UMB officials in a meeting or interview unless invited to (e.g., asking procedural questions). The Advisor may not make a presentation or represent their advisee during any meeting or proceeding and may not speak on behalf of the advisee to the Investigator(s) or other Decision-maker(s) except during a hearing proceeding, during cross-examination.

The parties are expected to ask and respond to questions on their own behalf throughout the investigation phase of the resolution process. Although the Advisor generally may not speak on behalf of their advisee, the Advisor may consult with their advisee, either privately as needed, or by conferring or passing notes during any resolution process meeting or interview. For longer or more involved discussions, the parties and their Advisors may ask for breaks to allow for private consultation.

Any Advisor who oversteps their role as defined by this policy will be warned only once. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the meeting will be ended, or other appropriate measures implemented. Subsequently, the Title IX Coordinator will determine how to address the Advisor's non-compliance and future role.

#### ***f. Sharing Information with the Advisor***

UMB expects that the parties may wish to have UMB share documentation and evidence related to the allegations with their Advisors. Parties may share this information directly with their Advisor or other individuals if they wish. Doing so may help the parties participate more meaningfully in the resolution process.

UMB provides a consent form that authorizes UMB to share such information directly with their Advisor. The parties must complete and submit this form to the Title IX Coordinator before UMB is able to share records with an Advisor.

If a party requests that all communication be made through their attorney Advisor, UMB will not comply with that request. It is the responsibility of the parties to provide information to their Advisor, including communications.

***g. Privacy of Records Shared with Advisor***

Advisors are expected to maintain the privacy of the records shared with them. These records may not be shared with third parties, disclosed publicly, or used for purposes not explicitly authorized by UMB. UMB may seek to restrict the role of any Advisor who does not respect the sensitive nature of the process or who fails to abide by UMB's privacy expectations.

***h. Expectations of an Advisor***

UMB generally expects an Advisor to adjust their schedule to allow them to attend meetings when planned, but may change scheduled meetings to accommodate an Advisor's inability to attend, if doing so does not cause an unreasonable delay.

UMB may also make reasonable provisions to allow an Advisor who cannot attend in person to attend a meeting by telephone, video conferencing, or other similar technologies as may be convenient and available.

***i. Expectations of the Parties with Respect to Advisors***

A party may elect to change Advisors during the process and is not obligated to use the same Advisor throughout. The parties are expected to inform the Investigator(s) of the identity of their Advisor at least two (2) business days before the date of their first meeting with Investigators (or as soon as possible if a more expeditious meeting is necessary or desired).

The parties are expected to provide timely notice to the Title IX Coordinator if they change Advisors at any time. It is assumed that if a party changes Advisors, consent to share information with the previous Advisor is terminated, and a release for the new Advisor must be secured. Parties are expected to inform the Title IX Coordinator of the identity of their hearing Advisor at least two (2) business days before the hearing.

***j. Assistance in Securing an Advisor***

UMB provides an Advisor to either Party for the specific purpose of conducting cross-examination if the Party has not chosen an Advisor. Advisors may be chosen from the UMB Community. UMB does not guarantee an Advisor will have legal knowledge or expertise.

For representation, Respondents may wish to contact organizations such as:

FACE (<http://www.facecampusequality.org>)

SAVE (<http://www.saveservices.org>).


Complainants may wish to contact organizations such as:

The Victim Rights Law Center (<http://www.victimrights.org>)

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

The Time's Up Legal Defense Fund: <https://nwlc.org/times-up-legal-defense-fund/> 

***k. Legal Representation Fund for Title IX Proceedings (Students Only)***

A current or former UMB student who makes a complaint or who responds to a complaint on which a formal Title IX investigation is initiated and who was enrolled as a student at UMB at the time of the incident that is the basis of the complaint may obtain legal counsel through the Maryland Higher Education Commission (the "Commission"). The Commission has developed a list of attorneys and legal services programs willing to represent students on a pro bono basis or at reduced fees equivalent to those paid to attorneys under civil legal services programs administered by the Maryland Legal Services Corporation. The student may select an attorney on the Commission's list or seek an alternate attorney to whom the Commission will pay reasonable fees equivalent to those paid to attorneys under civil legal services programs. Any fees above and beyond those paid under civil legal services programs administered by the Maryland Legal Services Corporation are the responsibility of the student. The Commission will not pay attorney's fees for representation of a student in any criminal or civil matter or any administrative matter that is not a Title IX proceeding at an institution operating in Maryland. See <https://mhec.maryland.gov/Pages/Title-IX-Campus-Sexual-Assault-Proceedings.aspx> .

## 6. Resolution Processes

Resolution proceedings are private. All persons present at any time during the resolution process are expected to maintain the privacy of the proceedings in accordance with UMB's policy. Although there is an expectation of privacy around what Investigators share with parties during interviews, the parties have discretion to share their own knowledge and evidence with others if they so choose, with the exception of information the parties agree not to disclose related to Informal Resolution, discussed below. UMB encourages parties to discuss any sharing of information with their Advisors before doing so.

### **a. Informal Resolution**

Informal Resolution can include three different approaches:

When the Title IX Coordinator can resolve the matter informally by providing supportive measures (only) to remedy the situation.

When the parties agree to resolve the matter through an alternate resolution mechanism as described below, usually before a formal investigation takes place; see discussion in b., below.

When the Respondent accepts responsibility for violating policy, and desires to accept a sanction and end the resolution process (similar to above, but usually occurs post-investigation); see discussion in c., below.

To initiate Informal Resolution, a Complainant needs to submit a Formal Complaint. A Respondent who wishes to initiate Informal Resolution should contact the Title IX Coordinator.

It is not necessary to pursue Informal Resolution first in order to pursue a Formal Grievance Process, and any party participating in Informal Resolution can stop the process at any time and begin or resume the Formal Grievance Process.

Prior to implementing Informal Resolution, the Title IX Coordinator, or their designee, will provide the parties with written notice on behalf of UMB of the reported misconduct and any sanctions or measures that may result from participating in such a process, including information regarding any records that will be maintained or shared by UMB.

UMB will obtain voluntary, written confirmation that all parties wish to resolve the matter through Informal Resolution before proceeding and will not pressure the parties to participate in Informal Resolution. Upon conclusion of the Informal Resolution, the parties will be provided a written copy of the terms of resolution agreement.

### **b. Alternate Resolution Mechanism**

Alternate Resolution is an informal mechanism by which the parties reach a mutually agreed upon resolution of an allegation. All parties must consent to the use of an Alternate Resolution n

The Title IX Coordinator may look to the following factors to assess whether Alternate Resolution is appropriate, or which form of Alternate Resolution may be most successful for the parties:

The parties' amenability to Alternate Resolution;

Likelihood of potential resolution, taking into account any power dynamics between the parties;

The parties' motivation to participate;

Civility of the parties;

Results of a violence risk assessment/ongoing risk analysis;

Disciplinary history;

Whether an emergency removal is needed;

Skill of the Alternate Resolution facilitator with this type of allegation;

Complaint complexity;

Emotional investment/capability of the parties;

Rationality of the parties;

Goals of the parties;

Adequate resources to invest in Alternate Resolution (time, staff, etc.)

The ultimate determination of whether Alternate Resolution is available or successful is to be made by the Title IX Coordinator. The Title IX Coordinator maintains records of any resolution that is reached, and failure to abide by the resolution agreement may result in appropriate remedial/disciplinary actions. Results of complaints resolved by Informal Resolution or Alternate Resolution are not appealable.

#### ***c. Respondent Accepts Responsibility for Alleged Violations***

The Respondent may accept responsibility for all or part of the alleged policy violations at any point during the resolution process. If the Respondent indicates an intent to accept responsibility for all of the alleged misconduct, the formal process will be paused, and the Title IX Coordinator will determine whether Informal Resolution can be used according to the criteria above.

If Informal Resolution is applicable, the Title IX Coordinator will determine whether all parties and UMB are able to agree on responsibility, sanctions, and/or remedies. If so, the Title IX Coordinator implements the accepted finding that the Respondent is in violation of UMB policy and implements agreed-upon sanctions and/or remedies, in coordination with other appropriate administrator(s), as necessary.

This result is not subject to appeal once all parties indicate their written assent to all agreed upon terms of resolution. When the parties cannot agree on all terms of resolution, the Formal Grievance Process will resume at the same point where it was paused.

When a resolution is accomplished, the appropriate sanction or remedial actions are promptly implemented in order to effectively stop the harassment or discrimination, prevent its recurrence, and remedy the effects of the discriminatory conduct, both on the Complainant and the community.

#### ***d. Negotiated Resolution***

The Title IX Coordinator, with the consent of the parties, may negotiate and implement an agreement to resolve the allegations that satisfies all parties and UMB. Negotiated Resolutions are not appealable.

### **7. Grievance Process Pool**

The Formal Grievance Process relies on a pool of administrators (“the Pool”) to carry out the process.

#### ***a. Pool Member Roles***

Members of the Pool are trained annually, and can serve in in the following roles, based on the training received and at the direction of the Title IX Coordinator:

- To provide appropriate intake of and initial guidance pertaining to complaints
- To act as an Advisor to the parties
- To serve in a facilitation role in Informal Resolution process
- To perform or assist with initial assessment
- To investigate complaints
- To serve as a hearing facilitator (process administrator, no decision-making role)
- To serve as a Decision-maker regarding the complaint
- To serve as a hearing Panelist
- To serve as an Appeal Decision-maker

#### ***b. Pool Member Appointment***

The Chief Accountability Officer, who may consult with the Title IX Coordinator or other relevant parties, appoints the Pool, which acts with independence and impartiality. Some members of the Pool may be trained in a variety of skill sets and can rotate amongst the different roles listed above in different cases. Some members of the Pool will have permanent roles. This process of role



assignment may be the result of particular training, skills, aptitudes, or talents identified that make them best suited to particular roles.

**c. Pool Member Training**

The Pool members receive annual training. Training will be specific to the roles the Pool member may hold and may include, but is not limited to:

The scope of the UMB's Discrimination and Harassment Policy and Procedures

How to conduct investigations and hearings that protect the safety of Complainants and Respondents, and promote accountability

Implicit bias

Disparate treatment and impact

Reporting, confidentiality, and privacy requirements

Applicable laws, regulations, and federal regulatory guidance

How to implement appropriate and situation-specific remedies

How to investigate in a thorough, reliable, and impartial manner

How to uphold fairness, equity, and due process

How to weigh evidence

How to conduct questioning

How to assess credibility

Impartiality and objectivity

How to render findings and generate clear, concise, evidence-based rationales

The definitions of all offenses

How to apply definitions used by UMB with respect to consent (or the absence or negation of consent) consistently, impartially, and in accordance with policy

How to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes

How to serve impartially by avoiding prejudice of the facts at issue, conflicts of interest, and bias

Any technology to be used at a live hearing

Issues of relevance of questions and evidence

Issues of relevance to create an investigation report that fairly summarizes relevant evidence

How to determine appropriate sanctions in reference to all forms of harassment, discrimination, and/or retaliation allegations

Recordkeeping

Not all members of the Pool will receive training in skills applicable to roles they will not serve.

Specific training is also provided for Appeal Decision-makers, intake personnel, Advisors (who are UMB employees), and Chairs. All Pool members are required to attend trainings related to their roles annually. The materials used to train all members of the Pool are publicly posted here: [www.umaryland.edu/titleix/training](http://www.umaryland.edu/titleix/training).

**d. Pool Membership**

The Pool includes:

members of the Title IX team

representative(s) from each of the Schools to serve as Hearing Panelists

Senior administration personnel

Individuals who are interested in serving in the Pool are encouraged to contact the Title IX Coordinator.

### **8. Formal Grievance Process: Notice of Investigation and Allegations**

The Title IX Coordinator will provide written notice of the investigation and allegations (the "NOIA") to the Respondent upon commencement of the Formal Grievance Process. This facilitates the Respondent's ability to prepare for the interview and to identify and choose an Advisor to accompany them. The NOIA is also copied to the Complainant, who is to be given advance notice of when the NOIA will be delivered to the Respondent.

The NOIA will include:

A meaningful summary of all of allegations,

The identity of the involved parties (if known),

The precise misconduct being alleged,

The date and location of the alleged incident(s) (if known),

The specific policies implicated,

A description of the applicable procedures,

A statement of the potential sanctions/remedial actions that could result,

A statement that UMB presumes the Respondent is not responsible for the reported misconduct unless and until the evidence supports a different determination,

A statement that determinations of responsibility are made at the conclusion of the process and that the parties will be given an opportunity to inspect and review all directly related and/or relevant evidence obtained during the review and comment period,

A statement about the UMB's policy on retaliation,

Information about the privacy of the process,

Information on the need for each party to have an Advisor of their choosing and suggestions for ways to identify an Advisor,

A statement informing the parties that UMB's Policy prohibits knowingly making false statements, including knowingly submitting false information during the resolution process,

Detail on how the party may request disability accommodations during the interview process,

A link to or physical copy of the UMB's VAWA Brochure

The name(s) of the Investigator(s), along with a process to identify, in advance of the interview process, to the Title IX Coordinator any conflict of interest that the Investigator(s) may have, and

An instruction to preserve any evidence that is directly related to the allegations.

Amendments and updates to the NOIA may be made as the investigation progresses and more information becomes available regarding the addition or dismissal of various charges.

Notice will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address(es) of the parties as indicated in official UMB records, or emailed to the parties' UMB-issued email or designated accounts. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

### **9. Resolution Timeline**

UMB will make a good faith effort to complete the resolution process within a sixty (60) business day time period, including appeal, which can be extended as necessary for appropriate cause by the Title IX Coordinator, who will provide notice and rationale for any extensions or delays to the parties as appropriate, as well as a estimate of how much additional time will be needed to complete the process.

### **10. Appointment of Investigators**

Once the decision to commence a formal investigation is made, the Title IX Coordinator appoints a Pool member, or members, to conduct the investigation, usually within two (2) business days of determining that an investigation should proceed.

### **11. Ensuring Impartiality**

Any individual, including the Title IX Coordinator, Deputy Title IX Coordinator, Investigator, Decision-maker(s), and Hearing Panelists, materially involved in the administration of the resolution process may neither have nor demonstrate a conflict of interest or bias for a party generally, or for a specific Complainant or Respondent.

The Title IX Coordinator will vet the assigned Investigator(s) to ensure impartiality by ensuring there are no actual or apparent conflicts of interest or disqualifying biases. The parties may, at any time during the resolution process, raise a concern regarding bias or conflict of interest, and the Title IX Coordinator will determine whether the concern is reasonable and supportable. If so, another Pool member will be assigned and the impact of the bias or conflict, if any, will be remedied. If the source of the conflict of interest or bias is the Title IX Coordinator, concerns should be raised with the Chief Accountability Officer.

The Formal Grievance Process involves an objective evaluation of all relevant evidence obtained, including evidence that supports that the Respondent engaged in a policy violation and evidence that supports that the Respondent did not engage in a policy violation. Credibility determinations may not be based solely on an individual's status or participation as a Complainant, Respondent, or witness.

UMB is committed to due process. It operates with the presumption that the Respondent is not responsible for the reported misconduct unless and until the Respondent is determined to be responsible for a policy violation by a preponderance of the evidence.

### **12. Investigation Timeline**

Investigations are completed expeditiously, normally within thirty (30) business days, though some investigations may take weeks or even months, depending on the nature, extent, and complexity of the allegations, availability of witnesses, police involvement, etc.

UMB will make a good faith effort to complete investigations as promptly as circumstances permit and will communicate regularly with the parties to update them on the progress and timing of the investigation.

### **13. Delays in the Investigation Process and Interactions with Law Enforcement**

UMB may undertake a short delay in its investigation (several days to a few weeks) if circumstances require. Such circumstances include, but are not limited to: a request from law enforcement to temporarily delay the investigation, the need for language assistance, the absence of parties and/or witnesses, and/or accommodations for disabilities or health conditions.

UMB will communicate in writing the anticipated duration of the delay and reason to the parties, and provide the parties with status updates if necessary. UMB will promptly resume its investigation and resolution process as soon as feasible. During such a delay, UMB will implement supportive measures as deemed appropriate.

UMB's action(s) or processes are not typically altered or precluded on the grounds that civil or criminal charges involving the underlying incident(s) have been filed or that criminal charges have been dismissed or reduced.

### **14. Steps in the Investigation Process**

All investigations are thorough, reliable, impartial, prompt, and fair. Investigations involve interviews with all relevant parties and witnesses; obtaining available, relevant evidence; and identifying sources of expert information, as necessary.

All parties have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence and expert witnesses, and to fully review and respond to all evidence on the record.

The Investigator(s) typically take(s) the following steps, if not already completed (not necessarily in this order):

Determine the identity and contact information of the Complainant

In coordination with campus partners (e.g., the Title IX Coordinator), initiate or assist with any necessary supportive measures

Identify all policies implicated by the alleged misconduct and notify the Complainant and Respondent of all of the specific policies implicated

Assist the Title IX Coordinator with conducting a prompt initial assessment to determine if the allegations indicate a potential policy violation

Commence a thorough, reliable, and impartial investigation by identifying issues and developing a strategic investigation plan, including a witness list, evidence list, intended investigation timeframe, and order of interviews for all witnesses and the parties

Meet with the Complainant to finalize their interview/statement, if necessary

Prepare and send the initial Notice of Investigation and Allegation (NOIA). The NOIA may be amended with any additional or dismissed allegations

The NOIA will include:

- a. The University's complete Policy and Procedures as set forth herein;
- b. The allegations of Prohibited Conduct as defined by the Policy;
- c. Identities of the Parties involved, if known;
- d. Date(s), location(s), and time(s) of the alleged incident(s), if known;
- e. Statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the adjudication process;
- f. Parties may have an Advisor of their choice, who may be an attorney and who may inspect and review evidence;
- g. If Parties do not select an Advisor of their choice, the University will provide a trained Advisor for purposes of performing cross-examination on behalf of that Party at the Hearing;
- h. Parties may have a Support Person of their choice;
- i. Advisement that knowingly making false statements or knowingly submitting false information during the investigation and adjudication process is prohibited under Section XII of the Policy;
- j. If the University decides to investigate additional allegations about either Party that are not in the original notice, the Parties will receive an amended notice containing the additional allegations; and
- k. The range of potential Sanctions associated with the alleged Prohibited Conduct.

Provide each interviewed party and witness an opportunity to review and verify the Investigator's summary notes (or transcript) of the relevant evidence/testimony from their respective interviews and meetings

Make good faith efforts to notify the parties of any meeting or interview involving the other party, in advance when possible

When participation of a party is expected, provide that party with written notice of the date, time, and location of the meeting, as well as the expected participants and purpose

Interview all available, relevant witnesses and conduct follow-up interviews as necessary

Allow each party the opportunity to suggest witnesses and questions they wish the Investigator(s) to ask of the other party and witnesses, and document in the report which questions were asked, with a rationale for any changes or omissions

Complete the investigation promptly and without unreasonable deviation from the intended timeline

Provide regular status updates to the parties throughout the investigation

Prior to the conclusion of the investigation, provide the parties and their respective Advisors (if so desired by the parties) with a list of witnesses whose information will be used to render a finding

Write a comprehensive investigation report fully summarizing the investigation, all witness interviews, and addressing all relevant evidence. Appendices including relevant physical or documentary evidence will be included

The Investigator(s) gather, assess, and synthesize evidence, but make no conclusions, engage in no policy analysis, and render no recommendations as part of their report

Prior to the conclusion of the investigation, provide the parties and their respective Advisors (if a consent form has been properly completed and so desired by the parties) a secured electronic or hard copy of the draft investigation report as well as an opportunity to inspect and review all of the evidence obtained as part of the investigation that is directly related to the reported misconduct, including evidence upon which UMB does not intend to rely in reaching a determination, for a ten (10) business day review and comment period so that each party may meaningfully respond to the evidence. The parties may elect to waive the full ten days. Each copy of the materials shared will be watermarked on each page with the role of the person receiving it (e.g., Complainant, Respondent, Complainant's Advisor, Respondent's Advisor).

The Investigator(s) may elect to respond in writing in the investigation report to the parties' submitted responses and/or to share the responses between the parties for additional responses

The Investigator(s) will incorporate relevant elements of the parties' written responses into the final investigation report, include any additional relevant evidence, make any necessary revisions, and finalize the report. The Investigator(s) should document all rationales for any changes made after the review and comment period

The Investigator(s) shares the report with the Title IX Coordinator and/or legal counsel for their review

The Investigator will incorporate any relevant feedback, and the final report is then shared with all parties and, if the proper Consent forms are completed, their Advisors through secure electronic transmission or hard copy at least ten (10) business days prior to a hearing. The parties are also provided with a file of any directly related evidence that was not included in the report.

#### **15. Role and Participation of Witnesses in the Investigation**

Witnesses (as distinguished from the parties) who are employees of UMB are required to cooperate with and participate in UMB's investigation and resolution process. Failure of such witnesses to cooperate with and/or participate in the investigation or resolution process constitutes a violation of policy and may warrant discipline.

Although in-person interviews for parties and all potential witnesses are ideal, circumstances (e.g., study abroad, summer break) may require individuals to be interviewed remotely. Skype, Zoom, FaceTime, WebEx, or similar technologies may be used for interviews if the Investigator(s) determine that timeliness or efficiency dictate a need for remote interviewing. UMB will take appropriate steps to reasonably ensure the security/privacy of remote interviews.

Witnesses may also provide written statements in lieu of interviews or choose to respond to written questions, if deemed appropriate by the Investigator(s), though not preferred. If a witness submits a written statement but does not intend to be and is not present for cross examination at a hearing, their written statement may not be used as evidence.

#### **16. Recording of Interviews**

No unauthorized audio or video recording of any kind is permitted during investigation meetings. If Investigator(s) elect to audio and/or video record interviews, all involved parties must be made aware of and consent to audio and/or video recording.

#### **17. Evidentiary Considerations in the Investigation**

The investigation does not consider: 1) incidents not directly related to the possible violation, unless they evidence a pattern; 2) the character of the parties; or 3) questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, 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.

**18. Referral for Hearing**

Provided that the complaint is not resolved through Informal Resolution, once the final investigation report is shared with the parties, the Title IX Coordinator will refer the matter for a hearing.

The hearing cannot be less than ten (10) business days from the conclusion of the investigation –when the final investigation report is transmitted to the parties and the Decision-maker–unless all parties and the Decision-maker agree to an expedited timeline.

The Chief Accountability Officer, or their designee, serves as the Decision-maker for hearings. The panel members for each hearing will be drawn from the Pool using a randomization process once any individuals in the Pool have been eliminated due to participation in the investigatory process, conflicts of interest, or bias.

**19. Hearing Decision-maker Composition**

The single Decision-maker will Chair the hearing.

The Decision-maker(s) will not have had any previous involvement with the investigation. The Title IX Coordinator may elect to have an alternate from the Pool sit in throughout the hearing process in the event that a substitute is needed for any reason.

Those who have served as Investigators will be witnesses in the hearing and therefore may not serve as Decision-makers. Those who are serving as Advisors for any party may not serve as Panelists in that matter.

The Title IX Coordinator may not serve as a Decision-maker or Chair in the matter but may serve as an administrative facilitator of the hearing if their previous role(s) in the matter do not create a conflict of interest. Otherwise, a designee may fulfill this role. The hearing will convene at a time determined by the Chair or designee.

**20. Evidentiary Considerations in the Hearing**

Any evidence that the Decision-maker(s) determine(s) is relevant and credible may be considered. The hearing does not consider: 1) incidents not directly related to the possible violation, unless they evidence a pattern; 2) the character of the parties; or 3) questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, 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.

Previous disciplinary action of any kind involving the Respondent may be considered in determining an appropriate sanction upon a determination of responsibility, assuming UMB uses a progressive discipline system. This information is only considered at the sanction stage of the process, and is not shared until then.

The parties may each submit a written impact statement prior to the hearing for the consideration of the Decision-maker(s) at the sanction stage of the process when a determination of responsibility is reached.

After post-hearing deliberation, the Decision-maker renders a determination based on a preponderance of the evidence; whether it is more likely than not that the Respondent violated the Policy as alleged.

**21. Notice of Hearing**

No less than ten (10) business days prior to the hearing, the Title IX Coordinator will send notice of the hearing to the parties. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

The notice will contain:

A description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable procedures, and a statement of the potential sanctions/remedial actions that could result.

The time, date, and location of the hearing and a reminder that attendance is mandatory, superseding all other campus activities.

Any technology that will be used to facilitate the hearing.

Information about the option for the live hearing to occur with the parties located in separate rooms using technology that enables the Decision-maker(s) and parties to see and hear a party or witness answering questions. Such a request must be raised with the

Title IX Coordinator at least five (5) business days prior to the hearing.

A list of all those who will attend the hearing, along with an invitation to object to any Decision-maker on the basis of demonstrated bias. This must be raised with the Title IX Coordinator at least two (2) business days prior to the hearing.

Information on how the hearing will be recorded and on access to the recording for the parties after the hearing.

A statement that if any party or witness does not appear at the scheduled hearing, the hearing may be held in their absence, and the party's or witness's testimony and any statements given prior to the hearing will not be considered by the Decision-maker(s). For compelling reasons, the Chair may reschedule the hearing.

Notification that the parties may have the assistance of an Advisor of their choosing at the hearing and will be required to have one present for any questions they may desire to ask. The party must notify the Title IX Coordinator if they do not have an Advisor, and UMB will appoint one. Each party must have an Advisor present. There are no exceptions.

A copy of all the materials provided to the Decision-maker(s) about the matter, unless they have been provided already.

An invitation to each party to submit to the Chair an impact statement pre-hearing that the Decision-maker will review during any sanction determination.

An invitation to contact the Title IX Coordinator to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing, at least seven (7) business days prior to the hearing.

Whether parties can/cannot bring mobile phones/devices into the hearing.

Hearings for possible violations that occur near or after the end of an academic term (assuming the Respondent is still subject to this Policy) and are unable to be resolved prior to the end of term will typically be held immediately after the end of the term or during the summer, as needed, to meet the resolution timeline followed by UMB and remain within the 60 business day goal for resolution.

In these cases, if the Respondent is a graduating student, a hold may be placed on graduation and/or official transcripts until the matter is fully resolved (including any appeal). A student facing charges under this Policy is not in good standing to graduate.

## **22. Alternative Hearing Participation Options**

If a party or parties prefer not to attend or cannot attend the hearing in person, the party should request alternative arrangements from the Title IX Coordinator or the Chair at least five (5) business days prior to the hearing.

The Title IX Coordinator can arrange to use technology to allow remote testimony without compromising the fairness of the hearing. Remote options may also be needed for witnesses who cannot appear in person. Any witness who cannot attend in person should let the Title IX Coordinator or the Chair know at least five (5) business days prior to the hearing so that appropriate arrangements can be made.

## **23. Pre-Hearing Preparation**

The Chair or hearing facilitator after any necessary consultation with the parties, Investigator(s) and/or Title IX Coordinator, will provide the names of persons who will be participating in the hearing, all pertinent documentary evidence, and the final investigation report to the parties at least ten (10) business days prior to the hearing.

Any witness scheduled to participate in the hearing must have been first interviewed by the Investigator(s) or have proffered a written statement or answered written questions, unless all parties and the Chair assent to the witness's participation in the hearing. The same holds for any evidence that is first offered at the hearing. If the parties and Chair do not assent to the admission of evidence newly offered at the hearing, the Chair may delay the hearing and instruct that the investigation needs to be re-opened to consider that evidence.

The parties will be given a list of the names of the Decision-maker and Panelists at least five (5) business days in advance of the hearing. All objections to any Decision-maker must be raised in writing, detailing the rationale for the objection, and must be submitted to the Title IX Coordinator as soon as possible and no later than one day prior to the hearing. Decision-makers will only be removed if the Title IX Coordinator concludes that their bias or conflict of interest precludes an impartial hearing of the allegation(s).

The Title IX Coordinator will give the Decision-maker(s) a list of the names of all parties, witnesses, and Advisors at least five (5) business days in advance of the hearing. Any Decision-maker who cannot make an objective determination must recuse themselves from the proceedings when notified of the identity of the parties, witnesses, and Advisors in advance of the hearing. If a Decision-maker is unsure of whether a bias or conflict of interest exists, they must raise the concern to the Title IX Coordinator as soon as possible.

During the ten (10) business day period prior to the hearing, the parties have the opportunity for continued review and comment on the final investigation report and available evidence. That review and comment can be shared with the Chair at the pre-hearing meeting or at the hearing and will be exchanged between each party by the Chair.

The parties and advisors will receive written notice of procedures for the hearing at least five (5) days in advance.

#### **24. Pre-Hearing Meetings**

The Chair may convene a pre-hearing meeting(s) with the parties and their Advisors to invite them to submit the questions or topics each party wishes to ask or discuss at the hearing, so that the Chair can rule on their relevance ahead of time to avoid any improper evidentiary introduction in the hearing or provide recommendations for more appropriate phrasing. However, this advance review opportunity does not preclude the Advisors from asking a question for the first time at the hearing or from asking for a reconsideration based on any new information or testimony offered at the hearing. The Chair must document and share with each party their rationale for any exclusion or inclusion at a pre-hearing meeting.

The Chair, only with full agreement of the parties, may decide in advance of the hearing that certain witnesses do not need to be present if their testimony can be adequately summarized by the Investigator(s) in the investigation report or during the hearing.

At each pre-hearing meeting with a party and their Advisor, the Chair will consider arguments that evidence identified in the final investigation report as relevant is, in fact, not relevant. Similarly, evidence identified as directly related but not relevant by the Investigator(s) may be argued to be relevant. The Chair may rule on these arguments pre-hearing and will exchange those rulings between the parties prior to the hearing to assist in preparation for the hearing. The Chair may consult with legal counsel and/or the Title IX Coordinator, or ask either or both to attend pre-hearing meetings.

#### **25. Hearing Procedures**

At the hearing, the Decision-maker(s) has the authority to hear and make determinations on all allegations of discrimination, harassment, and/or retaliation and may also hear and make determinations on any additional alleged policy violations that have occurred in concert with the discrimination, harassment, and/or retaliation, even though those collateral allegations may not specifically fall within the Policy.

Participants at the hearing will include the Chair, any additional panelists, the hearing facilitator, the Investigator(s) who conducted the investigation, the parties (or three (3) organizational representatives when an organization is the Respondent), Advisors to the parties, any called witnesses, the Title IX Coordinator, and anyone providing authorized accommodations or assistive services.

The Chair will answer all questions of procedure. Anyone appearing at the hearing to provide information will respond to questions on their own behalf.

The Chair will allow witnesses who have relevant information to appear at a portion of the hearing in order to respond to specific questions from the Panelists and the parties and the witnesses will then be excused.

#### **26. Joint Hearings**

In hearings involving more than one Respondent or in which two (2) or more Complainants have accused the same individual of substantially similar conduct, the default procedure will be to hear the allegations jointly.

However, the Title IX Coordinator may permit the investigation and/or hearings pertinent to each Respondent to be conducted separately if there is a compelling reason to do so. In joint hearings, separate determinations of responsibility will be made for each Respondent with respect to each alleged policy violation.

#### **27. The Order of the Hearing – Introductions and Explanation of Procedure**



The Chair explains the procedures and introduces the participants. This may include a final opportunity for challenge or recusal of any member of the Hearing Panel on the basis of bias or conflict of interest. The Chair will rule on any such challenge unless the Chair is the individual who is the subject of the challenge, in which case the Title IX Coordinator will review and decide the challenge.

At the hearing, recording, witness logistics, party logistics, curation of documents, separation of the parties, and other administrative elements of the hearing process are managed by a non-voting hearing facilitator, either the Title IX Coordinator or an individual appointed by the Title IX Coordinator. The hearing facilitator may attend to: logistics of rooms for various parties/witnesses as they wait; flow of parties/witnesses in and out of the hearing space; ensuring recording and/or virtual conferencing technology is working as intended; copying and distributing materials to participants, as appropriate, etc.

### **28. Investigator Presents the Final Investigation Report**

The Investigator(s) will then present a summary of the final investigation report, including items that are contested and those that are not, and will be subject to questioning by the Hearing Panelists and the parties (through their Advisors). The Investigator(s) will be present during the entire hearing process, but not during deliberations.

Neither the parties nor the Hearing Panel should ask the Investigator(s) their opinions on credibility, recommended findings, or determinations, and the Investigators, Advisors, and parties will refrain from discussion of or questions about these assessments. If such information is introduced, the Chair will direct that it be disregarded.

The pre-hearing meeting(s) may be recorded.

### **29. Testimony and Questioning**

Once the Investigator(s) present their report and are questioned, the parties and witnesses may provide relevant information in turn, beginning with the Complainant, and then in the order determined by the Chair. The parties/witnesses will submit to questioning by the Hearing Panel and then by the parties through their Advisors ("cross-examination").

All questions are subject to a relevance determination by the Chair. The Advisor, who will remain seated during questioning, will pose the proposed question orally, electronically, or in writing (orally is the default, but other means of submission may be permitted by the Chair upon request if agreed to by all parties and the Chair), the proceeding will pause to allow the Chair to consider it (and state it if it has not been stated aloud), and the Chair will determine whether the question will be permitted, disallowed, or rephrased.

The Chair may invite explanations or persuasive statements regarding relevance with the Advisors, if the Chair so chooses. The Chair will then state their decision on the question for the record and advise the party/witness to whom the question was directed, accordingly. The Chair will explain any decision to exclude a question as not relevant, or to reframe it for relevance.

The Chair will limit or disallow questions on the basis that they are irrelevant, unduly repetitious (and thus irrelevant), or abusive. The Chair has final say on all questions and determinations of relevance. The Chair may consult with legal counsel on any questions of admissibility. The Chair may ask Advisors to frame why a question is or is not relevant from their perspective but will not entertain argument from the Advisors on relevance once the Chair has ruled on a question.

If the parties raise an issue of bias or conflict of interest of an Investigator or Hearing Panelist at the hearing, the Chair may elect to address those issues, consult with legal counsel, and/or refer them to the Title IX Coordinator, and/or preserve them for appeal. If bias is not in issue at the hearing, the Chair should not permit irrelevant questions that probe for bias.

### **30. Refusal to Submit to Cross-Examination and Inferences**

If a party or witness chooses not to submit to cross-examination at the hearing, either because they do not attend the meeting, or they attend but refuse to participate in questioning, then the Decision-maker(s) may not rely on any prior statement made by that party or witness at the hearing (including those contained in the investigation report) in the ultimate determination of responsibility. The Decision-maker(s) must disregard that statement. Evidence provided that is something other than a statement by the party or witness may be considered.

If the party or witness attends the hearing and answers some cross-examination questions, only statements related to the cross-examination questions they refuse to answer cannot be relied upon. However, if the statements of the party who is refusing to submit to cross-examination or refuses to attend the hearing are the subject of the allegation itself (e.g., the case is about verbal

harassment or a quid pro quo offer), then those statements are not precluded from admission. Similarly, statements can be relied upon when questions are posed by the Hearing Panelists, as distinguished from questions posed by Advisors through cross-examination.

The Hearing Panelists may not draw any inference solely from a party's or witness's absence from the hearing or refusal to answer cross-examination or other questions.

If charges of policy violations other than sexual harassment are considered at the same hearing, the Hearing Panelists may consider all evidence it deems relevant, may rely on any relevant statement as long as the opportunity for cross-examination is afforded to all parties through their Advisors, and may draw reasonable inferences from any decision by any party or witness not to participate or respond to questions.

If a party's Advisor of choice refuses to comply with UMB's established rules of decorum for the hearing, UMB may require the party to use a different Advisor. If a UMB-provided Advisor refuses to comply with the rules of decorum, UMB may provide that party with a different Advisor to conduct cross-examination on behalf of that party.

### **31. Recording Hearings**

Hearings (but not deliberations) are recorded by UMB for purposes of review in the event of an appeal. The parties may not record the proceedings and no other unauthorized recordings are permitted.

The Hearing Panelists, the parties, their Advisors, and appropriate administrators of UMB will be permitted to listen to the recording in a controlled environment determined by the Title IX Coordinator. No person will be given or be allowed to make a copy of the recording without permission of the Title IX Coordinator.

### **32. Deliberation, Decision-making, and Standard of Proof**

The Hearing Panelists will deliberate in closed session to determine whether the Respondent is responsible or not responsible for the policy violation(s) in question. A simple majority vote is required to determine the finding. The preponderance of the evidence standard of proof is used. The hearing facilitator may be invited to attend the deliberation by the Chair, but is there only to facilitate procedurally, not to address the substance of the allegations.

When there is a finding of responsibility on one or more of the allegations, the Hearing Panelists may then consider the previously submitted party impact statements in determining appropriate sanction(s).

The Chair will ensure that each of the parties has an opportunity to review any impact statement submitted by the other party(ies). The Hearing Panelists may – at their discretion – consider the statements, but they are not binding.

The Hearing Panelists will review the statements and any pertinent conduct history that may have been provided by the party's School or administrative unit and will determine the appropriate sanction(s).

The Chair will then prepare a written deliberation statement and deliver it to the Title IX Coordinator, detailing the determination, rationale, the evidence used in support of its determination, the evidence not relied upon in its determination, credibility assessments, and any remedial actions or sanctions.

This report is typically three (3) to five (5) pages in length and must be submitted to the Title IX Coordinator within five (5) business days of the end of deliberations, unless the Title IX Coordinator grants an extension. If an extension is granted, the Title IX Coordinator will notify the parties.

### **33. Notice of Outcome**

Using the deliberation statement, the Title IX Coordinator will work with the Chair to prepare a Notice of Outcome, which may be reviewed by legal counsel. The Title IX Coordinator will then share the letter, including the final determination, rationale, and any applicable remedial actions and/or sanction(s) with the parties and their Advisors within seven (7) business days of receiving the Decision-maker(s)' deliberation statement.

The Notice of Outcome will then be shared with the parties simultaneously. Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official UMB records, or emailed to the parties' UMB-issued email or otherwise approved account. Once mailed, emailed, and/or received

in-person, notice will be presumptively delivered.

The Notice of Outcome will articulate the specific policy(jes) reported to have been violated, including the relevant policy section, and will contain a description of the procedural steps taken by UMB from the receipt of the misconduct report to the determination, including any and all notifications to the parties, interviews with parties and witnesses, site visits, methods used to obtain evidence, and hearings held.

The Notice of Outcome will specify the finding on each alleged policy violation; the findings of fact that support the determination; conclusions regarding the application of the relevant policy to the facts at issue; a statement of, and rationale for, the result of each allegation to the extent UMB is permitted to share such information under state or federal law; any sanctions issued which UMB is permitted to share according to state or federal law; and any remedies provided to the Complainant designed to ensure access to the UMB's educational or employment program or activity, to the extent UMB is permitted to share such information under state or federal law (this detail is not typically shared with the Respondent unless the remedy directly relates to the Respondent).

The Notice of Outcome will also include information on when the results are considered by UMB to be final, any changes that occur prior to finalization, and the relevant procedures and bases for any available appeal options.

### **34. Sanctions**

Factors considered when determining a sanction/remedial action may include, but are not limited to:

The nature, severity of, and circumstances surrounding the violation(s)

The Respondent's disciplinary history

Previous allegations or allegations involving similar conduct

The need for sanctions/remedial actions to bring an end to the discrimination, harassment, and/or retaliation

The need for sanctions/remedial actions to prevent the future recurrence of

The need to remedy the effects of the discrimination, harassment, and/or discrimination, harassment, and/or retaliation on the Complainant and the community

The impact on the parties

Any other information deemed relevant by the Decision-maker(s)

The sanctions will be implemented as soon as is feasible, either upon the outcome of any appeal or the expiration of the window to appeal without an appeal being requested.

The sanctions described in the Policy are not exclusive of, and may be in addition to, other actions taken or sanctions imposed by external authorities or entities.

#### **a. Student Sanctions**

The following are examples of remedial responses and sanctions that may be recommended singly or in combination:

**Warning:** A formal statement that the conduct was unacceptable and a warning that further violation of any UMB policy, procedure, or directive will result in more severe sanctions/remedial actions.

**Probation:** A written reprimand for violation of institutional policy, providing for more severe disciplinary sanctions in the event that the student or organization is found in violation of any institutional policy, procedure, or directive within a specified period of time. Terms of the probation will be articulated and may include denial of specified social privileges, exclusion from co-curricular activities, exclusion from designated areas of campus, no-contact orders, and/or other measures deemed appropriate.

**Suspension:** Termination of student status for a definite period of time not to exceed two years and/or until specific criteria are met. Students who return from suspension are automatically placed on probation through the remainder of their tenure as a student at UMB.

**Dismissal:** Permanent termination of student status and revocation of rights to be on campus for any reason or to attend UMB-sponsored events. This sanction will be noted permanently as a Conduct Expulsion on the student's official transcript.

**Required Counseling:** A mandate to meet with and engage in either UMB-sponsored or external counseling to better comprehend the misconduct and its effects.

**Required Training or Education:** A mandate to engage in either UMB-sponsored or external training or educational programs to better comprehend the misconduct and its effects.

**Withholding Degree:** UMB may withhold a student's degree for a specified period of time and/or deny a student participation in commencement activities if the student has an allegation pending or as a sanction if the student is found responsible for an alleged violation.

**Revocation of Degree:** UMB reserves the right to revoke a degree previously awarded from the UMB for fraud, misrepresentation, and/or other violation of UMB policies, procedures, or directives in obtaining the degree, or for other serious violations committed by a student prior to graduation.

**Transcript Notation:** A permanent notation on the student's official transcript of the policy violation.

**Other Actions:** In addition to or in place of the above sanctions, UMB may assign any other sanctions as deemed appropriate.

### ***b. Employee Sanctions/Remedial Actions***

The following are examples of remedial responses and sanctions that may be recommended singly or in combination:

**Warning – Verbal or Written:** A formal verbal or written statement that the conduct was unacceptable and a warning that further violation of any UMB policy, procedure, or directive will result in more severe sanctions/remedial actions.

**Performance Improvement Plan:** Inclusion of the violation on the employee's Performance Improvement Plan with corrective actions to be taken by the employee.

**Required Counseling:** A mandate to meet with and engage in either UMB-sponsored or external counseling to better comprehend the misconduct and its effects.

**Required Training or Education:** A mandate to engage in either UMB-sponsored or external training or educational programs to better comprehend the misconduct and its effects.

**Demotion:** Lowering the employee's status, title, and, if appropriate, pay.

**Suspension with pay:** Termination of employee's status for a definite period of time not to exceed two years and/or until specific criteria are met. Employees who return from suspension with pay are automatically placed on probation for a period to be determined at the time of suspension. The employee will continue to receive their base salary during the suspension period.

**Suspension without pay:** Termination of employee's status for a definite period of time not to exceed two years and/or until specific criteria are met. Employees who return from suspension with pay are automatically placed on probation for a period to be determined at the time of suspension. The employee will not receive their salary during the suspension period.

**Termination:** UMB will end its employment agreement with the employee. The employee will not be eligible to be re-hired by UMB.

**Other Actions:** In addition to or in place of the above sanctions/remedial actions, UMB may assign any other remedial actions as deemed appropriate.

## **36. Withdrawal or Resignation While Charges Pending**

### ***a. Students***

The Policy on Sexual Misconduct provides the potential outcomes should a student withdrawal or resign with charges are pending.

### ***b. Employees***

The Policy on Sexual Misconduct provides the potential outcomes should an employee resign with charges are pending.

## **37. Appeals**

Any party may file a request for appeal ("Request for Appeal"), but it must be submitted in writing to the Title IX Coordinator within five (5) days of the delivery of the Notice of Outcome.

A single Appeal Decision-maker ("Appeal Chair") will hear the appeal, who has not been previously involved in the process, including any dismissal appeal that may have been heard.

The Request for Appeal will be forwarded to the Appeal Chair for consideration to determine if the request meets the grounds for appeal (a Review for Standing).

This review of the Request for Appeal is not a review of the merits of the appeal, but solely a determination as to whether the request meets the grounds and is timely filed.

**a. Grounds for Appeal**

Appeals are limited to the following grounds:

(A) Procedural irregularity that affected the outcome of the matter;

(B) 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

(C) The Title IX Coordinator, Investigator(s), or Hearing Panelist(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent that affected the outcome of the matter.

If any of the grounds in the Request for Appeal do not meet the grounds in this Policy, that request will be denied by the Appeal Chair and the parties and their Advisors will be notified in writing of the denial and the rationale.

If any of the grounds in the Request for Appeal meet the grounds in this Policy, then the Appeal Chair will notify the other party(ies) and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigators and/or the original Hearing Panelists.

The other party(ies) and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigators and/or the original Hearing Panelists will be mailed, emailed, and/or provided a hard copy of the request with the approved grounds and then be given five (5) business days to submit a response to the portion of the appeal that was approved and involves them. All responses will be forwarded by the Chair to all parties for review and comment.

The non-appealing party (if any) may also choose to raise a new ground for appeal at this time. If so, that will be reviewed to determine if it meets the grounds in this Policy by the Appeal Chair and either denied or approved. If approved, it will be forwarded to the party who initially requested an appeal, the Investigator(s) and/or original Hearing Panelist(s), as necessary, who will submit their responses in five (5) business days, which will be circulated for review and comment by all parties.

Neither party may submit any new requests for appeal after this time period. The Appeal Chair will collect any additional information needed and all documentation regarding the approved grounds and the subsequent responses and the Appeal Chair will render a decision in no more than seven (7) business days, barring exigent circumstances. All decisions apply the preponderance of the evidence standard.

A Notice of Appeal Outcome will be sent to all parties simultaneously including the decision on each approved ground and rationale for each decision. The Notice of Appeal Outcome will specify the finding on each ground for appeal, any specific instructions for remand or reconsideration, any sanctions that may result which UMB is permitted to share according to state or federal law, and the rationale supporting the essential findings to the extent UMB is permitted to share under state or federal law.

Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official UMB records, or emailed to the parties' UMB-issued email or otherwise approved account. Once mailed, emailed and/or received in-person, notice will be presumptively delivered.

**b. Sanctions Status During the Appeal**

Any sanctions imposed as a result of the hearing are stayed during the appeal process. Supportive measures may be maintained or, if necessary reinstated, subject to the same supportive measure procedures above.

If any of the sanctions are to be implemented immediately post-hearing, but pre-appeal, then emergency removal procedures (detailed above) for a hearing on the justification for doing so must be permitted within 48 hours of implementation.

UMB may still place holds on official transcripts, diplomas, graduations, and course registration pending the outcome of an appeal when the original sanctions included separation.

### ***c. Appeal Considerations***

Decisions on appeal are to be deferential to the original decision, making changes to the finding only when there is clear error and to the sanction(s)/remedial action(s) only if there is a compelling justification to do so.

Appeals are not intended to provide for a full re-hearing (de novo) of the allegation(s). In most cases, appeals are confined to a review of the written documentation or record of the original hearing and pertinent documentation regarding the specific grounds for appeal.

An appeal is not an opportunity for the Appeal Chair to substitute his/her judgment for that of the original Decision-maker(s) merely because he/she disagree with the finding and/or sanction(s).

The Appeal Chair may consult with the Title IX Coordinator on questions of procedure or rationale, for clarification, if needed. Documentation of all such consultation will be maintained.

Appeals granted based on new evidence should normally be remanded to the original Investigator(s) and/or Decision-maker(s) for reconsideration. Other appeals may be remanded at the discretion of the Title IX Coordinator or, in limited circumstances, decided on appeal.

Once an appeal is decided, the outcome is final: further appeals are not permitted, even if a decision or sanction is changed on remand (except in the case of a new hearing).

In rare cases where a procedural [or substantive] error cannot be cured by the original Hearing Panelist(s) (as in cases of bias), the appeal may order a new hearing with a new Hearing Panelist(s).

The results of a remand to the Hearing Panelists cannot be appealed.

In cases in which the appeal results in reinstatement to UMB or resumption of privileges, all reasonable attempts will be made to restore the Respondent to their prior status, recognizing that some opportunities lost may be irreparable in the short term.

### **38. Long-Term Remedies/Other Actions**

Following the conclusion of the resolution process, and in addition to any sanctions implemented, the Title IX Coordinator may implement additional long-term remedies or actions with respect to the parties and/or the campus community that are intended to stop the harassment, discrimination, and/or retaliation, remedy the effects, and prevent reoccurrence.

These remedies/actions may include, but are not limited to:

Referral to counseling and health services

Referral to the Employee Assistance Program

Education to the individual and/or the community

Permanent alteration of housing assignments

Permanent alteration of work arrangements for employees

Provision of campus safety escorts

Climate surveys

Provision of transportation accommodations

Implementation of long-term contact limitations between the parties

Implementation of adjustments to academic deadlines, course schedules, etc.

At the discretion of the Title IX Coordinator, certain long-term support or measures may also be provided to the parties even if no policy violation is found.

When no policy violation is found, the Title IX Coordinator will address any remedies owed by UMB to the Respondent to ensure no effective denial of educational access.

UMB will maintain the privacy of any long-term remedies/actions/measures, provided privacy does not impair UMB's ability to provide these services.

### **39. Failure to Comply with Sanctions and/or Interim and Long-term Remedies and/or Remedial Actions**

All Respondents are expected to comply with the assigned sanctions, remedial actions, and/or corrective actions within the timeframe specified by the final Decision-maker(s) (including the Appeal Chair).

Failure to abide by the sanction(s)/action(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanction(s)/action(s), including suspension, expulsion, and/or termination from UMB and may be noted on a student's official transcript.

A suspension will only be lifted when compliance is achieved to the satisfaction of the Title IX Coordinator.

### **40. Recordkeeping**

UMB will maintain for a period of seven years records of:

1. Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required under federal regulation;
2. Any disciplinary sanctions imposed on the Respondent;
3. Any remedies provided to the Complainant designed to restore or preserve equal access to UMB's education program or activity;
4. Any appeal and the result therefrom;
5. Any Informal Resolution and the result therefrom;
6. All materials used to train Title IX Coordinators, Investigators, Decision-makers, and any person who facilitates an Informal Resolution process. UMB will make these training materials publicly available on UMB's website or available for public inspection upon request; and
7. Any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment, including:
  - a. The basis for all conclusions that the response was not deliberately indifferent;
  - b. Any measures designed to restore or preserve equal access to UMB's education program or activity; and
  - c. If no supportive measures were provided to the Complainant, document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

UMB will also maintain any and all records in accordance with state and federal laws.

### **41. Disabilities Accommodations in the Resolution Process**

UMB is committed to providing reasonable accommodations and support to qualified students, employees, or others with disabilities to ensure equal access to the UMB's resolution process.

Students needing such accommodations or support should complete the Disability and Reasonable Accommodations form located on the Educational Support and Disability Services website located at: <https://www.umaryland.edu/disabilityservices/for-students/how-to-request-accommodations/>. Employees should complete the Request for Reasonable Accommodation form and submitting it to Human Resource Services (HRS) Employee Labor Relations (ELR), Office of Diversity, ADA and Affirmative Action located at <https://www.umaryland.edu/hrs/current-employees/diversity-ada-aa/americans-with-disabilities-act/>. Students and employees seeking accommodations or support should inform the Title IX Coordinator when they have submitted the request(s) to allow for consultation to determine which accommodations are appropriate and necessary for full participation in the process.

### **42. Revision of this Policy and Procedures**

These procedures supersede any previous procedures for addressing harassment, sexual misconduct, discrimination, and/or retaliation under Title IX and will be reviewed and updated annually by the Title IX Coordinator. UMB reserves the right to make changes to this document as necessary, and once those changes are posted online, they are in effect.

During the resolution process, the Title IX Coordinator may make minor modifications to procedures that do not materially jeopardize the fairness owed to any party, such as to accommodate summer schedules. The Title IX Coordinator may also vary procedures materially with notice (on the institutional website, with the appropriate effective date identified) upon determining that changes to law or regulation require policy or procedural alterations not reflected in these procedures.

If government laws or regulations change – or court decisions alter – the requirements in a way that impacts this document, this document will be construed to comply with the most recent government regulations or holdings.

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

THESE PROCEDURES WERE ADAPTED FROM ATIXA 2020 ONE POLICY, TWO PROCEDURES MODEL  
USE AND ADAPTATION OF THIS MODEL WITH CITATION TO ATIXA IS PERMITTED THROUGH A LIMITED LICENSE TO UNIVERSITY  
OF MARYLAND, BALTIMORE  
ALL OTHER RIGHTS RESERVED.  
©2020. ATIXA

<b>RELATED PROCEDURES</b>
<a href="#">Reporting Through The UMB Hotline</a>
<b>RELATED POLICIES</b>
<a href="#">UMB POLICY ON SEXUAL MISCONDUCT</a>



The University of Maryland, Baltimore is the founding campus of the University System of Maryland.  
620 W. Lexington St., Baltimore, MD 21201 | 410-706-3100  
© 2023-2024 University of Maryland, Baltimore. All rights reserved.