

DEPARTMENT: Human Resources	POLICY DESCRIPTION: Title IX Sexual Misconduct
PAGE: 1 of 5	REPLACES POLICY DATED: 7/1/21
EFFECTIVE DATE: September 1, 2022	REFERENCE NUMBER: HR.ER.071
APPROVED BY: Ethics and Compliance Policy Committee	

SCOPE: This Policy applies to allegations of Title IX Sexual Misconduct of the Education Amendments of 1972 against individuals employed by an HCA Healthcare-affiliated GME Program (hereinafter, interchangeably referred to as “Employer” or “Program”) as a faculty member, Program Coordinator, Resident, or Fellow of that program, regardless of where the alleged conduct occurred. Third parties (e.g., contractors, applicants for admission or employment, vendors, recruiters, affiliates) may also report Title IX Sexual Misconduct against Faculty Members, Program Coordinators, Residents, or Fellows of the Program under this Policy.

Cases that allege sex-based discrimination that does not constitute Title IX Sexual Misconduct (e.g., excluding an individual from participation in or denying an individual the benefits of a GME Program, or subjecting an individual to differential treatment, on the basis of sex, as well as ostensibly neutral policies or practices that have a disparate impact on the basis of sex), are addressed under the Equal Opportunity, Anti-Harassment and Respectful Workplace Policy, HR.ER.072.

PURPOSE: To set forth the policy and grievance procedures on Sexual Misconduct in Education Programs and Activities, as required by Title IX of the Education Amendments of 1972 (“Title IX”).

POLICY:

A. Policy Statement, Prohibited Conduct, and Grievance Procedure

Employer has adopted this Policy on Title IX Sexual Misconduct in Education Programs and Activities (“Policy”) in recognition of our commitment to provide a safe and hospitable environment for all members of our community to work and study. Title IX Sexual Misconduct subverts Employer’s mission, diminishes the dignity of members of the community, and threatens permanent damage to the careers, educational experience, and well-being of our program coordinators, residents, fellows, and faculty.

Employer prohibits Title IX Sexual Misconduct as defined in this Policy, including unwanted conduct of a sexual nature that constitutes sexual harassment, sexual assault, domestic violence, dating violence, and stalking. Retaliation for the purpose of interfering with any right or privilege secured by this Policy is also strictly prohibited.

Title IX Sexual Misconduct may be experienced by individuals of any sex or gender and it may occur between persons of the same or different sex(es) or gender(s). In the case of sexual harassment, the injured party does not have to be the person harassed but could be anyone affected by the offensive conduct.

Each Program location has developed specific Grievance Procedures for the prompt, fair, and impartial resolution of all Complaints of Title IX Sexual Misconduct, as described in Appendix B.

This Policy will be widely disseminated to members of and participants in a Program at each Program location and will be consistently enforced. The Policy will be reexamined and updated as appropriate.

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B. Title IX Coordinator and Deputy Title IX Coordinators

Employer has appointed a Title IX Coordinator and Deputy Title IX Coordinators who help provide a nondiscriminatory educational and work environment to program coordinators, faculty members, residents, and fellows; provide information about available resources; explain the Program's formal complaint process; help individuals navigate Employer's systems; and monitor Employer's environment with respect to Sexual Misconduct. Inquiries about the application of this Policy or Title IX to the Program may be referred to the Program's Title IX Coordinator(s), to the Assistant Secretary of the U.S. Department of Education, or both.

A list of Title IX Coordinators and Deputy Title IX Coordinators can be found [here](https://hcahealthcare.com/physicians/graduate-medical-education/title-ix.dot): <https://hcahealthcare.com/physicians/graduate-medical-education/title-ix.dot>. Typically, the Title IX Coordinator is the local Human Resources Vice President affiliated with the Program. Upon receipt of a complaint, the Title IX Coordinator or Deputy Title IX Coordinator will inform the Regional Vice President, Human Resources, for the applicable geography.

C. Reporting Obligations for Employees

Any Employee (other than those who are prohibited from reporting, noted below) of a Program who learns of conduct that may violate this Policy must report the conduct to the Title IX Coordinator or appropriate Deputy Title IX Coordinator within twenty-four (24) hours, or as soon as possible. Employer recognizes that supervisors (including those who supervise employees and those who supervise residents and fellows) bear a particularly important responsibility to deter Sexual Misconduct. Only those individuals who are statutorily prohibited from reporting or identified by Employer as confidential (such as health professionals and those designated as ombudspersons) shall not have a duty to report to the Title IX Coordinator or Deputy Title IX Coordinator. If in doubt as to whether certain conduct violates this Policy, or if you have any questions about this Policy or its application, please consult with the Title IX Coordinator or a Deputy Title IX Coordinator.

PROCEDURE:

A. Reporting Sexual Misconduct

Any individual may report Title IX Sexual Misconduct to the Title IX Coordinator(s) in person, by phone, by mail, or by electronic submission (such as by e-mail, including to a shared inbox provided by Employer for reporting purposes). A Report is not a Complaint. Upon receipt of a Report, the Title IX Coordinator(s) will promptly contact the individual alleged to have experienced Sexual Misconduct to discuss the contents of the Report and provide written notice of the availability of Supportive Measures, and offer to explain the process and options for filing a Complaint.

B. Provision of Supportive Measures and Resources

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Supportive Measures, as defined in Appendix A, are available on an equitable basis to individuals who are alleged to have experienced and those who have been accused of Title IX Sexual Misconduct. Individuals impacted by Title IX Sexual Misconduct are encouraged to seek confidential counseling and other support resources offered by Employer. Individuals are encouraged not to wait to seek confidential counseling.

C. Filing a Complaint of Sexual Misconduct

Any individual may file a Complaint pursuant to this Policy by describing in detail alleged Sexual Misconduct by a Respondent on a form designated by the Title IX Coordinator, submitting that completed form to the Title IX Coordinator (in-person, by mail, or e-mail), and requesting that Employer investigate the allegation(s). Once a Complaint is filed, the Title IX Coordinator will review the Complaint and refer it for Investigation and resolution under the Grievance Procedures outlined in Appendix B.

D. Informal Resolution

Except as limited by the Grievance Procedures applicable to Title IX Sexual Misconduct and Title IX Sexual Harassment (as described in Appendix B), Employer may, at any time prior to reaching a determination regarding responsibility, facilitate a voluntary Informal Resolution process, such as mediation, that does not involve a full investigation and adjudication. Informal Resolution is voluntary and will only occur with the consent of all parties and the Title IX Coordinator.

E. Administrative Action

In the event that an individual impacted by Title IX Sexual Misconduct declines to file a Complaint, Employer will offer Supportive Measures and resources. Employer may take other reasonable administrative actions to prevent the recurrence of any Sexual Misconduct and to correct its discriminatory effects, as appropriate, depending on the nature of the allegations.

F. Other Reporting Options

In the event of a safety emergency, individuals should call local law enforcement at 911. In addition to filing a Complaint with Employer, individuals may choose to file a criminal complaint with local law enforcement at any time. At an individual's request, the Title IX Coordinator(s) is available to assist in notifying local law enforcement. All individuals have the right to seek a protective order or similar lawful order issued by a criminal or civil court in addition to Supportive Measures identified in this Policy.

An individual who wishes to file a criminal complaint or seek a protective order is urged to take steps to preserve evidence, as it may be necessary to the proof of criminal domestic violence, dating violence, sexual assault, or stalking, or in obtaining a protection order.

Because the standards for finding a violation of a criminal law are different from the standards articulated in this Policy, criminal investigations or reports are not determinative of whether a violation of this Policy has occurred. The filing of a Complaint under this Policy is independent of any criminal investigation or proceeding. Employer's investigation may be temporarily

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delayed while the criminal investigators gather evidence. However, Employer will not wait for the conclusion of any criminal investigation or proceeding before beginning its own investigation or implementing Supportive Measures to protect the Complainant and the Employer community, if necessary.

Individuals are encouraged to use all available internal procedures established to uphold this Policy before pursuing administrative remedies outside of the Employer. However, Employer acknowledges the rights of individuals to seek redress from any external enforcement agency, including the Equal Employment Opportunity Commission, the Office for Civil Rights of the United States Department of Education, and any state or local Fair Employment Practices Agency. The filing of an external complaint or investigation will not preclude Employer from investigating and addressing issues or concerns raised to Employer, nor will it preclude any individual alleging to have experienced Sexual Misconduct from receiving Supportive Measures.

G. Confidentiality

Complaints and Grievance Procedures under this Policy are treated as confidential by Employer. Employer complies with the Family Educational Rights & Privacy Act (FERPA) and other applicable privacy laws, as it relates to this Program, at all times in the course of investigations. Employer will keep confidential the identity of any individual who has made a Report or Complaint of Title IX Sexual Misconduct, any Complainant, any individual who has been reported to be the perpetrator of sexual misconduct, any Respondent, and any witness, except as may be permitted by FERPA, or as required by law, or in order to conduct any investigation, hearing, or judicial proceeding arising from this Policy. Employer will not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence, as long as such conduct is not harassing or retaliatory. The investigation, investigation report, and proceedings of the Grievance Procedures are considered confidential.

H. Training

Training on this Policy, preventing Title IX Sexual Misconduct, and promoting a respectful community will be provided to Faculty Members, Program Coordinators, Residents and Fellows of the Program. Such individuals are responsible for completing training identified as mandatory. Investigations involving alleged violations of this Policy shall be conducted by officials who receive training on issues related to sexual harassment, sexual assault, dating violence, domestic violence, and stalking as well as on how to conduct a grievance process that protects the safety of all parties involved and promotes accountability.

REFERENCES:

1. [HCA Healthcare Code of Conduct](#)
2. Non-Retaliation Policy, [EC.030](#)
3. Equal Opportunity, Anti-Harassment and Respectful Workplace Policy, [HR.ER.072](#)

HR.ER.071 Appendix A Definitions

Complainant: an individual who has filed a Complaint alleging Title IX Sexual Misconduct, which includes sexual harassment, sexual assault, dating violence, domestic violence, and stalking as defined under the Act. In cases of sexual harassment, the Complainant is the individual who is alleged to be the victim of that conduct.

Consent: words or overt actions indicating a freely given agreement to the sexual act or sexual contact in question. Guidance for understanding consent include:

- The willingness to participate must be clearly indicated prior to any sexual act or sexual contact.
- If at any time during the sexual act or sexual contact any confusion or ambiguity should arise on the issue of consent, it is incumbent upon the individual to stop the activity and clarify, verbally, the other's willingness to continue.
- A verbal "no," even if it may sound indecisive or insincere, constitutes lack of consent.
- The absence of an overt action or an explicit verbal response to a verbal request for consent constitutes lack of consent.
- It is expected that, once consent has been established, persons who change their mind during the sexual act or sexual contact will communicate through words or overt actions their decision to no longer proceed.
- Past consent to a sexual act or sexual contact does not imply future ongoing consent, and the fact that two persons are in an on-going relationship shall not preclude the possibility that Sexual Misconduct might occur within that relationship.
- A person's use of alcohol and/or other drugs shall not diminish such person's responsibility to obtain consent.
- Lack of verbal or physical resistance, or submission by the unwilling participant, when such submission results from the use of force, threats, or coercion by the Respondent shall not constitute consent.
- A person is considered incapable of giving consent if he/she/they are asleep, unconscious, and/or losing and regaining consciousness, or clearly mentally or physically incapacitated, for example, by alcohol and/or other drugs (signs of incapacitation include, but are not limited to, difficulty walking, inability to speak in a coherent manner, vomiting or the presence of vomit, etc.).
- Consent cannot be obtained through use of force, threats, fear, or by administering to another person by force or threat of force, or without the knowledge or permission of that other person, a drug, intoxicant, or other similar substance that substantially impairs the ability of that other person to appraise or control that other person's conduct.
- In determining whether consent exists, consideration will be given to what a reasonable person should have known about the other person's capability to give consent.

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Days: business days, unless otherwise specified in the applicable Grievance Procedures, which shall govern.

Decision-maker(s): those charged with making decisions regarding responsibility, sanctions, and appeals. The Decision-maker(s) or the process for selecting Decision-maker(s) from a qualified pool will be designated in the Grievance Procedures pursuant to Appendix B. A member of Employer management will serve as the Decision-maker. There may be one or more Decision-maker(s).

Education Program or Activity: the locations, events, or circumstances where Employer operates a Graduate Medical Education Program and exercises substantial control over both the Respondent and the context in which alleged Title IX Sexual Misconduct occurs.

Employee: a faculty member, Program Coordinator, Resident, or Fellow who is employed by Employer or has a faculty appointment and works directly for the Program, at the time the alleged Title IX Sexual Misconduct occurred and at the time the Grievance Procedures are invoked.

Fair: when used to describe Grievance Procedures means a process in which both parties will receive notice of the allegations, an opportunity to provide evidence, and an opportunity to be heard by an unbiased Decision-maker(s) who will determine whether or not this Policy was violated.

Fellow: an individual who has completed medical school and residency and is registered or enrolled in a specialty Program (or where there is an expectation of continued enrollment) at the time the alleged Title IX Sexual Misconduct occurred and at the time a Report or Complaint is made to Employer.

Force: the use or threatened use of a weapon; the use of such physical strength or violence as is sufficient to overcome, restrain, or injure a person; or the use of a threat of harm sufficient to coerce or compel submission by another person.

Grievance Procedures: the procedures used to respond to Complaints of Title IX Sexual Misconduct or Informal Resolution. The requirements for Grievance Procedure are set forth in this Policy, including Appendix B.

Informal Resolution: a voluntary, informal resolution process, such as mediation, that does not involve a full investigation and adjudication.

Investigator: an individual charged with conducting an investigation as described in the Grievance Procedures set forth in this policy, including Appendix B. Except in cases presenting a conflict of interest, the investigator should be the Employer's Title IX Coordinator or Deputy Title IX Coordinator.

Non-Title IX Sexual Misconduct: Sexual Misconduct that does not meet the definition of Title IX Sexual Misconduct, but may meet the definition of sexual harassment under Title VII.

Report: a verbal or written (including electronic) communication from an individual alleging conduct that could constitute Title IX Sexual Misconduct, whether or not the individual is alleged to be the victim or target of the conduct. A Report is not a Complaint.

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Resident: an individual who has completed medical school and is registered or enrolled in a Program (or where there is an expectation of continued enrollment) at the time the alleged Title IX Sexual Misconduct occurred and at the time a Report or Complaint is made to Employer.

Respondent: an individual who has been alleged in a Complaint to be the perpetrator of conduct that could constitute Title IX Sexual Misconduct.

Retaliation: intimidation, threats, coercion, discrimination, or other materially adverse action against any individual (1) for the purpose of interfering with any right or privilege secured by a sex discrimination law or this Policy, or (2) because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this Policy. Retaliation includes charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a Report or Complaint of sex discrimination or sexual harassment, when such charges are made for the purpose of interfering with any right or privilege secured by this Policy.

Title IX Complaint: a document filed by a Complainant or the Title IX Coordinator, or designee, alleging Title IX Sexual Misconduct against a Respondent and requesting that Employer investigate the allegation of Title IX Sexual Misconduct. At the time of filing a Title IX Complaint, a Complainant must be participating in or attempting to participate in a Program. A Title IX Complaint may be filed with the Title IX Coordinator in person, by mail, by electronic mail, or by any other means designated by the Title IX Coordinator. As used in this paragraph, the phrase "document filed" means a document or electronic submission (such as by e-mail, including to a shared inbox provided for this purpose by Employer) that contains the Complainant's physical or digital signature, or otherwise indicates the identity of the person who has filed the Complaint. Where the Title IX Coordinator signs the Title IX Complaint, the Title IX Coordinator is not a Complainant or otherwise a party.

Title IX Sexual Misconduct: unwanted conduct of a sexual nature that constitutes Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence, or Stalking prohibited by the Act. Specifically, Title IX Sexual Misconduct includes:

- A. *Sexual Harassment:* Sexual Harassment that occurs (a) in the United States; (b) in an Education Program or Activity; and (c) under the following circumstances:
 - 1. Any employee of the Employer conditioning the provision of an educational aid, benefit, or service of Employer on an individual's participation in unwelcome sexual conduct; or
 - 2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to a Program.

- B. *Sexual Assault (as defined under the Clergy Act):* includes:
 - 1. *Rape:* penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.
 - 2. *Attempted Rape:* Any attempt to engage in Rape.

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3. *Fondling*: The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of the victim's age or because of the victim's temporary or permanent mental incapacity.
 - a. This definition covers touching over and under clothing.
 - b. Private body parts means the genitalia, anus, groin, breast, inner thigh, or buttocks.
 4. *Incest*: Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
 5. *Statutory rape*: Sexual intercourse with a person who is under the statutory age of consent. The age of consent is determined by applicable state law.
- C. Dating Violence, Domestic Violence, and Stalking as defined under the Violence Against Women Act (VAWA)
1. *Dating violence*: Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship is determined based on a consideration of the following factors: (i) the length of the relationship; (ii) the type of relationship; and (iii) the frequency of interaction between the persons involved in the relationship.
 2. *Domestic violence*: Violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under state domestic or family violence laws, or by any other person against an adult or youth victim who is protected from that person's acts under state domestic or family violence laws.
 - a. Violence includes attempted violence.
 - b. To constitute Domestic Violence, the relationship between the perpetrator and the victim must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.
 3. *Stalking*: Engaging in a course of conduct directed at a specific person that would cause reasonable persons to fear for their safety or the safety of others or to suffer substantial emotional distress.
 - a. Fear for an individual's safety includes feeling seriously alarmed, disturbed or frightened.
 - b. Stalking can occur whether or not the offender intended to cause fear or substantial emotional distress.
 - c. Stalking in this provision relates to stalking on the basis of sex or gender.
 4. *Other Sex Offenses*:
 - a. Engaging in "sexual contact" that does not otherwise meet the definition of Sexual Assault, without consent.

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Sexual contact means the touching with any clothed or unclothed body part or any object, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse any person. "Touching" in this definition includes the touching of a victim's private body parts, and the touching of an individual's own private body parts to any body part of the victim.

- b. Engaging in threatening conduct in the context of a domestic or dating relationship that causes the victim to fear for the victim's safety or causes physical or psychological injury, pain, or illness, where such conduct does not otherwise constitute Dating Violence or Domestic Violence under this Policy.

Supportive Measures: non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to any individual alleging to have experienced Title IX Sexual Misconduct, or any individual accused of engaging in Title IX Sexual Misconduct before, during, or after the filing of a Complaint or where no Complaint has been filed. Such measures are designed to restore or preserve equal access to a Program without unreasonably burdening the other party or parties, including measures designed to protect the safety of all parties or the educational environment, or deter Title IX Sexual Misconduct. Supportive Measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or schedules, facility escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of Employer facilities, and other similar measures. Employer will maintain as confidential any Supportive Measures provided to any individual under this Policy to the extent that maintaining such confidentiality would impair the ability of Employer to provide the Supportive Measures. The Title IX Coordinator(s) is responsible for coordinating the effective implementation of Supportive Measures.

Title IX Coordinator(s): the Title IX Coordinator and Deputy Coordinators, who are the employees designated and authorized to coordinate Employer's efforts to comply with its responsibilities under this Policy. When the Title IX Coordinator is referred to in the singular within this Policy, it means only the Title IX Coordinator and not the Deputy Title IX Coordinators.

HR.ER.071 Appendix B Grievance Procedures for Title IX Sexual Misconduct

Overview

Each Employer location supporting a Graduate Medical Education Program has established the following Grievance Procedures for the prompt, fair, and impartial resolution of all Complaints of Title IX Sexual Misconduct, under this Policy on Sexual Misconduct (the "Policy"). Title IX Sexual Misconduct includes sexual harassment, sexual assault, dating violence, domestic violence, and stalking as defined under the Act.

Unless resolved through Informal Resolution, Employer will investigate the allegations in all Title IX Complaints for which it has actual knowledge in a prompt, fair, and impartial manner, with one or more internal or external investigations. Following the investigation, a determination regarding responsibility will be made in accordance with the applicable Grievance Procedures. If there is a determination of responsibility, Employer will determine sanctions and remedies as appropriate. The applicable Grievance Procedures also provide for an appeals process.

Determination of Grievance Procedure

- The mechanism for investigating Non-Title IX Sexual Misconduct may not be used to consider an allegation of potential Title IX Sexual Misconduct. All Complaints alleging Title IX Sexual Misconduct must be addressed under the Grievance Procedures for Title IX Sexual Misconduct. Investigations of Non-Title IX Sexual Misconduct will be addressed pursuant to the Employer's policies on Sexual Harassment, HR.ER.024; Equal Employment Opportunity, HR.ER.013; and Respectful Workplace, HR.ER.059.
- The Title IX Coordinator has the discretion to determine which investigation mechanism will apply and whether the allegations warrant consolidated, parallel, or sequential processing under different procedures (including in cases that allege both Title IX Sexual Misconduct and harassment based on other protected status, which are covered under other Employer policies). If at any time it becomes apparent to the Title IX Coordinator that the investigation of the Complaint or Title IX Complaint should be conducted under a different procedure, the Complaint will be transferred to the appropriate procedures. Upon receipt of a complaint, the Title IX Coordinator or Deputy Title IX Coordinator will inform the Regional Vice President, Human Resources, for the applicable geography.

The definitions of Appendix A of the Policy are incorporated in these procedures.

Grievance Procedures for Title IX Sexual Misconduct

Complaints alleging Title IX Sexual Misconduct will be addressed under Grievance Procedures set forth below and established by each Program location that must comply with the following requirements:

- A. **Burden of Proof and Standard of Evidence**: The burden of proof and the burden of evidence sufficient to reach a determination regarding responsibility rest on Employer and not on the parties. The standard of evidence is the preponderance of the evidence standard.
- B. **No Conflicts of Interest**: The Title IX Coordinator(s) will perform their duties neutrally and without conflict of interest or bias. Any individual designated as an investigator, Decision-maker, or any person designated to facilitate an Informal Resolution process, may not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent.

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- C. Interim Suspension/Emergency Removal: Employer may remove a Respondent who is a Resident or Fellow of an Education Program or Activity of Employer on an emergency basis in accordance with applicable conduct code provisions and the Employer's policy on Discipline, Counseling, and Corrective Action, HR.ER.008. As required by Title IX, before doing so in cases alleging Title IX Sexual Misconduct, Employer must undertake an individualized safety and risk analysis, determine that an immediate threat to the physical health or safety of any Resident, Fellow, or other individual arising from the allegations of Title IX Sexual Misconduct justifies removal, and provide the Respondent with notice and an opportunity to challenge the decision immediately following removal.
- D. Administrative Leave: The Employer's policy on Discipline, Counseling, and Corrective Action, HR.ER.008, provides procedures for placing an employee on investigatory suspension during the pendency of an investigation or grievance process.
- E. Advisors: The parties have the opportunity to be accompanied to any meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney. Employer will not limit the choice or presence of an advisor for either party in any meeting or grievance proceeding, except that the advisor may not be a party or witness or an individual who would otherwise create a conflict of interest. Employer may require all advisors in a proceeding to adhere to rules of decorum.
- F. Notice of Complaint: Upon receipt of a complaint alleging Title IX Sexual Misconduct, Employer will provide the following written notice to the parties identified in the Title IX Complaint:
1. Notice of Employer's Grievance Procedures, including the Informal Resolution process.
 2. Notice of the allegations of Title IX Sexual Misconduct, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting Title IX Sexual Misconduct, and the date and location of the alleged incident, if known.
 3. Notice that, under the relevant Grievance Procedures, the Respondent is not treated as responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.
 4. Notice to the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney, and may inspect and review evidence.
 5. Notice of the provision in the applicable Grievance Procedure that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

If, in the course of an investigation, Employer decides to investigate allegations about the Complainant or Respondent that were not included in the notice provided to the parties, or remove charges that were included in the original notice, Employer will provide an amended notice of the allegations to the parties identified in the Title IX Complaint.

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- G. *Dismissal of Complaint*: If the conduct alleged in the Title IX Complaint would not constitute Title IX Sexual Misconduct, if proved, then the Title IX Complaint will be dismissed by the Title IX Coordinator, but Employer may still address the conduct under other provisions of its policies and codes of conduct, as applicable. Employer may dismiss a Title IX Complaint or any allegations therein, if at any time during the investigation or hearing: a Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Title IX Complaint or any allegations therein; the Respondent is no longer employed by Employer or enrolled in a Program or Activity of Employer; or specific circumstances prevent Employer from gathering evidence sufficient to reach a determination as to the Title IX Complaint or allegations therein. Upon dismissal, Employer will promptly send written notice of the dismissal and the reason(s) simultaneously to the parties as well as procedures related to appeal.
- H. *Consolidation of Cases*: Employer may, at the discretion of the Title IX Coordinator, consolidate complaints as to allegations of Title IX Sexual Misconduct 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 Title IX Sexual Misconduct arise out of the same facts or circumstances. Where a grievance process involves more than one Complainant or more than one Respondent, references in this Policy to the singular “party,” “Complainant,” or “Respondent” include the plural, as applicable.
- I. *Notice of Meetings and Timeframes*: Employer will provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate. Employer will establish reasonably prompt timeframes for conclusion of the grievance process, including reasonably prompt timeframes for filing and resolving appeals and Informal Resolution processes. At the discretion of Employer, the grievance process may be temporarily delayed and limited extensions of timeframes may be granted for good cause shown with written notice to the Complainant and the Respondent of the delay or extension and the reasons for the action. Good cause may include, but is not limited to, considerations such as the absence of a party, advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities. No party may unreasonably delay the grievance process due to unavailability of an advisor.
- J. *Informal Resolution*: With the exception of allegations that an Employee engaged in Title IX Sexual Misconduct against a Resident or Fellow, Employer may, at any time prior to reaching a determination regarding responsibility after the filing of a Title IX Complaint, facilitate a voluntary Informal Resolution process, such as mediation, that does not involve a full investigation and adjudication, provided that the following conditions are met:
1. *Notice*. Employer will provide to the parties a written notice disclosing: the allegations; the requirements of the Informal Resolution process including the circumstances under which it precludes the parties from resuming a Title IX Complaint arising from the same allegations; the right of any party to withdraw from the Informal Resolution process and resume the grievance process with respect to the Title IX Complaint prior to agreeing to a resolution; and any consequences resulting from participating in the Informal Resolution process, including the records that will be maintained or could be shared;

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2. *Voluntary Consent.* Employer will obtain the parties' voluntary, written consent to the Informal Resolution process.
 3. *Timeframe.* Informal Resolution will be completed within approximately forty-five (45) days of the parties' agreement to participate in Informal Resolution, but Employer may extend the timeframe for good cause.
- K. *Investigation Process.* Title IX Sexual Misconduct investigations will involve an objective evaluation of all relevant evidence, including both inculpatory and exculpatory evidence. Credibility determinations will not be based on a person's status as a Complainant, Respondent, or witness. The parties will have an equal opportunity to present witnesses and other inculpatory and exculpatory evidence. Employer will not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence, as long as such conduct is not harassing or retaliatory.
1. *Review of Evidence.* Employer will provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in the Title IX Complaint. This includes the evidence upon which Employer does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation. Prior to completion of the investigative report, Employer will make available to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties will have at least ten (10) days to submit a written response, which the investigator will consider prior to completion of the investigative report.
 2. *Medical Records.* Employer will not access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless Employer obtains that party's voluntary, written consent to do so.
 3. *Past Sexual History.* Evidence about the Complainant's sexual predisposition or prior sexual behavior is not relevant, unless (1) 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 (2) 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.
 4. *Privilege.* Employer will not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.
 5. *Investigative Report.* At the conclusion of the investigation, the investigator will create an investigative report that fairly summarizes relevant evidence. At least ten (10) days prior to a hearing, as applicable, Employer will send to each party and the party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response.

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- L. *Decision-Making Process*. After an Investigation of a Title IX Compliant, the decision-making process will occur pursuant to the relevant location's Grievance Procedures for Title IX Sexual Misconduct, and the following procedures apply:
1. *Notice of Decision-Making Process*. After the Investigation is complete, the Title IX Coordinator(s) will send to each party and the party's advisor, if any, a notice and description of this decision-making process and the expected timeframe for the process.
 2. *Standard of Evidence*. The standard of evidence for all cases of Title IX Sexual Misconduct is preponderance of the evidence, which means whether it is more likely than not that Title IX Sexual Misconduct occurred.
 3. *Production of Evidence*. All evidence subject to the parties' inspection and review at the conclusion of the investigation will be available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.
 4. *Live Hearings*. Employer will provide a live hearing, which can be accomplished in-person or remotely using technology.
 - a. *Cross-Examination*. At the live hearing, the Decision-maker(s) will permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging the credibility of each party or witness. Such cross-examination at the live hearing will be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally, notwithstanding the discretion of Employer to otherwise restrict the extent to which advisors may participate in the proceedings. Advisors must comply with any rules of decorum set forth by Employer. If a party or witness does not submit to cross-examination at the live hearing, the Decision-maker(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility. The Decision-maker(s) cannot draw an inference relevant to 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.
 - b. *Provision of Advisors to Conduct Cross-Examination*. If a party does not have an advisor present at the live hearing, Employer will provide without fee or charge to that party, an advisor of Employer's choice, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party.
 - c. *Relevance Determinations*. Only relevant cross-examination and other questions may be asked of a party or witness. Before a Complainant, Respondent, or witness answers a cross-examination or other question, the Decision-maker(s) will first determine whether the question is relevant and explain any decision to exclude a question as not relevant. Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless (1) 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 (2) the

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questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

- d. **Separate Locations.** At the request of either party, Employer will provide for the live hearing to occur with the parties located in separate rooms with technology enabling the Decision-maker(s) and parties to simultaneously see and hear the party or the witness answering questions. Live hearings may be conducted with all parties physically present in the same geographic location or, at Employer's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other.
- e. **Recording.** Employer will create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection and review. The recording will be maintained in accordance with the record-keeping requirements below.

5. Determination Regarding Responsibility

- a. **Independent Decision-Makers.** A member of Employer management will serve as the Decision-maker. The Decision-maker(s) cannot be the same person(s) as the Title IX Coordinator(s) or the investigator(s).
- b. **Written Determinations.** The Decision-maker(s) will issue a written determination regarding responsibility, using the preponderance of the evidence standard. Employer will provide the written determination to the parties simultaneously. If an appeal is filed, the determination regarding responsibility becomes final on the date that Employer provides the parties with the written determination of the result of the appeal. If an appeal is not filed, the determination regarding responsibility becomes final on the date on which an appeal would no longer be considered timely. The written determination must include:
 - i. Identification of the allegations potentially constituting Title IX Sexual Misconduct;
 - ii. A description of the procedural steps taken from the receipt of the Title IX Complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
 - iii. Findings of fact supporting the determination;
 - iv. Conclusions regarding the application of this Policy, as applicable, to the facts;
 - v. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility;
 - vi. Any disciplinary sanctions Employer will impose on the Respondent, and whether remedies designed to restore or preserve equal access to the Education Program or Activity will be provided to the Complainant. Remedies will be determined in accordance with the Grievance Procedures. For employees, sanctions and remedies will be referred to Employer, consistent with the Employer's policies, handbook, and practices, and employees members who are subject to sanctions under this Policy will receive the procedural protections set forth below; and

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- vii. The procedures and permissible bases for the Complainant and Respondent to appeal.
- M. Sanctions and Educational Remedies. Following a determination of responsibility, Employer may impose one or more sanctions and/or remedies under applicable procedures.
1. *Residents or Fellows*. Sanctions and/or remedies for Residents or Fellows include but are not limited to: written reprimand; fines; work sanction, restitution, educational classes/projects, referral to community resources, disciplinary probation, active suspension, disciplinary dismissal, or any other sanction that is determined by the Decision-maker(s) to be fair and proportionate to the violation.
 2. *Employees*. Sanctions and/or remedies for Employees under this Policy include but are not limited to: training, coursework, mentoring, participation in workshops or support groups, monitoring, written apology, a course of counseling, letter of reprimand, loss of faculty privileges, probation, denial of a salary increase, bonus, or other remuneration, reduction of salary, unpaid suspension from work for a stated period of time, removal of duties, with commensurate reduction in pay, reduction in rank; termination of employment; or any other sanction that is determined by the Decision-maker(s) to be fair and proportionate to the violation.
 3. *Equal Access*. Remedies will be designed to restore or preserve equal access to the Education Program or Activity. Such remedies may include Supportive Measures but may also be disciplinary or punitive.
 4. *Sanction Oversight*. The Title IX Coordinator is responsible for oversight of the effective implementation of any sanctions and remedies. Failure to comply with sanctions may be considered an additional violation of the Title IX Sexual Misconduct Policy, and/or may lead to additional sanctions under Employer's applicable policies.
- N. Appeals. Employer will offer both parties an appeal from a determination regarding responsibility, and from a dismissal of a Title IX Complaint or any allegations therein. The appeals process will occur at each Program location, and the following procedures apply:
1. *Bases for Appeal*. An appeal may be made on the following bases:
 - 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(s), investigator(s), or Decision-maker(s) had a conflict of interest or bias that affected the outcome of the matter.
 2. *Notification*. The Title IX Coordinator(s) or designated official will notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties.
 3. *Decision-Maker*. The Decision-maker(s) for the appeal will not be the same person as the investigator(s), the Title IX Coordinator(s), or the Decision-maker(s) that reached the determination regarding responsibility or dismissal. The Decision-maker(s) reviewing an

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appeal must be free of conflict of interest or bias and will receive training as Decision-maker(s).

4. *Written Statements.* Both parties will have a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome.
 5. *Written Decision.* The Decision-maker(s) will issue a written decision describing the result of the appeal and the rationale for the result, and the written decision will be provided simultaneously to both parties and the Title IX Coordinator.
 6. *Timeframe for Appeals.* Each party has seven (7) business days from the date of that the *decision* is transmitted to file an appeal. Review of an appeals will be completed by the Employer within fourteen (14) business days of filing.
- O. *Confidentiality.* Complaints and investigations under this Title IX Sexual Misconduct Policy will be treated as confidential by Employer. The decision and sanctions will be shared with official(s) of the Employer to the extent necessary to implement sanctions and remedies. Employer complies with the Family Educational Rights & Privacy Act (FERPA) and other applicable privacy laws at all times in the course of investigations. Employer will keep confidential the identity of any individual who has made a Report or Complaint of Sexual Misconduct, any Complainant, any individual who has been reported to be the perpetrator of Sexual Misconduct, any Respondent, and any witness, except as may be permitted by FERPA, or as required by law, or in order to conduct any investigation, hearing, or judicial proceeding arising from this Policy. Employer will not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence, as long as such conduct is not harassing or retaliatory. The investigation, investigation report, and proceedings are considered confidential.
- P. *False Information.* Knowingly making a materially false statement or submitting false information in bad faith during the grievance process is prohibited. However, a determination regarding responsibility, alone, is not sufficient to charge any party with making a materially false statement in bad faith.
- Q. *Training.* The Title IX Coordinator(s), investigator(s), Decision-maker(s), and any person who facilitates an Informal Resolution process, will receive training on the definitions of terms used in this Policy, the scope of the Program, how to conduct an investigation and grievance process including hearings, appeals, and Informal Resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias. Employer also will ensure that investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence. Decision-maker(s) will receive training on any technology to be used at a live hearing, as applicable, 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. Any materials used to train Title IX Coordinator(s), investigator(s), Decision-maker(s), and any person who facilitates an Informal Resolution process, will not rely on sex or gender stereotypes and will promote impartial investigations and adjudications of Complaints of Title IX Sexual Misconduct.
- R. *Recordkeeping.* For a period of at least seven (7) years and consistent with Employer's policies on document and record retention, Employer will maintain records of:

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1. Each investigation of a Title IX Complaint including any determination regarding responsibility and any audio or audiovisual recording or transcript, any disciplinary sanctions imposed on the Respondent, and any remedies provided to the Complainant designed to restore or preserve equal access to a Program;
2. Any appeal and the result therefrom;
3. Any Informal Resolution and the result therefrom; and
4. All materials used to train Title IX Coordinator(s), investigator(s), Decision-maker(s), and any person who facilitates an Informal Resolution process. Employer must make these training materials publicly available on its website.
5. Any actions, including any Supportive Measures, taken in response to a Title IX Complaint of Sexual Misconduct. In each instance, Employer will document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to a Program. If Employer does not provide a Complainant with Supportive Measures, then Employer will document the reasons and why they are reasonable in light of the known circumstances.