

## TITLE IX SEXUAL HARASSMENT POLICY

### INCLUDING SEXUAL HARASSMENT, SEXUAL ASSAULT, DOMESTIC AND DATING VIOLENCE, AND STALKING (“SEXUAL HARASSMENT”)

#### TITLE IX STATEMENT ON NON-DISCRIMINATION

Title IX of the Education Amendments of 1972 prohibits discrimination based on sex (including sexual harassment and sexual violence) in educational programs and activities that receive federal financial assistance. Title IX also prohibits retaliation against individuals who file a complaint of sex-based harassment/discrimination or assist in the filing, investigation, or resolution of such complaints. To ensure compliance with Title IX and other federal and state civil rights laws, Ursuline College has developed policies and procedures that prohibit all forms of sex-based discrimination and/or retaliation. Accordingly, Ursuline College does not tolerate unlawful discrimination and makes every effort to maintain a work and academic environment free from all forms of sexual misconduct, including sexual harassment, sexual assault, domestic and dating violence, and stalking. The College will promptly respond to individuals who are alleged to have experienced sexual harassment by offering supportive measures, follow a fair grievance process as outlined in this policy to resolve formal complaints of sexual harassment, and provide remedies to those who are determined to have experienced sexual harassment through that process. Thus, all forms of prohibited conduct under this policy are considered serious offenses, and violations will result in discipline, up to and including possible suspension, expulsion, dismissal, termination, or removal and exclusion from the College.

#### DEFINITIONS

*Actual knowledge:* Notice of sexual harassment to the Title IX Coordinator or other official of the College, who has authority to take corrective action on behalf of the College. In addition to the Title IX Coordinator, officials with authority to take corrective action include: the Vice President of Student Affairs, Director of Human Resources, Dean of the School of Arts and Sciences, Dean of the Breen School of Nursing, Director of Legal Studies, Director of Athletics, and the Director of Residence Life (CAs). Although all employees are considered mandatory reporters and are required to report sexual harassment, those employees not listed in this paragraph, do not qualify as individuals, who have authority to take corrective action. Therefore, notice to those employees does not qualify as actual notice to the College.

*Coercion:* Coercion is the use of unreasonable pressure to compel an individual to initiate or continue sexual activity against an individual’s will. It includes a wide range of behaviors which override the voluntary nature participation.

*Complainant:* Individual, who alleges conduct that would, *if true*, constitute sexual harassment.

*Education Program or Activity:* Any operations of Ursuline College, including locations, events, or circumstances over which Ursuline College exercised substantial control over both the respondent and the context in which the sex discrimination or sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by Ursuline College.

*Formal Complaint:* A document filed by the complainant or signed by the Title IX Coordinator, alleging sexual harassment by a respondent and requesting that the College investigate the allegations of sexual harassment. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the College's education program or activity. If the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or otherwise a party under this Policy and must comply with the requirements of this Policy.

A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information list for the Title IX Coordinator in this Policy and by any additional method designated by the College. The complaint must contain the complainant's physical or digital signature or otherwise indicate that the complainant is the person filing the formal complaint.

*Incapacitation:* Incapacitation is defined as the inability, temporarily or permanently, to give consent because an individual is mentally and/or physically helpless, asleep, unconscious, or unaware that sexual activity is occurring. An individual who is incapacitated lacks the ability to make informed, rational judgments and therefore cannot consent to sexual activity. Personal with certain intellectual or developmental disabilities may not have the capacity to give consent.

Where alcohol or other drugs are involved, incapacitation is a state beyond intoxication. Evaluating incapacitation requires an assessment of how the consumption of alcohol and/or drugs affects an individual's decision-making ability, awareness of consequences, ability to make informed judgments, capacity to appreciate the nature of the act, and their level of consciousness. In other words, a person cannot give valid consent due to incapacitation if the person cannot appreciate the who, what, where, when, why, or how of a sexual interaction.

A respondent may not be held responsible for invalid consent through incapacitation where the respondent did not know and should not have known of the complainant's incapacitation based on objectively and reasonably apparent indications of impairment when viewed from the perspective of a sober reasonable person in the respondent's position.

*Minors:* Minors are defined as anyone under the age of 18, who participates in the College's programs or activities, or who participate in any program on the College's campus, or who are otherwise covered under the foregoing Scope of Policy. Ursuline College prohibits sexual relations between employees and students under the age of 18. The Policy applies to minors, in the same manner as others noted in the Scope of Policy, except where otherwise indicated in the Policy. For example, when an offense or crime as described in this Policy applies to minors, that definition shall apply. The Policy also applies to minors participating in the College Credit Plus program and those minors enrolled in camps or other activities run on Ursuline's campus by outside organizations. Where there is a conflict between this Policy and federal or state law, those laws shall apply. Additionally, employees may have mandatory reporting obligations, under Ohio law. Under many laws, minors may not have the capacity to consent.

*Respondent:* A respondent is an individual who has been reported to have committed conduct that could, *if true*, constitute sexual harassment.

## SCOPE OF POLICY

This policy applies to all members of the Ursuline College community, including, but not limited to, Ursuline students, faculty, staff, alumnae/alumni, third-party vendors, contractors, guests, and all other visitors, including minors, to the Ursuline College campus or any other property owned or controlled by the College, within the United States. This policy also applies to all acts of Prohibited Conduct (as defined below) committed by or against any member of the Ursuline College community (as defined above) if:

- The Prohibited Conduct occurs on property owned or controlled by Ursuline College, within the United States; or
- The Prohibited Conduct is directly related to or occurs in the context of College employment or an education program or activity of the College, including, but not limited to: College-sponsored research, internship/externship programs, independent study, on-line courses, volunteer activities, work-related travel, training, attendance at seminars or conferences, participation in athletics, student organizations, or any other extra-curricular activity, within the United States; or
- The Prohibited Conduct is directly related to or occurs while using property or resources owned, controlled, or provided by Ursuline College, including, but not limited to: College-owned vehicles, laptops, mobile devices, computer systems and networks, email accounts, telephone and voice mail systems, within the United States; or
- The Prohibited Conduct has continuing adverse effects on a member of the Ursuline College community (as defined above) as it relates to an education program or activity of the College, within the United States.

Additionally, an attempt to commit an act prohibited by this policy, as well as assisting or willfully encouraging any such act, is also considered a violation of this policy.

Notwithstanding the foregoing, this Policy's grievance procedures apply only to sex discrimination occurring against a person *in the United States*. Please note that the College's Harassment and Discrimination and/or other College Codes of Conduct may apply to discrimination based on sex, race, national origin, disability, age, or other protected class, occurring against a person, participating in a College program or activity, outside of the United States.

<https://www.ursuline.edu/files/assets/ursuline-harassment-and-discrimination-policy-websiteversion.pdf>. In the event of any conflict or inconsistency between the provisions and requirements of this Title IX Sexual Harassment Policy and any other Ursuline College policy regulating the conduct of any member of the Ursuline College community or setting forth procedures governing the suspension, expulsion, dismissal, termination, or removal and exclusion from Ursuline College property of any member of the Ursuline College community, the provisions and requirements of the most current version of this Policy shall prevail and govern. Where prohibited conduct violates both this Title IX Sexual Harassment Policy and any other Ursuline College policy regulating the conduct of any member of the Ursuline College community, the College's response will be governed by the provisions and procedures outlined in the most current version of this Policy. Sexual misconduct not otherwise covered under this policy may be addressed under the College's

Harassment and Discrimination Policy if it applies. Under no circumstances may the Harassment and Discrimination Policy be used to retaliate against an individual, who has filed a complaint under the College's Title IX Sexual Harassment Policy.

Please note that religiously sponsored organizations, such as Ursuline College, are exempt from certain aspects of Title IX of the Education Amendments Act, Title VII of the Civil Rights Act, the Americans with Disabilities Act, and other federal, state, and local laws. Nothing in this policy should be read or interpreted as a waiver of the College's exemptions under these or other federal, state or local laws.

## **DEFINITIONS OF PROHIBITED CONDUCT**

The following acts of Title IX Sexual Harassment are prohibited under this policy:

*Sexual harassment:* Conduct on the basis of sex that satisfies one or more of the following criteria:

1. An employee of the College conditions an aid, benefit, or service on an individual's participation in unwelcome sexual conduct;
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 the College's education program or activity; or
3. Sexual assault, dating violence, domestic violence, or stalking, as further defined in this section.

**Sexual Assault:** Sexual and non-forcible sex offenses, as defined in the FBI's Uniform Crime Reporting database, including:

**Non-Consensual Penetration:** 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 [complainant].

**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 or physical incapacity.

**Incest:** Sexual intercourse between persons who are related to each other, within the degrees wherein marriage is prohibited by law. In Ohio, this prohibits sexual intercourse by individuals closer in kin than second cousins.

**Statutory Rape:** Sexual intercourse with a person who is under the statutory age of consent. In Ohio, a person under the age of 13 cannot consent. A person under the age of 16 cannot consent to sex with persons older than 18, in Ohio.

**Dating Violence:** An act of violence committed by a person who is or has been in a romantic or intimate relationship with the complainant. The existence of such a romantic or intimate relationship

is determined by the length of the relationship, the type of relationship, and the frequency of the interactions between the individuals involved in the relationship.

**Domestic Violence:** An act of violence committed on the basis of sex by:

- A current or former spouse or intimate partner of the complainant;
- A person with whom the complainant shares a child in common
- A person, who is cohabiting with, or has cohabited with, the complainant as a spouse or intimate partner;
- A person similarly situated to a spouse of the victim under the domestic/family violence laws of the jurisdiction;
- Any other person against an adult or youth victim, who is protected from person's acts under domestic/family violence laws of the jurisdiction.

**Stalking:** Engaging in a course of conduct directed at a specific person that would cause a reasonable person with similar characteristics under similar circumstances to:

- Fear for the person's safety or the safety of others; or
- Suffer substantial emotional distress
  - Significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

To qualify under Title IX, the conduct must be sex-based stalking. Stalking that does not constitute sexual harassment because it is not on the basis of sex may still fall under other College codes of conduct.

A course of conduct, for purposes of stalking, means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.

## **RETALIATION IS PROHIBITED**

Ursuline College does not tolerate retaliatory conduct and strictly prohibits retaliation. Any retaliatory conduct against such persons will be addressed by the College in the most serious manner, and individuals who engage in such actions will be subject to disciplinary action that may include suspension, expulsion, dismissal, termination, or removal and exclusion from the College.

Retaliation is defined as intimidation, threats, coercion or discrimination against any individual for the purpose of interfering with any right or privilege secured by this Policy, Title IX or its implementing regulations. Retaliation also includes intimidation, threats, coercion, or discrimination aimed at a person because that person complained of sex discrimination or sexual harassment, testified, provided information, assisted, participated in, or refused to participate in, in any manner, in a sex discrimination or sexual harassment investigation, proceeding, or hearing under Ursuline College policies or the law. Notwithstanding this prohibition, there may be circumstances in which conduct, that does not fall under this policy, may fall under other College policies, such as the

College's Harassment and Discrimination Policy or other College codes of conduct. In those instances, after determining the conduct in question does not fall under this Policy, but rather under another College policy, the College may investigate such conduct under the other policy, so long as the purpose is not to engage in retaliation. Anyone who is aware of possible retaliation or has other concerns regarding the response to a sexual misconduct complaint should report such concerns to the Title IX Coordinator, who will take appropriate actions to address such conduct in a prompt and equitable manner.

The College must keep confidential the identity of any individual who has made a report or complaint of sex discrimination or harassment, any respondent, and any witness, except as permitted by the Family Educational Rights and Privacy Act (FERPA), or as otherwise required by law or to carry out the purposes of Title IX, its implementing regulations, or this Policy, including the conduct of any investigation, hearing, or judicial proceeding arising under this Policy. Complaints alleging retaliation may be filed with the Title IX Coordinator and will be addressed under the College's Harassment and Discrimination Policy.

Charging an individual with a violation of this policy for making a materially false statement in bad faith in the course of a grievance proceeding does not constitute retaliation. However, a determination regarding responsibility is not sufficient, by itself, to conclude that any party made a materially false statement in bad faith.

## **CONSENT**

Consent represents the cornerstone of respectful and healthy intimate relationships. Thus, all sexual conduct or contact occurring on campus and/or occurring with a member of the Ursuline College community must be consensual.

Consent requires words or overt acts by a competent person indicating a freely given agreement to the sexual conduct at issue. Consent must be freely given without compulsion or duress by a person legally capable of consenting, and not based on fraud or deception. Consent may not be inferred from silence or passivity alone and a current or previous relationship is not sufficient to constitute consent. Consent to some sexual acts does not constitute consent to others, nor does past consent to a given act constitute present or future consent to the same or another sexual act. Consent must be ongoing throughout a sexual encounter and can be revoked or withdrawn at any time prior to or during a specific sexual act by either person.

Consent is not valid when given by someone who is incapacitated or is not of legal age to consent under the circumstances. Consent is also not valid when obtained by coercion or force. In order to find a lack of consent under one of these circumstances, there must be a finding that the complainant was unable to consent and a finding that the respondent knew or had reason to know the complainant was unable to consent. Intoxication of the respondent is not an excuse for failure to obtain consent or failure to know of the complainant's inability to consent.

## **TITLE IX COORDINATOR**

Ursuline College has designated and authorized the following College official to coordinate and oversee its Title IX compliance efforts, to handle reports of sex discrimination, sexual harassment,

and retaliation, and to decide whether formal complaints, alleging actions prohibited by Title IX or this policy, should be accepted for investigation, resolved informally, or dismissed. The Coordinator shall also have authority to file formal complaints when appropriate; to assign formal complaints, alleging action prohibited by Title IX or this policy, to an investigator; to offer supportive measures; and to implement remedial measures upon the recommendation of the hearing decision-maker. Prohibited actions include all forms of sexual harassment, including sexual assault, domestic and dating violence, stalking, and retaliation.

**Deborah L. Kamat**  
**Director of Compliance/Title IX and Disability Coordinator**  
**Chief Civil Rights Investigator**  
 Office Location: [Mullen 155](#)  
 Telephone: (440) 484-7027  
 Email: [deborah.kamat@ursuline.edu](mailto:deborah.kamat@ursuline.edu)

**CIVIL RIGHTS INVESTIGATORS**

The College may designate qualified and trained staff and faculty members to investigate formal complaints, which the Title IX Coordinator has accepted for investigation. The investigator on a case may not be the same person as the hearing officer on the case and may not decide appeals. Individuals who are assigned to investigate formal complaints are referred to internally as the College’s Civil Rights Investigators. The following individuals have been trained and designated to serve as Civil Rights Investigators for Ursuline College, for formal complaints accepted by the Title IX Coordinator and delegated for investigation.

<p><b>Deanne Hurley</b>  <b>Vice President for Student Affairs</b>                  Office Location: Pilla 205                  Telephone: (440) 646-8319                  Email: <a href="mailto:dhurley@ursuline.edu">dhurley@ursuline.edu</a></p>	<p><b>Kelli Knaus</b>  <b>Director of Human Resources</b>                  Office Location: Mullen 235                  Telephone: (440) 646-8316                  Email: <a href="mailto:kknaus@ursuline.edu">kknaus@ursuline.edu</a></p>	<p><b>Elizabeth Kavran</b>  <b>Dean, School of Arts and Sciences</b>                  Office Location: <a href="#">Mullen 302</a>                  Telephone: (440) <a href="#">449-2015</a>                  Email: <a href="mailto:ekavran@ursuline.edu">ekavran@ursuline.edu</a></p>
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<p><b>Anne Murphy Brown</b>  <b>Associate Professor &amp; Director of Legal Studies</b>                  Office Location: Pilla 219                  Telephone: (440) 449-5403                  Email: <a href="mailto:amurphybrown@ursuline.edu">amurphybrown@ursuline.edu</a></p>	<p><b>Gina DeMart-Kraus</b>  <b>Director of Housing and Residence Life</b>                  Office Location: Pilla 202                  Telephone: 440-646-8334                  Email: <a href="mailto:GDeMart@ursuline.edu">GDeMart@ursuline.edu</a></p>	<p><b>Pamela Hasan</b>  <b>Supervisor of Office Services and Facilities Rental</b>                  Office Location: MU 229                  Telephone: 440-684-6029                  Email: <a href="mailto:phasan@ursuline.edu">phasan@ursuline.edu</a></p>
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**Please Note:** The Title IX Coordinator and the Civil Rights Investigators are not confidential reporting resources. While they will address your complaint with sensitivity and keep your information as private as possible, confidentiality cannot be guaranteed. Please see below for information on confidential reporting options.

**IMMEDIATE AND ONGOING ASSISTANCE**

Individuals who experience sexual harassment are strongly encouraged to seek immediate medical attention in order to treat injuries, test for and treat sexually transmitted infections, test for pregnancy, and access emergency contraception (if requested). Hospitals can also perform rape evidence collection procedures and test for “date rape” drugs. In addition, the Cleveland Rape Crisis Center offers free, comprehensive services to anyone seeking to heal from sexual violence. CRCC Hospital Advocates are available 24 hours per day, 7 days per week to support sexual violence victims and their families and friends during a visit to the emergency room for a medical examination and evidence collection process. If emergency room medical personnel do not offer to contact a CRCC Hospital Advocate on the victim’s behalf, the victim may request one by calling the CRCC hotline at 216.619.6192 or 440-423-2020.

Short term counseling will be made available to victims of sexual harassment occurring on or off campus in accordance with the policies of the Office of Personal Counseling. The counselor will also assist the victim in finding a long-term counseling relationship if needed; however, the cost of such counseling will be borne by the victim. CRCC also provides victims of sexual violence with individual therapy sessions and a Justice System Advocate to support you through the College’s complaint process and/or through the criminal justice process, all free of charge.

The following area resources can provide victims with medical attention and other support services:

**Cleveland Clinic- Hillcrest Hospital** 2.85 mi  
 6780 Mayfield Rd  
 Mayfield Heights, OH 44124  
 440.312.4500  
[My.clevelandclinic.org](http://My.clevelandclinic.org)

**Family Urgent Care Center** 3.10 mi  
 5195 Mayfield Rd Suite 101  
 Cleveland, OH 44124  
 440.442.0400



**University Hospitals Chagrin Highlands**

**Urgent Care** 4.82 mi  
3909 Orange Place Suite 101  
Orange Village, OH 44122  
216.285.0831

**Metro Health Hospital** 20.30 mi  
2500 Metro Health Dr  
Cleveland, OH 44109  
216.778.7800  
www.metrohealth.org

**Circle Health Services of Greater Cleveland** 9.80 mi

12201 Euclid Ave  
Cleveland, OH 44106  
216.721.4010  
www.circlehealthservices.org

**Cleveland Rape Crisis Center**

Multiple locations  
Crisis/Support Hotline:  
216.619.6192 or 440-423-2020  
Webchat also available  
www.clevelandrapecrisis.org

**University Hospitals**

**Ahuja Medical Center** 8.0 mi.

3999 Richmond Road  
Beachwood, Ohio 44122  
216-272-3014

Website: UHhospitals.org

**Chagrin Counseling Associates** 2.87 mi

29325 Chagrin Blvd Suite 313,  
Beachwood, OH 44122  
www.chagrincounseling.com  
216.360.4606

(Offers general counseling services, counseling for challenging life events, depression/anxiety, addition and other disorders)

**RAINN: Rape, Abuse & Incest National**

**Network:** RAINN is the nation's largest anti-sexual violence organization. RAINN created and operates the National Sexual Assault Hotline (800-656-4673 and centers.rainn.org). RAINN also carries out programs to prevent sexual violence, help victims and ensure that rapists are brought to justice.

**PRESERVATION OF EVIDENCE**

If possible, an individual who has been sexually assaulted should not shower, bathe, urinate, douche, brush teeth, drink or change clothes or bedding before going to the hospital or seeking medical attention. If the individual decides to change clothes, he or she should not wash the clothes worn during the assault and should bring them to the hospital or medical facility. Because medical evidence dissipates quickly, individuals who wish to preserve such evidence are encouraged to seek medical

attention within 48 hours (and no more than 86 hours) of the incident. In addition, all physical evidence, including electronic communications (e.g., emails and text messages), recordings, and photographs should be preserved in its original form. These steps are important to help preserve evidence for possible use in legal actions or requests for a civil no-contact order and/or an order of protection.

## **REPORTING OPTIONS & DUTIES**

Any person may report sex discrimination, including sexual harassment (whether or not the reporter is the alleged victim), in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. Such a report may be made at any time, by using the Title IX Coordinator's contact information.

The reporting and disciplinary procedures outlined in this policy are separate and apart from the criminal justice system, and a victim of sexual misconduct may choose to file a complaint with either the College or law enforcement, with neither, or with both simultaneously. The outcome of a sexual misconduct complaint filed with the College is not dependent on the outcome of a criminal investigation conducted by law enforcement.

### **Reporting Incidents of Title IX Sexual Harassment to Ursuline College**

Ursuline College strongly encourages all victims and witnesses to promptly report incidents of sexual harassment (including sexual assault, domestic violence, dating violence, and stalking, to the Title IX Coordinator. The College takes all complaints of sexual harassment seriously and will work to reach a prompt, impartial, and equitable resolution of the matter.

At Ursuline, **all** College employees are considered responsible employees and are required to report all incidences of sexual misconduct to the Title IX Coordinator, unless such employees are specifically designated as confidential employees, as further explained below. In addition, employees that become aware of felony crimes must report such crimes to law enforcement. Ursuline College Security Department can assist with reports to law enforcement, and they can assist with immediate actions to keep individuals safe in emergency situations. In emergencies, individuals can also call 9-1-1.

1. Upon learning of a complaint of sexual harassment, the College will offer supportive measures; will take immediate and appropriate steps to discuss appropriate options (e.g., supportive measures, informal resolution (e.g., mediation), or a formal complaint investigation and hearing), with the complainant.
2. All employees are responsible employees and must report to the Title IX Coordinator all relevant details of any alleged act of sexual harassment that the employee is aware of— including the names of the alleged victim (complainant) and alleged perpetrator(s)(respondent(s)), the names of any witnesses, and any other relevant facts, including the date, time and specific location of the alleged

incident. To the extent possible, information reported to a responsible employee will be shared only with those officials responsible for handling the College's response to the report.

3. The College must treat complainants and respondents equitably by offering supportive measures as defined in this Policy and by following the grievance process as set forth in this policy, before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a respondent.

Before a complainant reveals any information to a responsible employee, the employee should ensure that the complainant understands the employee's reporting obligations and, if the complainant wants to ensure that confidentiality is maintained, the complainant should be directed to one of the confidential resources identified below. If the complainant still seeks confidentiality but chooses to disclose to the responsible employee what happened despite the warning, the employee should remind the complainant that the College will consider the request but cannot guarantee confidentiality. In reporting the details of the incident to the Title IX Coordinator, the responsible employee should also inform the Coordinator of the complainant's request for confidentiality. Responsible employees should not pressure a complainant into making a full report if the complainant is not ready to do so, nor should they encourage the complainant to remain silent about the incident; rather, the employee should honor and support the complainant's wishes. Please note that the College's responsibility to minors on campus may preclude treating the minor's complaint as confidential. State and federal reporting requirements may apply.

If a complainant discloses an incident of sexual misconduct to a responsible employee but wishes to maintain confidentiality or requests that no investigation is conducted or no disciplinary action is taken, the College must weigh that request against the College's legal obligation to provide a safe, non-discriminatory environment for all students and employees, including the victim. If the College honors the request for confidentiality, a complainant must understand that the College's ability to meaningfully investigate the incident and pursue disciplinary action against the respondent(s) may be limited. Sometimes, the College will not be able to honor a complainant's request because of the need to provide a safe, non-discriminatory environment for all students and employees.

When a report is filed with the Title IX Coordinator, the Title IX Coordinator must promptly contact the complainant to discuss the availability of supportive measures, as well as the option to file a formal complaint. The Title IX Coordinator must also inform the complainant of the availability of supportive measures with or without the filing of a formal complaint and explain to the complainant the process for filing a formal complaint.

When weighing a complainant's request for confidentiality or that no investigation or discipline be pursued, the Title IX Coordinator may consider a range of factors, including, but not limited to the following:

- the increased risk that the respondent will commit additional acts of sexual harassment, sexual assault, dating violence, domestic violence, or stalking, such as:
  - whether there have been other sexual harassment, sexual assault, dating violence, domestic violence, or stalking complaints against the same respondent;

- whether the respondent has a criminal record demonstrating a history of sexual harassment, sexual assault, dating violence, domestic violence, or stalking;
- whether the respondent has a history of engaging in sexual harassment, sexual assault, dating violence, domestic violence, or stalking from a prior school or employer;
- whether the respondent threatened further sexual harassment, sexual assault, dating violence, domestic violence, or stalking against the victim or others;
- whether the sexual harassment, sexual assault, dating violence, domestic violence, or stalking was committed by multiple perpetrators or against multiple victims;
- whether the sexual harassment, sexual assault, dating violence, domestic violence or stalking was perpetrated with a weapon;
- whether the sexual harassment, sexual assault, dating violence, domestic violence, or stalking occurred on campus or other property owned or controlled by the College;
- whether the complainant is a minor;
- whether the respondent(s) is a member of the Ursuline College community;
- whether the College possesses other means to obtain relevant evidence of the sexual harassment, sexual assault, dating violence, domestic violence, or stalking (e.g., security cameras or personnel, audio recordings, physical evidence).

The presence of one or more of these factors could lead the Title IX Coordinator to file a formal complaint to investigate and, if appropriate, pursue disciplinary action against the respondent, despite the complainant's request.

If the Title IX Coordinator determines that the College cannot honor a complainant's request for confidentiality, the College will inform the complainant prior to starting an investigation and will maintain the privacy of the investigation to the extent possible in the context of implementing this Policy. The College will work with the complainant regarding the availability of supportive measures. If the College decides not to open an investigation or pursue disciplinary action, the Title IX Coordinator will inform the complainant of that decision. Retaliation against the complainant will not be tolerated.

The College recognizes that complainants impacted by sexual harassment may wish to take advantage of the health and support services available on campus without disclosing the incident or making a formal report to the College. To that end, certain College employees have been designated as **limited and fully confidential resources** to whom complainants can speak without their personally identifying information being shared with the Title IX Coordinator or Campus Security.

**Non-professional counselors and advocates who work or volunteer in the Office for Diversity and the Women's Center** are not considered responsible employees and can generally talk to a complainant without revealing any personally identifying information about an incident to the College. These individuals include: the Campus Minister, **Paula Fitzgerald**, Assistant Dean for

Diversity, **Yolanda King** and the Co-Directors of the Women's Center, **Amy Lechko** and **Jessica Headley**. These individuals are still required to report felonies to law enforcement, however.

If you are a victim of sexual harassment and do not want to pursue action through the Ursuline College system, you may still want to consider making a **limited report** to one of the above listed individuals or offices. A victim can seek assistance and support from these individuals/offices without triggering a College investigation that could reveal the complainant's identity or that the complainant has disclosed the incident. While maintaining a complainant's confidentiality, these individuals or their office should report the nature, date, time, and general location of an incident to the Title IX Coordinator and the Ursuline College Security Department. This limited report – which includes no information that would directly or indirectly identify the complainant – helps keep the Title IX Coordinator and Security Department informed of the general extent and nature of sexual violence and other crimes on and off campus so that the College can keep an accurate record of the number of incidents involving students, faculty, staff or guests; track patterns of crime; evaluate the scope of each incident; formulate appropriate campus-wide responses; and alert the campus community to potential danger, if necessary. Limited reports filed in this manner are counted and disclosed in the annual crime statistics for the College without revealing any confidential information regarding the victim.

**Pastoral and licensed professional counselors, when acting in their professional capacity**, are not considered responsible employees and are not required to report any information regarding complaints of sexual misconduct to either the Title IX Coordinator or to law enforcement. Thus, these counselors are not required to report crimes for investigation or inclusion in the annual disclosure of crime statistics. Crimes reported to these counselors are **strictly confidential**, except in very limited cases where the information suggests an imminent threat to the health and safety of the patient or others, or in cases of child abuse. These counselors include: the College Psychologist, **Anita Culbertson** and all other licensed professional counselors in the Office of Personal Counseling, who provide mental health counseling to members of the College Community. As a matter of policy, pastoral and licensed professional counselors are encouraged – if and when they deem it appropriate – to inform persons being counseled of the procedures to report crimes on a voluntary and confidential basis for inclusion in the annual crime statistics report, and of the option to seek supportive measures and resolution through the Title IX process.

A complainant who speaks to a professional or non-professional counselor or advocate must understand that if the complainant wants to maintain confidentiality, the College may not be able to conduct an investigation into the particular incident or pursue disciplinary action against the alleged perpetrator. Even so, these counselors and advocates will still assist the complainant in receiving other necessary protection and support, such as victim advocacy, academic support or accommodations, disability, health or mental health services, and changes to living, working or course schedules. A complainant who at first requests confidentiality may later decide to file a complaint with the College or report the incident to local law enforcement, and thus have the incident fully investigated. These counselors and advocates will provide the complainant with assistance in filing a complaint, if the complainant wishes to do so.

**Please Note:** While these professional and non-professional counselors and advocates may maintain a complainant's confidentiality vis-à-vis the College, they may have reporting or other obligations under state or federal law, such as mandatory reporting to law enforcement in case of minors; imminent harm to self or others; mandatory reporting of felonies; and requirements to testify if subpoenaed in a criminal case.

### **Reporting Incidents of Sexual Harassment to Law Enforcement**

Some types of sexual harassment, including sexual assault, dating and domestic violence, and stalking are criminal acts and Ursuline College strongly encourages all victims and witnesses to report suspected criminal acts to the Pepper Pike Police Department or any other appropriate law enforcement agency if the incident occurred off campus. Upon request, Ursuline College officials are available to assist an individual in contacting and/or notifying the appropriate law enforcement agency. Please note that under Ohio law, with certain exceptions, persons who have knowledge of a felony are required to report such information to law enforcement authorities. *See* Ohio Revised Code § 2921.22. Failure to report a felony may itself be a crime. The contact information for the Pepper Pike Police Department is listed below:

Pepper Pike Police Department  
28000 Shaker Blvd.  
Pepper Pike, Ohio 44124

For emergencies, dial 911. If dialing from a campus phone, you must dial 9-911. For non-emergency calls to all divisions or personnel of the Pepper Pike Police Department, use the business line at (216) 831-8500 and the operator will direct your call.

Although cooperation with law enforcement may require Ursuline College to temporarily suspend its internal investigation into complaints/reports of sexual misconduct, the College will promptly resume the investigation as soon as it is notified by law enforcement that the agency has completed its evidence gathering. The College will not, however, wait for the conclusion of a criminal proceeding to begin its own investigation and, if necessary, will take immediate and interim measures to address the alleged conduct.

### **AMNESTY FOR REPORTING**

Ursuline College encourages reporting of sexual misconduct and seeks to remove any barriers to an individual making a report. The College recognizes that individuals who have been drinking or using drugs at the time of the incident may be hesitant to make a report because of potential consequences for their own conduct. Thus, individuals who report sexual misconduct or participate in a sexual misconduct investigation, will not be subject to disciplinary action by the College for their own personal consumption of alcohol or drugs at or near the time of the incident, provided that any such violations did not and do not place the health or safety of any other person at risk. Ursuline College may, however, initiate an educational discussion on the use of alcohol or other drugs or require participation in an alcohol/drug prevention training course/program. Amnesty will not be extended for any violations of Ursuline College policy other than for alcohol/drug use. In addition, amnesty does not preclude or prevent action by police or other legal authorities.

### **ANONYMOUS COMPLAINTS**

Anonymous complaints will be accepted; however, the College's ability to obtain necessary and additional information may be compromised and the ability to investigate or resolve anonymous complaints may be limited.

### **BAD FAITH COMPLAINTS**

This policy shall not be used to bring frivolous or malicious complaints against members of the Ursuline College community. If the College's investigation reveals that a complaint is made in bad faith or is knowingly false, such complaint shall be dismissed and the person who filed the bad faith complaint may be subject to disciplinary action. A complaint, however, will not be considered false, frivolous or in bad faith solely because it cannot be corroborated.

### **ACADEMIC/WORK ACCOMMODATIONS AND SUPPORTIVE MEASURES**

Upon learning of sexual harassment, the College may implement non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant and the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the College's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the College's education environment, or deter sexual harassment. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus 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 the campus, and other similar measures. The College must maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the College to provide the supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

In certain instances, the College may need to report an incident to law enforcement authorities (e.g, when a suspected felony has occurred). Such circumstances include any incidents that warrant the undertaking of additional safety and security measures for the protection of the student, employee or other members of the Ursuline College community or other situations in which there is clear and imminent danger, and when a weapon may be involved. However, in all cases, crisis intervention and safety concerns will take precedence.

### **PROCEDURES FOR INVESTIGATION AND RESOLUTION OF COMPLAINTS (GRIEVANCE PROCEDURES)**

These grievance procedures apply only to sexual harassment occurring against a person in the United States. Please note that the College's Harassment and Discrimination and/or other College codes of conduct may apply to sexual harassment occurring against a person outside other the United States.

Upon notification of a complaint alleging a violation of this Title IX Sexual Harassment Policy, an investigation into the matter will be conducted in a prompt, thorough, and impartial manner by the Title IX Coordinator and/or one or more of the College's Civil Rights Investigators, who shall have adequate knowledge and training on how to conduct proper investigations under Title IX. The designated investigator(s) shall be responsible for gathering relevant evidence, but shall not serve as the decision-maker. The objective of the investigation process is to gather relevant evidence, including information from both parties and relevant witnesses, to facilitate a hearing to determine whether a policy violation occurred. If the decider determines that the conduct constitutes a policy violation, the decider will determine what sanctions should be imposed and what actions will be taken to end the harassing or discriminatory conduct and prevent its recurrence.

If the complainant or the respondent has a concern about the conduct of any investigator or believes that an investigator has a conflict of interest that may impair the investigator's ability to be fair and impartial, the complainant/respondent should immediately put her/his concerns in writing and submit them to the Title IX Coordinator for review. The Title IX Coordinator will promptly review the matter and determine whether it is appropriate to recuse the investigator.

### **COOPERATION WITH INVESTIGATION AND DISCIPLINARY PROCEDURES**

Ursuline College encourages all members of the College community to cooperate fully in the investigation and disciplinary procedures.

The College also understands that there may be circumstances in which a party wishes to limit her/his participation in an investigation. The complainant retains this right. However, the designated investigator(s) may be required to move forward with an investigation, absent the party's participation in the process. In such situations, the College will not draw any adverse inference from a party's silence. However, silence of a party will result in an absence of their side of the story being represented in the information presented for adjudication.

If a complainant or respondent refuses to undergo cross-examination, during the hearing, that person's statements will not be considered.

The College will not restrict the ability of any party to discuss the allegations under investigation or to gather and present relevant evidence. A party's communication with a witness or potential witness is considered part of a party's right to meaningfully participate in furthering the party's interests in the case. However, where a party's conduct toward a witness violates a no-contact order or rises to the level of retaliation, it is prohibited.

### **INITIAL ASSESSMENT OF COMPLAINT/REPORT**

The investigative process is initiated when the Title IX Coordinator receives a formal complaint of a sexual harassment. The Title IX Coordinator will conduct an initial assessment of the complaint/report



to determine the next steps. Following the initial assessment, one or more of the following actions will be taken:

- The Title IX Coordinator must dismiss a complaint if the conduct alleged would not constitute sexual harassment, even if proven, or the conduct did not occur within recipient's education program or activity or in the United States.
- Such a dismissal does not preclude action under another provision of the College's code of conduct or the College's Harassment and Discrimination Policy, if they apply.
- The College may dismiss the formal complaint or any allegations contained in the complaint, if at any time during the investigation or hearing:
  - a complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations in that complaint;
  - the respondent is no longer enrolled or employed by the College; or
  - specific circumstances prevent the College from gathering evidence sufficient to reach a determination as to the formal complaint or allegations in that complaint.
- Upon dismissal, the Title IX Coordinator must promptly send written notice of the dismissal and reason(s) for the dismissal to both parties, simultaneously.

*Consolidation of formal complaints:* The Title IX Coordinator may consolidate formal complaints as to allegations of sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances.

Please note that sexual misconduct occurring outside of the United States may, under appropriate circumstances, be investigated under the College's Harassment or Discrimination Policy or other relevant policies, so long as the intent is not to retaliate against a person for filing a complaint or otherwise participating in the complaint process. See, Retaliation section.

- If it is determined that the complaint/report, if substantiated, would constitute a violation of this policy, the appropriate supportive measures will be determined and the Title IX Coordinator will explain the options for informal resolution (e.g., mediation) and a formal investigation. The complainant will be advised that a hearing will be held, at which parties and witnesses will be cross-examined by advisors for each party. Neither the complainant nor respondent will be allowed to directly cross examine each other.

Any individual designated by the College as a Title IX Coordinator, investigator, decision-maker, or any person designated by the College to facilitate an informal resolution process must not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. The Title IX Coordinator's initiation of a formal complaint or an individual's decision that allegations warrant an investigation or hearing shall not be considered evidence of bias. An individual's current job title, professional qualifications, past experience, identity, or sex will not alone indicate bias. Use of trauma-informed practices will not be considered evidence of bias when such practices do not rely on sex stereotypes, apply generalizations to allegations in specific cases, cause loss of impartiality, or prejudice the facts at issue. The College will apply an objective, common sense approach to evaluating whether a particular person serving in

a Title IX process is biased and will exercise caution not to apply generalizations that might unreasonably conclude that bias exists.

## NOTICE OF ALLEGATIONS

Upon receipt of a formal complaint, the College must provide the following written notice to the parties who are known:

- (A) Notice of the College's grievance process that complies with this section, including any informal resolution process.
- (B) Notice of the allegations of sexual harassment potentially constituting sexual harassment, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include, if known:
  - a. The identities of the parties involved in the incident;
  - b. The conduct allegedly constituting sexual harassment;
  - c. The date and location of the alleged incident.
- (C) A notice that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.
- (D) Inform the parties of their right to have an advisor of their choice, who may be, but is not required to be, an attorney, and may inspect and review evidence.
- (E) Inform the parties of any provision in the College's Policy that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.
- (F) If, during the investigation, the College decides to investigate additional allegations, the College will provide written notice of the additional allegation to all known parties.

## INFORMAL RESOLUTION

1. The College may not require a party to waive the right to an investigation and a live hearing with cross-examination.
2. The College may not require the parties to engage in an informal resolution process and may not offer informal resolution, unless a formal complaint is filed and both parties agree, in writing, to an informal resolution.
3. At any time prior to reaching a determination regarding responsibility, the College may facilitate an informal resolution process, such as mediation, a negotiated resolution, or restorative justice, that does not involve a full investigation and adjudication, provided that the College:
  - a. Issues a written notice disclosing:
    - i. the allegations

- ii. the requirements of the informal resolution process (including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegation);
  - iii. a statement that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint; and
  - iv. an explanation that any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared;
- b. Obtains the parties' voluntary, written consent to the informal resolution process;
  - c. Does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

Informal resolutions shall be resolved within 30 days of assignment, unless there is good cause shown to continue the process. Good cause shall include: showing that reasonable progress is being made and that continued informal resolution efforts will likely result in resolution or that there was a good reason for failure to resolve the complaint within 30 days (e.g., the unavailability of the parties, school closings, etc.)

## **FORMAL INVESTIGATION**

The following procedures shall apply during a formal investigation:

1. The investigator will offer each party the opportunity to be interviewed, to provide a written statement, to provide evidence for consideration, to submit suggested witnesses, and to submit information from fact witnesses and expert witnesses.
2. Both the complainant and the respondent to the complaint will have an equal opportunity to provide evidence and to identify any witnesses that support their position.
3. The investigators must presume that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.
4. The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rests on the College and not on the parties.
5. Interviews shall be sought from the complainant, the respondent, any witnesses identified by the parties as relevant and necessary to the matter, and any witnesses determined by the investigator(s) to be relevant to the matter. If any witnesses identified by the parties as relevant and necessary to the matter are not interviewed, then the investigator(s) will state, in the written response to the parties, the reason(s) for not conducting the additional interviews.
6. Parties and witnesses may be interviewed more than once in order to gather all relevant information and evidence.
7. All relevant documents and evidence shall be gathered and reviewed by the investigator(s) and, upon request, made available for review by the parties, except to the extent that such documents and/or evidence contain privileged, confidential, or FERPA-protected information, which shall be determined solely by the College. For example, the College cannot 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 the College obtains that party's voluntary, written consent to do so for a grievance process under this Policy. If a party is a minor, then the College must obtain the voluntary, written consent of a parent or guardian.

8. Due to the nature of most sexual harassment allegations, the parties will be interviewed separately and neither the complainant nor respondent will be permitted to directly question one another. However, the parties may have their advisors cross examine the other party and/or their witnesses, in a live cross examine hearing. A complainant's or respondent's advisor may also be allowed to ask questions of their own party, to help the party explain the party's side of the story.
9. All investigations will be conducted under a preponderance of the evidence standard, meaning, the decision-maker will determine whether it is more likely than not that the respondent violated this Title IX Sexual Harassment Policy.
10. Both the complainant and the respondent may have a single advisor/support person of their choice present during any meetings with the investigator(s). The advisor/support person may not actively participate during any meetings or ask or answer any questions during the meetings. They may advise the parties privately but may not confer with them while the meeting is in progress. The investigator(s) may remove any advisor/support person who distracts or disrupts the investigatory process. The support person may be the same individual who represents the party at the live hearing with cross-examination. An advisor may participate in the hearing to conduct live cross examination of the parties or witnesses and to respond to questions from the decision maker.
11. The investigator(s) may record by electronic, stenographic, or other means any meeting, to the extent permitted by law. Other than the official recording made by the investigator(s), no photographs, tape recordings, videotapes, stenographic records, or other recordings of proceedings under this policy may be made by any person.
12. The investigation shall be completed as promptly as possible. Generally, investigations will be completed within 90 calendar days of receipt of the complaint. However, complicated cases, absence of witness, school closings, or other factors may result in longer investigations. If the investigation will exceed 90 calendar days, the investigator(s) will notify the complainant and the respondent.
13. The parties and their advisors shall receive simultaneous access to the investigative report.
14. The parties must have an opportunity to review all the evidence, including evidence upon which the College 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 each party can meaningfully respond to the evidence prior to the conclusion of the investigation.
15. Prior to completion of the investigative report, the College must send 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. The parties and advisors are not permitted to disseminate the evidence subject to inspection and review. The parties must have at least 10 calendar days to submit a written response, which the investigator will consider prior to completion of the investigative report. The College must also make all such evidence subject to the parties' inspection and review available at any hearing

to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.

16. The investigators shall create an investigative report that fairly summarizes relevant evidence. At least 10 days prior to a hearing or other time of determination regarding responsibility, the College must 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. The decider shall review the written responses prior to hearing.

**HEARING:**

1. The College must provide a live hearing, with cross-examination.
2. At the hearing, each party's advisor is allowed to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility.
3. A party is never permitted to cross-examine another party. Only the party's advisor can conduct cross examination.
4. An advisor can attend the hearing and conduct cross-examination, even if the party they represent does not appear. No assumption should be inferred about the appearance or non-appearance of the party.
5. Third party cross-examination of what a non-appearing party stated does not count as statements tested on cross-examination. For example, family or friends cannot appear on behalf of the non-appearing party and answer questions for them.
6. The decider may rely on a description of the words allegedly used by a respondent, if those words constitute part of the alleged sexual harassment at issue, even if the party does not submit to cross-examination.
7. The decision as to what occurred, whether it constitutes a policy violation, and what sanctions are appropriate shall be made by the decision-maker, who cannot be the same person as the Title IX Coordinator or the investigator. The decision-maker shall be trained on how to conduct a hearing, including any technology needed to conduct the hearing remotely.
8. The decision maker shall also be trained on how to recognize that a party should not be "unfairly judged due to inability to recount each specific detail of an incident in sequence, whether such inability is due to trauma, the effects of drugs or alcohol, or simple fallibility of human memory".
9. The hearing may be conducted with all parties physically present in the same geographic location or in separate rooms. At the request of either party or at the College's discretion, the hearing may occur with the parties located in separate rooms with technology enabling the

decider and parties to simultaneously see and hear the party or the witness answering questions, using an online platform, such as Zoom, as long as both parties can see each other.

10. The College must create an audio or audiovisual recording or transcript, of any live hearing. It must be available to the parties for inspection and review.
11. Each party is entitled to the advisor of the party's choice. If a party does not have an advisor, the College shall appoint an advisor, of the College's choice, to conduct cross-examination in the place of the party's advisor of choice. Both parties must have advisors, who may be, but are not required to be attorneys. There shall be no charge to either party for an advisor appointed by the College.
12. The parties shall have the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney, and not limit the choice or presence of advisor for either the complainant or respondent in any meeting or grievance proceeding. The College may, however, establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long the restrictions apply equally to both parties.
13. For reasons of confidentiality, the advisor is the only individual permitted to accompany the party at hearing, unless otherwise required by law (e.g., a sign language interpreter).
14. The advisor's role in the hearing shall be limited to cross examination, unless the advisor is asked a question by the decider. For all other meetings, the advisor may accompany the complainant or respondent. However, the advisor's role is limited to that of silent support person in those other meetings.
15. The College 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;
16. The decider shall not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege (e.g., attorney-client, doctor-patient, etc.), unless the person holding such privilege has waived the privilege in writing.
17. At the live hearing, the decision-maker must permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including questions that challenge credibility. The advisor's questions may test consistency, accuracy, and memory, so that the decision-maker can better assess whether a party's story should be believed. The advisor may direct the decision-maker's attention to implausibility, inconsistency, unreliability, and ulterior motives, in the other party's statements. Appropriate questions will advance the asking party's perspective with respect to the specific allegation at issue. The decider may also ask questions to help the decider determine whether or not a policy has been violated.

No party-on-party questioning will be permitted. Such cross-examination must be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally. Other than this function, the advisor may not participate in the proceedings, except if the decider uses its discretion to allow participation, for the purpose of obtaining additional relevant evidence only.

18. If a party does not submit to cross examination at the live hearing, the decision-maker is permitted to consider prior statements of the party or witness in reaching a determination regarding responsibility. The decision-maker will grant the evidence appropriate weight, taking into account that it has not been subject to cross-examination. The decision-maker will provide a written determination of assessment of appropriate weight given to such statements based on standards for weighing credibility found within this policy.
19. During the hearing, the decider will evaluate each question for relevance before an answer may be given to that question. Questions that are not relevant will be disallowed. Before a complainant, respondent, or witness answers a cross-examination or other question, the decider must first determine whether the question is relevant and explain any decision to disallow a question as not relevant. The decider is not required to give a lengthy or complicated explanation of a relevancy determination during the hearing. The decider may send to the parties after the hearing any revisions to the decider's explanation that was provided during the hearing.
20. Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless: (a) such questions and evidence are offered to prove that someone other than the respondent committed the conduct alleged by the complainant; or (b) 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.
21. Repetition of the same question, evidence that is duplicative of other evidence, and information protected by a legally recognized privilege that has not be waived is irrelevant.
22. The decider will not exclude relevant evidence, but may objectively evaluate such evidence by analyzing whether that evidence warrants a high or low level of weight or credibility. In considering the weight of the evidence, the decider may consider factors, such as:
  - a. Was the statement subject to cross-examination?
  - b. Is there a competing narrative?
  - c. Is the information at issue based on firsthand knowledge or direct observations?
  - d. Is the information from a reliable source? Are there concerns about bias?
  - e. Is there any evidence that suggests the information might be affected by memory problems?
23. Both parties shall have an equal opportunity to present witnesses, including fact and expert witnesses, and other evidence, to show that the respondent either did or did not commit a policy violation.

24. After the hearing, the decision-maker must issue a written determination regarding responsibility, applying the preponderance of evidence standard. There shall be an objective evaluation of all relevant evidence, including both evidence that tends to prove a policy violation and evidence that disproves a policy violation.

The decision-maker will evaluate all admissible, relevant evidence for weight or credibility. The degree to which any inaccuracy, inconsistency, or implausibility in a narrative provided by a party or witness should affect a determination regarding responsibility is a matter to be decided by the decision-maker, after having the opportunity to ask questions of parties and witnesses, and to observe how parties and witnesses answer the questions posed by the other party. Corroborating evidence is not required. Credibility determinations are not based solely on observing demeanor, but are also based on other factors (e.g., specific details, inherent plausibility, internal consistency, corroborative evidence). Credibility determinations will not be based on an individual's status as a complainant, respondent, or witness.

25. The written determination must include the following:
  - a. The standard of evidence for making the decision, which shall be the preponderance of the evidence standard (i.e., whether it is more likely than not that the violation occurred).
  - b. Identification of the Complainant's allegations potentially constituting sexual harassment, as defined above.
  - c. A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held.
  - d. Findings of fact supporting the determination.
  - e. Conclusions regarding the application of the College's Title IX Sexual Harassment Policy and other relevant policies to the facts.
  - f. The result, as to each allegation, including a statement of, and rationale for the result, a determination regarding responsibility, any disciplinary sanctions the College imposes on the respondent, and whether remedies designed to restore or preserve equal access to the College's education program or activity will be provided by the College to the Complainant.
  - g. The College's procedures and permissible bases for the complainant and respondent to appeal.
26. The College must provide the written decision to both parties simultaneously.
27. The determination regarding responsibility becomes final, either on the date that the College provides the parties with the written determination of the result of the appeal, if one is filed or, if an appeal is not filed, the date on which an appeal would no longer be considered timely.
28. The respondent shall not be informed of all remedies offered to the Complainant unless they specifically relate to the respondent.
29. The Title IX Coordinator or the Deputy Coordinator is responsible for effective implementation of any remedies.



## APPEALS

30. Each party shall have an equal opportunity to file a written appeal to the College's dismissal of a formal complaint or any allegations in the complaint or a determination regarding responsibility, within 10 calendar days of receipt of the determination 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 of the determination regarding responsibility (the hearing decision) or dismissal was made, that could affect the outcome of the matter; and/or
  - c. The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainant or respondent generally or the individual complainant or respondent that affected the outcome of the matter.
31. The appeal shall be filed with the Title IX Coordinator, who will assign the appeal to a trained senior administrator or external party for decision.
32. As to all appeals, the Title IX Coordinator must:
  - a. Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties;
  - b. Ensure that the decision-maker(s) for the appeal is not the same person as the decision-maker(s) that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator;
  - c. Ensure that the decision-maker(s) for the appeal complies with the standards set forth in this Policy;
  - d. Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome;
  - e. Issue a written decision describing the result of the appeal and the rationale for the result; and
  - f. Provide a written decision simultaneously to both parties.
  - g. Appeals shall be resolved within 30 calendar days from the date of filing, unless good cause is shown, with written notice to the parties. Good cause may include, but shall not be limited to: the unavailability of parties, a party's advisor, or a witness (if needed); delays caused by concurrent law enforcement activity; the need for language assistance or accommodation of disabilities; school closings; or emergencies caused by the pandemic.

## SANCTIONS

A complaint alleging sexual misconduct does not alone constitute proof of prohibited conduct. As such, the fact that a complaint has been filed against an individual in the past shall not be taken into consideration when evaluating or making decisions regarding the academic or employment status of such individual, unless the previous or current investigation results in a finding of a policy violation.

Persons found to be in violation of this policy will be subject to immediate and appropriate disciplinary action, proportional to the seriousness of the offense. Possible sanctions include: educational sanctions, oral or written warning/reprimand, loss of privileges, mandatory training or counseling, disciplinary probation, performance improvement plan, last chance agreement,

College or social probation, expulsion from school, reassignment, fine, restitution, no-contact order, restriction from specific College programs or activities, housing restriction/relocation, restriction from College employment, demotion, involuntary leave of absence, suspension or termination of employment or contractual status, revocation of tenure, and/or removal and exclusion from Ursuline College property.

## **EMERGENCY REMOVAL**

The College may remove a respondent from the College's education program or activity on an emergency basis, provided that the College performs an individualized safety and risk analysis, determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal, and provides the respondent with notice and an opportunity to challenge the decision immediately following the removal. This provision shall not modify any rights under the Section 504 of the Rehabilitation Act of 1973 or other applicable laws.

## **ADMINISTRATIVE LEAVE**

The College may place a non-student employee respondent on administrative leave during the pendency of a grievance process. This provision shall not modify any rights under Section 504 of the Rehabilitation Act of 1973 or applicable laws. Administrative leave is not subject to the challenge procedure relating to emergency removal.

## **TRAINING, PREVENTION AND EDUCATION**

Ursuline College provides educational resources, programming and counseling services throughout the year related to the prevention of sexual assault, stalking, and domestic and dating violence. Educational awareness and training programs are presented during student and employee orientations, and Residence Life and the Office of Counseling and Career Services provide programs utilizing non-campus resources such as the Case Western Reserve University Police, the Pepper Pike and Mayfield Heights Police Departments, a Sexual Assault Nurse Examiner (SANE) from Hillcrest Hospital, and staff from the Cleveland Rape Crisis Center and Recovery Resources. The Director of Compliance/Title IX Coordinator also provides routine and ongoing education and training related to the prevention of sexual assault, stalking, and domestic and dating violence.

Ursuline College now requires that all students and employees successfully complete an on-line training course/program on the awareness and prevention of sexual assault, stalking, and domestic and dating violence. The on-line training course/program is currently provided through an outside vendor and addresses the following:

- Definitions of sexual harassment, sexual assault, domestic violence, dating violence, stalking, and consent;
- Safe and positive options for bystander intervention that may be utilized by an individual to prevent harm or intervene when there is a risk of domestic violence, dating violence, sexual assault, or stalking against a person; and

- Information on risk reduction to recognize warning signs of abusive behavior and how to avoid potential attacks, among other topics.

In addition to the on-line training course/program, students and employees are required to successfully complete a refresher course/program annually.

All individuals designated to serve as investigators, deciders, advisors, and appeal panelists under this policy (including the College's Director of Compliance / Title IX and Disability Coordinator) receive training and education regarding these policies as required by Title IX and Clery Act regulations. Investigators are trained on how to conduct proper investigations in a prompt, thorough, and impartial manner. Training and certification is conducted by the Director of Compliance/Title IX Coordinator, by providers offered through the Ohio Department of Higher Education and by other trained professionals.

## **RECORDKEEPING**

The College must 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 this policy; any disciplinary sanctions imposed on the respondent; and, any remedies provided to the complainant designed to restore or preserve equal access to the recipient's education program or activity;
2. Any appeal and the result of the appeal;
3. Any informal resolution and the result of the informal resolution; and
4. All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process. The College must make these training materials publicly available on its website.
5. A College must create and maintain for a period of seven years, records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment. In each instance, the College must 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 the College's education program or activity. If the College does not provide a complainant with supportive measures, then the College must document the reasons why such a response was not clearly unreasonable in light of the known circumstances.