



**MEMORANDUM**

**To:** Julio Frenk  
University President

**From:** Linda L. Neider  
Chair, Faculty Senate

A handwritten signature in blue ink, appearing to read 'L. Neider', is placed over the 'From:' field.

**Date:** August 28, 2020

**Subject:** Faculty Senate Legislation #2020-07(B) – Revise the *Faculty Manual* Sexual Harassment Policy Handbook Section to include Title IX clause

Reference Legislation #2020-08(B) – Update *Faculty Manual* Section B4.10 (Committee on Professional Conduct)

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The Faculty Senate, at its August 26, 2020 meeting, had no objections to the proposal to revise the *Faculty Manual* Sexual Harassment Policy Handbook Section to include the Title IX clause. This revision was necessitated by federal mandates to have a process for Title IX complaints that complies to Title IX, and regulations that govern it.

The proposal is enclosed for your reference.


This legislation is now forwarded to you for your action.

LLN/rh

cc: Jeffrey Duerk, Executive Vice President and Provost  
Guillermo Prado, Vice Provost, Faculty Affairs  
JoNel Newman, First Vice Chair, Faculty Senate; Professor, School of Law  
Tamara Lave, Professor, School of Law

**CAPSULE:** Faculty Senate Legislation #2020-07(B) – Revise the *Faculty Manual* Sexual Harassment Policy Handbook Section to include Title IX clause

**PRESIDENT’S RESPONSE**

APPROVED:  DATE: 9/11/20  
(President’s Signature)

OFFICE OR INDIVIDUAL TO IMPLEMENT: Faculty Senate

EFFECTIVE DATE OF LEGISLATION: IMMEDIATELY  
(pending any additional approval by the Board of Trustees)

NOT APPROVED AND REFERRED TO: \_\_\_\_\_

REMARKS (IF NOT APPROVED): \_\_\_\_\_

Please note the proposed revisions are shown in **Red/Strikeout** format.

[BEGIN TEXT, *FACULTY MANUAL*]

## Nondiscrimination Policy of the University<sup>1</sup>

Members of the UNIVERSITY FACULTY shall abide by the Non-discrimination Policy of the University. It is the policy of the University of Miami that no person shall be excluded from participation in, denied the benefits of, or subjected to discrimination or harassment (including all forms of sexual harassment and sexual violence) on the basis of race, religion, color, sex, age, disability, sexual orientation, gender identity or expression, veteran status, or national origin, under any program or activity of the University. This applies to an act of any kind, taking place on University property, utilizing University resources, or involving any University activity or program taking place off campus.<sup>2</sup>

## Faculty Policies on Sexual Harassment<sup>3</sup>

Sexual Harassment by any member of the University community is prohibited. The University and its faculty are committed to a work environment free of sexual harassment, and violations of the University policies against sexual harassment are regarded as grounds for sanctions as defined in this policy. Serious cases of sexual harassment by a member of the University community may result in dismissal in accord with the appropriate policy.<sup>4</sup>

**There are two separate Faculty policies on sexual harassment at the University:**

**The Faculty Policy on Title IX sexual harassment applies to all cases in which charges of Title IX sexual harassment are made by a member of the University community against a member of the UNIVERSITY FACULTY (as defined in the *Faculty Manual*). Charges of Title IX sexual harassment against members of the University community other than the UNIVERSITY FACULTY are dealt with under other applicable policies (including but not limited to the University’s Sexual Misconduct Policy).**

The Faculty Policy on **non-Title IX** sexual harassment applies to ~~all~~ cases in which charges of **non-Title IX** sexual harassment are made by a member of the University community against a member of the UNIVERSITY FACULTY (as defined in the *Faculty Manual*). Charges of **non-Title IX** sexual harassment against members of the University community other than the UNIVERSITY FACULTY are dealt with under other applicable policies.

## **Faculty Policy on Title IX Sexual Harassment**

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<sup>1</sup> [#94001\(B\)](#)

<sup>2</sup> [#2014-23\(B\)](#)

<sup>3</sup> [#2001-19\(B\)](#)

<sup>4</sup> This policy is designed to recognize and protect the rights of all parties. Insofar as applicable state or federal law, now or in the future, may provide greater substantive and procedural rights within the University context to any party, this policy should be read as incorporating any and all such rights, in addition to those specifically set out herein.

[ALL NEW SECTION ADDED BELOW]:

## DEFINITIONS

Sexual harassment is defined broadly to include any of three types of misconduct on the basis of sex: (i) any instance of *quid pro quo* harassment by a University employee; (ii) any unwelcome conduct that a reasonable person would find so severe, pervasive, and objectively offensive that it denies a person equal educational access; and (iii) any instance of sexual assault (as defined in the Clery Act), dating violence, domestic violence, or stalking, as defined in the Violence Against Women Act (VAWA).

The first kind of sexual harassment, often referred to as “quid pro quo” includes implied or overt threats or pressure for sexual favors. Such sexual harassment is engaged in when (1) sexual advances are a condition of employment, work status, promotion, grades, or letters of recommendation or (2) unwelcome propositions of a sexual nature are made by a supervisor or individual with authority at the University over the status of the complainant.

Examples of the second kind of sexual harassment, may include:

Verbal conduct, such as unwelcome sexual propositions, that persist despite the objections of the person to whom they are made. It may also include sexually explicit statements, innuendoes, comments, questions and jokes, as well as remarks of a sexual nature about a person’s clothing or body or remarks about a person’s sexual activity or speculations about the previous sexual experience of that person.

Physical contact, such as outright assault, other forms of inappropriate or embarrassing touching, such as brushing up against another’s body, unwanted hugging, pinching or patting.

Conduct, other than physical conduct, such as suggestive or insulting sounds, gestures, leers or stares.

This list is intended to be illustrative, not exhaustive; sexual harassment is established by determining whether the particular facts and circumstances of each case meet the definitions of this policy. Where unwelcome sex-based conduct consists of speech or expressive conduct, the University balances Title IX enforcement with respect for free speech and academic freedom.

Important differences exist between the classroom and the ordinary workplace, and the academic functions of teaching and scholarship must take place in an environment of academic freedom. The Title IX definition provides appropriate protections for educational institutions where students are learning, and employees are teaching. Students, teachers, faculty, and others enjoy free speech and academic freedom protections, even when speech or expression is offensive. Nothing in this policy censures the content, method, or language of academic courses that deal with sexual topics in an explicit fashion and examine in detail such issues as gender, sexuality and sexual beliefs, feelings, actions, and practices. The University protects the academic freedom and First Amendment rights of all members of the University community. Faculty members are expected not to introduce into their teaching sexual material that has no relation to their subject, to avoid any exploitation, harassment, or discriminatory treatment of students, and to respect students as individuals.

Students are entitled to an atmosphere conducive to learning and to even-handed treatment in all aspects of the teacher-student relationship. Evaluation of students is to be based on academic performance professionally judged and not on matters irrelevant to that performance.

“Complainant” refers to an individual within the University community who is alleged to be the victim of conduct that could constitute Title IX sexual harassment.

“Respondent” refers to an individual who is a member of the UNIVERSITY FACULTY and has been reported to be the perpetrator of conduct that could constitute Title IX sexual harassment.

“Formal complaint” refers to a document filed by a complainant or signed by the Faculty Title IX Coordinator alleging sexual harassment against a respondent and requesting that the University investigate the allegation of sexual harassment.

“Supportive measures” refer to individualized services reasonably available that are non-punitive, non-disciplinary, and not unreasonably burdensome to the other party while designed to ensure equal educational access, protect safety, or deter sexual harassment.

## PROCEDURES

### I. General Matters

#### A. Responsibility of Faculty Title IX Coordinator

The Provost will appoint the Faculty Title IX Coordinator, within the office of Faculty Affairs, whose responsibility is to coordinate the University’s efforts to comply with the Faculty Policy on Title IX Sexual Harassment. The Faculty Title IX Coordinator shall not have a conflict or bias for or against complainants or respondents generally or an individual complainant or respondent.

The Faculty Title IX Coordinator may also serve as a Title IX Investigator and will, in consultation with the Provost, appoint at least one additional Faculty Title IX Investigator who shall be readily available in case the Faculty Title IX Coordinator has a conflict of interest or in the Faculty Title IX Coordinator’s absence. As needed, the Faculty Title IX Coordinator may also seek the collaboration of the University’s Title IX Coordinator and/or University’s Deputy Title IX Coordinator to assist in the fulfilment of the duties assigned herein.

The Faculty Title IX Coordinator and Faculty Title IX Investigators shall receive training to ensure they are able to carry their duties consistent with applicable law.

The Faculty Title IX Coordinator shall receive reports of sex discrimination, and receipt of such a report constitutes actual knowledge by the University of sexual harassment in an education program or activity. The Faculty Title IX Coordinator will promptly contact the complainant to discuss the availability of supportive measures as defined above, consider the complainant’s wishes with respect to supportive measures, 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. The Faculty Title IX Coordinator will coordinate any University

investigation of any complaint of Title IX sexual harassment made against a member of the UNIVERSITY FACULTY. The Faculty Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures, as defined above. If the University does not provide a complainant with supportive measures, then the Faculty Title IX Coordinator will document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

The Faculty Title IX Coordinator may sign a formal complaint to initiate an investigation over the wishes of the complainant if doing so is not clearly unreasonable in light of the known circumstances. The Faculty Title IX Coordinator may also facilitate an informal resolution process as defined below. The Faculty Title IX Coordinator cannot be a decisionmaker in a formal Title IX hearing as described below.

#### B. Responsibility of Deans, Chairs, and Faculty

- All members of the UNIVERSITY FACULTY have an obligation to report any and all alleged sexual misconduct, mistreatment, or neglect involving minors to the Faculty Title IX Coordinator.

In addition:

- Faculty have an obligation to report any and all alleged Sexual Misconduct that they learn of to the Faculty Title IX Coordinator. This includes information about allegations of sexual misconduct that they learn of from a student. This obligation to report does not apply if the Faculty has a special relationship with the reporting party, such as a faculty member serving as an attorney, academic counsel, or representative for a member of the faculty, staff, or student, and (2) the reporting party requests that the allegation remain confidential. However, if the faculty believes that the accused poses a substantial risk of bodily or extreme emotional harm to self or others then they must report consistent with any guidelines established by their professional obligations.

Faculty members should report complaints of sexual harassment in accordance with the *Reporting Procedures* below.

#### C. Confidentiality

The University will keep confidential the identity of complainants, respondents, and witnesses, except as may be permitted by FERPA, as required by law, or as necessary to carry out a Title IX proceeding. The University will not restrict the ability of the parties to discuss the allegations or gather evidence.

#### D. Archive of Records

At the conclusion of informal procedures or a formal hearing, all records of proceedings and actions of the Faculty Title IX Coordinator and the Committee on Professional Conduct (CPC, the entity that conducts all hearings and which cannot include the Title IX Coordinator or a Title IX

Investigator) shall be placed in an archive maintained by the Provost's Office. In an informal procedure, the record shall include only a description of the complaint, any response to the complaint by the faculty member, and any action or agreement in response to the complaint.

In the case of a hearing, the University will create, and the archive will contain, an audio or audiovisual recording, or transcript of the proceedings. The audio recording and other hearing documentation may be made available to the parties for review consistent with applicable law, including the opportunity to review in consideration of filing an appeal.

The archive will also contain the written determination of the CPC regarding responsibility with findings of fact, conclusions about whether the alleged conduct occurred, rationale for the result as to each allegation, any disciplinary sanctions recommended to be imposed on the respondent, and whether remedies will be provided to the complainant. The archive will also contain documents related to any appeal. Records shall be kept for a minimum of seven years after the conclusion of the investigation and then sealed. The Office of Faculty Affairs, General Counsel, and the University Title IX Office may keep appropriate records, and these records shall be sealed after seven years under the same terms. No other record of proceedings or actions may be kept, except that a Chair or Dean may keep a record of any action, agreement, or sanction. These limitations do not apply, however, when it is necessary to comply with applicable law, court order, or valid subpoena or request for production.

In the event that a subsequent Title IX complaint is made against the same member of the University Faculty, access to the records shall be restricted to the Faculty Title IX Coordinator. Such records may not be used in any subsequent proceeding except when they are incorporated in an intervening (i.e., less than seven year old) proceeding, or when, the Provost determines that the new allegations, if true, are sufficiently serious to warrant consideration of the prior complaint(s).

#### E. Right to Resist and Report

No faculty member or University official shall retaliate or take any other adverse action against any person because that person resists sexual harassment, plans to report acts of harassment in accordance with the procedures of this Policy, or reports acts of sexual harassment in accordance with those procedures. However, persons who knowingly make false claims of sexual harassment are subject to disciplinary action.

#### F. Time Limits

The University encourages timely reporting of sexual harassment as a means to maximize availability of relevant information and witnesses; however, the University will not enforce a deadline by which complaints of sexual misconduct must be filed. All reports of alleged Title IX Sexual Harassment by a member of the UNIVERSITY FACULTY will be given due consideration consistent with this policy.

#### G. Supportive Measures

Supportive measures offered and coordinated by the Faculty Title IX Coordinator 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 University will maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the recipient's ability to provide the supportive measures. The Faculty Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures. If the University does not provide a complainant with supportive measures, then the Faculty Title IX Coordinator must document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

H. In response to a claim of Title IX sexual harassment, the University must follow the formal grievance process described below before the imposition of any disciplinary sanctions or other actions that are not supportive measures, against a respondent.

The University may remove a respondent from its education program or activity on an emergency basis, provided that the University undertakes an individualized safety and risk analysis, determines that (1) there is an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal or (2) the respondent's continued presence undermines the University's ability to carry out its operations. In these cases, the University shall provide the respondent with notice and an opportunity to challenge the decision immediately following the removal.

#### J. Retaliation Prohibited

Neither the University nor any other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or this part, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceedings, or hearing under this part. Intimidation, threats, coercion, or discrimination, including 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 a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX or this part, constitutes retaliation. Complaints alleging that a member of the UNIVERSITY FACULTY has retaliated against an individual as described above or has knowingly made a false claim of sexual harassment, may be filed according to the grievance procedures described below.

#### II. Reporting Sexual Harassment

Any person may report sexual harassment. This includes complainants and third parties.

Instances of sexual harassment by a member of the UNIVERSITY FACULTY may be reported to the Faculty Title IX Coordinator or through:

- i. A report made/filed through the University's Title IX Website



- ([www.miami.edu/titleix](http://www.miami.edu/titleix)) or the University Hotline System;
- ii. A report made by calling (305-284-8624) or emailing the Title IX Office ([titleixcoordinator@miami.edu](mailto:titleixcoordinator@miami.edu));
  - iii. A report mailed to the Title IX Office at the address provided above;
  - iv. A report made by contacting the Title IX Coordinator, Deputy Title IX Coordinator or an Area Deputy Title IX Coordinator directly; or
  - v. A report made by contacting a Title IX Liaison.

When a report of sexual harassment received by any of these individuals or offices involves a UNIVERSITY FACULTY as the respondent, the report shall be assigned to the Faculty Title IX Coordinator for response consistent with this policy.

Upon receiving a report of sexual harassment, the Faculty Title IX Coordinator must promptly contact the complainant to discuss the availability of supportive measures as defined above, consider the complainant’s wishes with respect to supportive measures, 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. The Faculty Title IX Coordinator may also discuss available informal procedures.

If the Faculty Title IX Coordinator determines that the facts described would not constitute sexual harassment under Title IX as defined above, the Coordinator shall so advise the complainant and reporting party in writing. In such cases, the report shall be dismissed for Title IX purposes; however, the Faculty Title IX Coordinator shall inform the reporting party whether the conduct constitutes a viable report under a different policy.

The Faculty Title IX Coordinator may inform the Provost and/ or other Title IX Coordinators or University staff on a “need-to-know” basis when a report has been made where the circumstances warrant this action to protect the University and its personnel and/or students.

### III. Types of Procedures

Any individual who has been subjected to sexual harassment as defined by Title IX has available two methods for resolving the matter within the University:

1. through an informal procedure described in IV below, or
2. through a formal procedure, described in V below.

### IV. Informal Procedures

The Faculty Title IX Coordinator in consultation with the Chair or Dean, may attempt to resolve a case informally such as by mediation or restorative justice, so long as both parties give voluntary, informed written consent to attempt informal resolution. Any person who facilitates an informal

resolution must be well trained. Allegations that a member of the UNIVERSITY FACULTY sexually harassed a student may not be resolved informally.

Neither the University nor any University employee may require as a condition of enrollment or continued enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to a formal investigation and adjudication of formal complaints of sexual harassment. Similarly, neither the University nor any University employee may require the parties to participate in any informal resolution process and/or condition an informal resolution process on the filing of a formal complaint.

At any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and must resume the grievance process with respect to the formal complaint, unless the complainant or the University withdraws the formal complaint. In either case, the reason for the dismissal or the terms of the informal agreement shall be summarized by the Faculty Title IX Coordinator and placed in the Archives by the Faculty Sexual Harassment Title IX Coordinator, together with a record of the complaint.

## V. Formal Procedures

### A. Making a Complaint

A formal procedure requires the complainant to file a formal complaint alleging sexual harassment against a respondent and requesting that the University investigate the allegation of sexual harassment. That complaint may be filed with the Faculty Title IX Coordinator in person, by mail, or by electronic mail. It must contain the complainant's physical or digital signature, or otherwise indicate that the complainant is the person filing the formal complaint. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in an education program or other activity conducted by the University of Miami. The Faculty Title IX Coordinator is available to assist a complainant at any point during these procedures. The complainant may instead choose another University employee to provide assistance.

A complainant's wishes with respect to whether the University investigates will be respected unless the Faculty Title IX Coordinator determines that signing a formal complaint to initiate an investigation over the wishes of the complainant is not clearly unreasonable in light of the known circumstances.

If the allegations in a formal complaint do not meet the Title IX definition of sexual harassment, or did not occur in the University's education program or other activity, the Faculty Title IX Coordinator will dismiss the allegations for purposes of Title IX, but the University may still address them through the COMMITTEE ON PROFESSIONAL CONDUCT, where warranted.

### B. Burden of Proof and Presumption

The respondent is presumed to be not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process. The burden of proof utilized in the grievance process shall be preponderance of the evidence, meaning that in order to

support a finding of responsibility it must be more likely than not that an incident happened. The burden of gathering evidence and burden of proof remain on the University, not the parties.

### C. Notice

The Faculty Title IX Coordinator will provide notice to the respondent and complainant (“parties”) of the allegations of sexual harassment potentially constituting actionable sexual harassment under this policy. Notice should include 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 sexual harassment, and the date and location of the alleged incident, if known. The written notice will include a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process. The written notice will inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney, and they may inspect and review evidence. The written notice will inform the parties that knowingly making a false claim of sexual harassment is subject to disciplinary action.

### D. Investigation and Grievance Process

The Faculty Title IX Coordinator or designee will investigate the allegations in the formal complaint. The Coordinator will also provide notice of the following, in addition to notice provisions noted elsewhere in this policy, during the investigation, grievance, and hearing processes:

- The University will provide equal opportunity for the parties to present fact and expert witnesses and other inculpatory and exculpatory evidence.
- The University does not restrict the ability of the parties to discuss the allegations or gather evidence.
- Parties will have the same opportunity to select an advisor of their choice who may be, but need not be, an attorney.
- The University will send written notice of any investigative interviews, meetings, or hearings to the parties and their advisors.
- The University will send the parties, and their advisors, evidence directly related to the allegations, in electronic format or hard copy, with at least 10 days for the parties to inspect, review, and respond to the evidence.
- The University will send the parties, and their advisors, an investigative report that fairly summarizes relevant evidence, in electronic format or hard copy, with at least 10 days for the parties to respond.
- The University may, in its discretion, dismiss a formal complaint or allegations therein if the complainant informs the Title IX Coordinator in writing that the complainant desires to withdraw the formal complaint or allegations therein, if the respondent is no longer employed by the University, or if specific circumstances prevent the University from gathering sufficient evidence to reach a determination.

- The University will give the parties written notice of a dismissal (mandatory or discretionary) and the reasons for the dismissal.
- The University may, in its discretion, consolidate formal complaints where the allegations arise out of the same facts.
- The University protects the privacy of a party's medical, psychological, and similar treatment records, which means the University cannot access or use such records unless it obtains the party's voluntary, written consent to do so.

#### E. Hearing

Any hearing on a formal complaint alleging sexual harassment in violation of Title IX by a member of the UNIVERSITY FACULTY will be held in accordance with the process for hearings before the COMMITTEE ON PROFESSIONAL CONDUCT (CPC). In addition to the procedures set forth in Section B4.10 and the Guidelines for CPC Complaint Procedures, Faculty Senate Legislation #2011-23(D)<sup>5</sup>, the following procedures apply in a Title IX-related hearing. In the event that these procedures conflict with those set forth at B4.10 and the Guidelines at #2011-23(D), the procedures herein govern:

- CPC panel members will be trained on the definition of sexual harassment, on how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.
- The CPC Hearing Panel must permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including questions challenging credibility.
- Such cross-examination at the live hearing must be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally.
- At the request of either party, the University must provide for the entire live hearing (including cross-examination) to occur with the parties located in separate rooms with technology enabling the parties to see and hear each other.
- Only relevant cross-examination and other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers cross-examination or other question, the decision-maker must first determine whether the question is relevant and explain to the party's advisor asking questions any decision to exclude a question as not relevant.
- The University provides rape shield protections for complainants thereby deeming irrelevant questions and evidence about a complainant's prior sexual behavior unless offered to prove that someone other than the respondent committed the alleged misconduct or offered to prove consent.
- If a party does not have an advisor present at the live hearing, the University must provide, without fee or charge to that party, an advisor who may be, but is not required to be, an attorney to conduct cross-examination on behalf of that party. In order to exercise this right, the party shall notify the Faculty Title IX Coordinator in writing (including via email) no less than 14 days before a formal hearing.

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<sup>5</sup> [https://fs.miami.edu/\\_assets/pdf/facultysenate/Documents/2011-Legislation/2011-23-D-FM-B4-9-CPC-procedures.pdf](https://fs.miami.edu/_assets/pdf/facultysenate/Documents/2011-Legislation/2011-23-D-FM-B4-9-CPC-procedures.pdf)

- If a party or witness does not submit to cross-examination at the live hearing, the CPC Hearing Panel must not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the Hearing Panel cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.
- Live hearings may be conducted with all parties physically present in the same geographic location or, at the University's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually.
- The University must create an audio or audiovisual recording, or transcript, of any live hearing. Deliberations will not be recorded.
- The respondent is presumed to be not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the process.

#### F. Standard of Evidence & Written Determination

- The CPC Hearing Panel will apply a preponderance of the evidence standard.
- The CPC Hearing Panel will prepare a written determination. The determination will contain findings of fact, conclusions about whether the alleged conduct occurred, rationale for the results as to each allegation, any recommended disciplinary sanctions to be imposed on the respondent, and its recommendation as to whether remedies should be provided to the complainant.
- The written determination along with information about how to file an appeal will be sent by the Secretary of the Faculty Senate simultaneously to the parties, the Faculty Title IX Coordinator, the President, and the Chair of the Faculty Senate.

#### G. Appeals

- Any parties may appeal a determination or dismissal on the following bases: procedural irregularity that affected the outcome of the matter, newly discovered evidence that could affect the outcome of the matter, and/or that Title IX personnel or adjudicators had a conflict of interest or bias that affected the outcome of the matter. Such appeal must be filed within 20 days of receipt of the notice of determination. Appeals will be heard in one of two manners:
  - o Appeals from a recommendation that tenure should be revoked and/or the faculty member's employment terminated shall be heard by a Review Panel according to the provisions of C15.
  - o Any other appeals shall be heard by a CPC Hearing Panel that has no overlap in membership with the prior Hearing Panel according to the provisions of B4.10

#### V. Reports

Each year the Faculty Title IX Coordinator and the COMMITTEE ON PROFESSIONAL CONDUCT shall separately submit written reports on all actions taken or findings made regarding Title IX sexual harassment. These reports shall be made to the Provost and the Chair of the Senate and shall briefly describe the nature of the harassment and the outcomes in each case without identifying individuals.

## Policy on non-Title IX Sexual Harassment

When a complaint of sexual harassment does not meet the conditions set forth in the foregoing Faculty Policy on Title IX Sexual Harassment, the complaint will be dismissed for Title IX purposes but will be reviewed consistent with the Policy on Non-Title IX Sexual Harassment.

[END OF ALL NEW SECTION]

### DEFINITION

Sexual harassment is defined as unwelcome sexual conduct, such as unwelcome advances, requests for sexual favors, or other conduct of a sexual nature when:

1. Such conduct is engaged in under circumstances implying that one’s response might affect academic or personnel decisions that are subject to the influence of the person engaging in that conduct; or
2. Such conduct is directed at an individual or a group and (a) is either abusive or would be considered severely humiliating by a reasonable person at whom it was directed, or persists despite the objection of the person(s) targeted by the conduct; or (b) is so clearly unprofessional that it creates a hostile environment that may substantially impair the work or academic performance of colleagues, coworkers or students. **Unlike sexual harassment pursuant to the Faculty Policy on Title IX Sexual Harassment, sexual harassment pursuant to this policy does not have to be severe and pervasive and occur within the United States.**

The first kind of sexual harassment **under the Policy on Non-Title IX Sexual Harassment**, often referred to as “quid pro quo” includes implied or overt threats or pressure for sexual favors. Such sexual harassment is engaged in when (1) sexual advances are a condition of employment, work status, promotion, grades, or letters of recommendation or (2) unwelcome propositions of a sexual nature are made by a supervisor or individual with authority at the University over the status of the complainant.

Examples of the second kind of sexual harassment **pursuant to the Policy on Non-Title IX Sexual Harassment**, often referred to as “hostile environment,” may include:

Verbal conduct, such as unwelcome sexual propositions which are made by a supervisor, coworker, or individual with authority at the University over the status of the complainant, and persist despite the objections of the person to whom they are made. It also includes sexually explicit statements, innuendoes, comments, questions and jokes, as well as remarks of a sexual nature about a person’s clothing or body or remarks about a person’s sexual activity or speculations about the previous sexual experience of that person.

Physical contact, such as outright assault, other forms of inappropriate or embarrassing touching, such as brushing up against another’s body, unwanted hugging, pinching or patting.

Conduct, other than physical conduct, such as suggestive or insulting sounds, gestures, leers or stares.

In any event, to constitute sexual harassment, the conduct must be severe, or persist despite the fact that the faculty member knew or should have known that the conduct was unwelcome.

This list is intended to be illustrative, not exhaustive; sexual harassment is established by determining whether the particular facts and circumstances of each case meet the definitions of this policy.

Important differences exist between the classroom and the ordinary workplace, and the academic functions of teaching and scholarship must take place in an environment of academic freedom. Nothing in this policy censures the content, method, or language of academic courses that deal with sexual topics in an explicit fashion and examine in detail such issues as gender, sexuality and sexual beliefs, feelings, actions, and practices. The University protects the academic freedom and First Amendment rights of all members of the University community. Faculty members are expected not to introduce into their teaching sexual material that has no relation to their subject, to avoid any exploitation, harassment, or discriminatory treatment of students, and to respect students as individuals. Students are entitled to an atmosphere conducive to learning and to even-handed treatment in all aspects of the teacher-student relationship. Evaluation of students is to be based on academic performance professionally judged and not on matters irrelevant to that performance.

## PROCEDURES

### I. General Matters

#### A. Responsibility of Deans, Chairs, and Faculty

Each Dean and Chair is responsible for pursuing sexual harassment complaints immediately upon becoming knowledgeable of their existence. Faculty members should report complaints of sexual harassment to the appropriate office. (see *Informal Procedures* below). A complaint of sexual harassment against a member of the UNIVERSITY FACULTY should be made to the department Chair or Dean who is the faculty member's immediate supervisor.<sup>6</sup>

#### B. Confidentiality

To the extent possible, the investigation and proceedings under this policy shall be conducted in a manner to ensure the confidentiality of all parties.

#### C. Archive of Records

At the conclusion of informal or formal procedures all records of proceedings and actions of the Faculty Sexual Harassment Officer and the Committee on Professional Conduct shall be placed in an archive maintained by the Provost's Office. In an informal procedure, the record shall include only a description of the complaint, any response to the complaint by the faculty member, and any action or agreement in response to the complaint. In a formal procedure, the record shall include

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<sup>6</sup> In cases where a Dean or Chair is accused of sexual harassment, ~~a person's immediate supervisor~~ the Provost is responsible for pursuing the complaint.

only the findings of the Faculty Sexual Harassment Officer and the conclusions of the Committee on Professional Conduct. Access to the records shall be restricted to the Faculty Sexual Harassment Officer in the context of a subsequent complaint. Records shall be kept for a maximum of seven years after the conclusion of the investigation and then sealed. Such records may not be used in any subsequent proceeding except when they are incorporated in an intervening (i.e., less than seven year old) proceeding, or when, after investigation, the Provost determines that the new allegations, if true, are serious enough to warrant initiation of dismissal for cause proceedings. The Office of General Counsel may keep appropriate records, and these records shall be sealed after seven years under the same terms. No other record of proceedings or actions may be kept, except that a Chair or Dean may keep a record of any action, agreement, or sanction. These limitations do not apply, however, when it is necessary to comply with applicable law or, court order, or valid subpoena or request for production.

#### D. Right to Resist and Report

No faculty member or University official shall retaliate or take any other adverse action against any person because that person resists sexual harassment, plans to report acts of harassment in accordance with the procedures of this Policy, or reports acts of sexual harassment in accordance with those procedures. However, persons who knowingly make false claims of sexual harassment are subject to disciplinary action.

#### E. Time Limits

~~Complaints of sexual harassment, both formal and informal, should be filed within 30 calendar days from the date the most recent incident occurred. A complaint that is not filed within 30 days but that is filed within four years of the incident may still be subject to University action.~~

**The University encourages timely reporting of sexual harassment as a means to maximize availability of relevant information and witnesses; however, the University will not enforce a deadline by which complaints of sexual misconduct must be filed. All reports of alleged non-Title IX Sexual Harassment by a member of the UNIVERSITY FACULTY will be given due consideration consistent with this policy.**

#### II. Types of Procedures

Any individual who believes that he or she has been subjected to sexual harassment has available two methods for resolving the matter within the University:

1. through an informal procedure, or
2. through a formal procedure. A formal procedure requires the complainant to submit a written statement of the complaint.

~~The Human Resources Office~~ **The Office of Faculty Affairs** is available to assist the complainant at any point during these procedures. ~~The complainant may choose another University employee to provide assistance.~~ In all proceedings, formal and informal, every effort shall be made to ensure due process and to protect the rights of both the complainant and the accused.



### III. Informal Procedures

#### A. *Making a Complaint*

Any individual who encounters sexual harassment is encouraged to seek an informal resolution of the problem at the department or school level. Instances of sexual harassment may be reported to the appropriate Chair or Dean or to any of the following individuals or offices:

1. Faculty Sexual Harassment Officer (appointed by the Provost)
2. Human Resources Office
3. University Student Ombudsperson
4. Designated School or College counselor (a list of counselors may be obtained through the Provost, Dean of Students, or the Human Resources Office)
5. Provost

Complaints received by these individuals or offices shall be reported to the appropriate Chair or Dean. Reports of sexual harassment alleged to be committed by a member of the UNIVERSITY FACULTY received by any of these individuals or offices shall be reported to the Faculty Sexual Harassment Coordinator. This duty does not apply if (1) a Responsible Employee has a special relationship with the reporting party, such as a faculty member serving as an attorney, academic counsel, ombudsperson, or representative for a member of the faculty, staff, or student, and (2) the reporting party requests that the allegation remain confidential. However, if the Responsible Employee believes that the accused poses a substantial risk of bodily or extreme emotional harm to self or others then they must report consistent with any guidelines established by their professional obligations.

#### B. *Actions of the Chair or Dean*

Each Chair or Dean is responsible for resolving sexual harassment complaints promptly upon becoming knowledgeable of their existence<sup>7</sup>.

If the Chair or Dean, after consultation with the Faculty Sexual Harassment Officer, determines that the facts described in the complaint would not, in the meaning of the law or policy, constitute sexual harassment, the Officer shall so advise the complainant.

The Chair or Dean shall make every reasonable effort to inquire into the facts regarding the complaint including: speaking with the complainant; speaking with other persons identified by the

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In cases where a Dean or Chair is accused of sexual harassment, a person's immediate supervisor—the Provost is responsible for pursuing the complaint.

complainant; speaking with the faculty member; and speaking with other persons identified by the faculty member. This inquiry should be completed as soon as practicable, usually in ~~ten academic~~ **twenty calendar** days. When the inquiry is complete, the accused faculty member shall immediately be provided with a description of the complaint, including the name of the complainant, where appropriate, the time and circumstances of the conduct, and other material facts.

In all cases **involving allegations** of sexual harassment, the Chair or Dean is to notify the Faculty Sexual Harassment Officer of the complaint and the action taken to resolve the matter. This notification normally will be submitted at the end of the inquiry. The Faculty Sexual Harassment Officer may inform the Provost that a complaint has been made where the circumstances warrant this action to protect the University and its personnel.

#### C. *Resolution by Action or Agreement*

At the conclusion of the inquiry, the Chair or Dean, in consultation with the **Faculty** Sexual Harassment Officer, may take appropriate administrative action to resolve the complaint or may attempt to resolve the complaint informally and ~~by voluntary means~~ **as agreed upon by the parties**. If administrative action is taken or an agreement satisfactory to all persons involved is reached, the terms of the action or agreement shall be summarized by the Chair or Dean and placed in the Archives by the Faculty Sexual Harassment Officer, together with a record of the complaint. Where no agreement is reached, the complainant may file a formal complaint within 20 ~~academic~~ **calendar** days of the termination of the informal procedures. In cases where the Chair or Dean in consultation with the **Faculty** Sexual Harassment Officer concludes that the allegations are without foundation, the material placed in the Archives should clearly reflect this judgment.

### IV. Formal Procedures

#### A. Making a Complaint

The formal complaint shall be in writing and shall set forth: the facts and circumstances pertaining to the alleged harassment; the name of the complainant and the accused; the date, time and place of the incident(s); the names of other persons with knowledge of the incident(s); and the desired resolution. The formal complaint shall be filed with the Faculty Sexual Harassment Officer. If the Faculty Sexual Harassment Officer determines that the facts described in the complaint would not, in the meaning of the law or policy, constitute sexual harassment, the Officer shall so advise the complainant. If the Officer determines that an investigation is warranted the Officer shall notify the accused faculty member, the appropriate Dean or Chair, and the complainant.

#### B. Investigation

The Faculty Sexual Harassment Officer shall conduct the investigation, shall make every reasonable effort to interview the complainant, the faculty member, and other persons identified by the complainant or the faculty member as having direct knowledge of the matters, and shall examine appropriate records.

#### C. Hearing

Upon completion of the investigation, the Faculty Sexual Harassment Officer shall report the results of the investigation in writing to the ~~Committee on Professional Conduct~~ **Provost and the Chair of the Faculty Senate and shall** recommend whether or not a hearing should be held. ~~The Committee shall determine whether or not a hearing shall be held and shall conduct any such hearing in accordance with Committee policies and procedures.~~ **Any hearing on the matter will be held by the COMMITTEE ON PROFESSIONAL CONDUCT pursuant to B4.10.**

~~The Faculty Sexual Harassment Officer~~ **The Secretary of the Senate** shall inform the complainant, the faculty member, the Provost, the Chair of the Senate, and the appropriate Chair or Dean of the outcome of ~~the~~ **any** hearing of the COMMITTEE ON PROFESSIONAL CONDUCT.

#### V. Reports

Each year the Faculty Sexual Harassment Officer and the COMMITTEE ON PROFESSIONAL CONDUCT shall separately submit written reports on all actions taken or findings made. These reports shall be made to the Provost and the Chair of the Senate and shall briefly describe the nature of the harassment and the outcomes in each case without identifying individuals.

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