

Sexual Misconduct Policy

2017-2018

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Introduction and The University's Commitment

The University of the South stands firmly for the principle that its employees, students, and participants of university-sponsored programs have a right to be free from discrimination based on race, color, sex, religion, national origin, age, disability, sexual orientation, gender identity, veteran/reserve/national guard status, pregnancy and childbirth, and genetic information, and free from sexual misconduct in its educational programs and activities and with regard to employment. The University is committed to sustaining a community in which the dignity of every individual is respected. Key to this value are efforts to nurture an environment of civility and mutual respect and to foster a culture of reporting concerns so that the University can respond promptly and equitably whenever an incident occurs. All employees, students, and participants of university-sponsored programs also have the right to be free from harassment and retaliation.

Related Commitments

The University is also committed to free expression. Speech not specifically directed against individuals in a harassing way may be protected by traditional safeguards of free speech, even though the comments may cause considerable discomfort or concern to others in the community.

Scope & Definitions

WHAT conduct is covered by this policy?

This policy covers all forms of sexual misconduct between undergraduate students. Sexual misconduct is a broad term that includes sexual assault, sexual exploitation, sexual harassment, dating violence, domestic violence and stalking. All undergraduate sexual misconduct is considered prohibited conduct under this policy. Prohibited conduct also includes retaliation, complicity, and certain other related misconduct. Each of these terms is defined. Harassment and discrimination concerns unrelated to sexual misconduct are addressed using the [Non-Discrimination, Harassment, and Retaliation Policy](#).

WHO is subject to this policy?

Every undergraduate student who is registered or enrolled in coursework at the University or is participating in an approved study away program during or between any academic session (fall, spring, or summer terms) is subject to this policy.

While this policy addresses matters of sexual misconduct involving only undergraduate students at the University, students with concerns of alleged incidents of sexual misconduct involving an employee, a graduate student, or non-University individuals are encouraged to contact the Office of the Dean of Students for guidance on how to proceed with other related University policies and processes.

WHERE must sexual misconduct occur in order to be covered by this policy?

Because the University views sexual misconduct as deeply inconsistent with a community of caring

and trust and likely to have continuing effects within the community, wherever it occurs, this policy applies *both* to on-campus and to off-campus conduct.

WHEN does this policy apply?

There is no deadline for reporting sexual misconduct under this policy, although delayed reporting may compromise the ability of the University to investigate and remedy the sexual misconduct in question. A report of sexual misconduct (discussed below) must be filed while the respondent (the student responding to the report) remains a student, in order for action to be taken by the University.

Differences in University and Legal Processes

The University provides a fair, respectful, prompt, and reasonable process. The University's disciplinary processes do not and are not intended to afford the same rights of criminal or civil statutes or any other legal authorities. Conduct violations that are also violations of Tennessee law may be referred to the appropriate legal authorities for investigation and adjudication.

Definitions

Sexual misconduct is a broad term that encompasses several forms of prohibited conduct. Sexual misconduct includes sexual assault, sexual exploitation, sexual harassment, dating violence, domestic violence, and stalking. Sexual misconduct is a form of discrimination under federal civil rights laws. Most of its forms also constitute crimes in Tennessee and throughout the United States.

Sexual misconduct offenses include, but are not limited to, the following:

Non-consensual sexual contact is:

- any intentional sexual touching,
- however slight,
- with any object,
- by any person upon any person,
- that is without consent and/or by force.

Sexual Contact includes intentional contact with the breasts, buttocks, groin, or genitals, or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts; any intentional bodily contact in a sexual manner, though not involving contact with/of/by breasts, buttocks, groin, genitals, mouth, or other orifice.

Non-consensual sexual intercourse is:

- any sexual intercourse,
- however slight,
- with any object,
- by any person upon any person,
- that is without consent and/or by force.

Intercourse includes vaginal penetration by a penis, object, tongue or finger, anal penetration by a penis, object, tongue, or finger, and oral copulation (mouth to genital contact or genital to mouth contact), no matter how slight the penetration or contact.

Sexual exploitation occurs when a student takes non-consensual or abusive sexual advantage of another for their own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of other sexual misconduct offenses. Examples of sexual exploitation include, but are not limited to:

- causing or attempting to cause the **incapacitation** of another person in order to gain a sexual advantage over such other person;
- invasion of sexual privacy;
- prostituting another student;
- non-consensual video or audio-recording of sexual activity;
- going beyond the boundaries of consent (such as letting your friends hide in the closet to watch you having consensual sex);
- engaging in voyeurism;
- knowingly transmitting an STI or HIV to another student;
- exposing one's genitals in non-consensual circumstances;
- inducing another to expose their genitals;
- sexually-based stalking and/or bullying may also be forms of sexual exploitation.

Sexual harassment is:

- unwelcome, gender-based verbal or physical conduct
- that is so sufficiently severe, persistent, or pervasive
- that it unreasonably interferes with, denies, or limits someone's ability to
- participate in or benefit from the college's educational program and/or activities,
- and is based on power differentials (quid pro quo), the creation of a hostile environment, or retaliation.

Examples include (but are not limited to) attempting to coerce an unwilling person into a sexual relationship; repeatedly subjecting a person to egregious, unwelcome sexual attention; punishing a refusal to comply with a sexually based request; conditioning a benefit on submitting to sexual advances; stalking; gender-based bullying; sexual violence; and intimate partner violence.

"Stalking" (see below) falls under this last category.

Domestic violence includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the survivor, by a person with whom the survivor shares a child in common, by a person who is cohabiting with or has cohabited with the survivor as a spouse or intimate partner, by a person similarly situated to a spouse of the survivor under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth survivor who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

Dating violence means violence committed by a person:

- who is or has been in a social relationship of a romantic or intimate nature with the survivor; and
- where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - The length of the relationship.
 - The type of relationship.
 - The frequency of interaction between the persons involved in the relationship.

Stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- fear for their safety or the safety of others; or
- suffer substantial emotional distress.

Other Related Definitions

Reporter: The reporter is generally the person filing the report but can also refer to the person who was named as the victim or survivor in the reporting process.

Respondent: A respondent is the student who is responding to an allegation of misconduct.

Sexual Misconduct Grievance: A sexual misconduct grievance is a report made against a student, indicating a violation of the University’s sexual misconduct policy. A grievance is usually made by an individual affected by the specific behavior.

Retaliation against any person or another student for any reason is a violation considered under the University’s “failure to comply” policy. In cases of sexual misconduct, “retaliation” includes intimidation, threats, harassment, and other adverse action threatened or taken against any reporter or other persons participating in the conduct process. Retaliation should be reported promptly to the Dean of Students, or, in cases of sexual misconduct, to the Process Facilitator or the Title IX Coordinator.

Specifically included are individuals who have filed a report of sexual misconduct, been the subject of a report sexual misconduct, or assisted or participated in any way, as reporter, respondent, witness or otherwise, in the investigation or resolution of an alleged violation of this policy. Action is generally deemed retaliatory if it would deter a reasonable person in the same circumstances from assisting or participating in any way, as reporter, respondent, witness or otherwise, in the investigation or resolution of a good faith allegation of an incident of sexual misconduct or other prohibited conduct under this policy. Retaliation may be present even where there is ultimately a finding of “no responsibility” on the underlying sexual misconduct charges. Retaliation may be committed by the respondent or the reporter or by any other individual or group. Such conduct violations may result in disciplinary action.

Complicity means any act that knowingly aids, facilitates, promotes or encourages the commission of an incident of prohibited conduct, as established by the EQB Guide, by another person.

Consent is clear, knowing, and voluntary. Consent is active, not passive. Silence, in and of itself, cannot be interpreted as consent. Consent can be given by words or actions, as long as those words

or actions create mutually understandable clear permission regarding willingness to engage in (and the conditions of) sexual activity.

- Consent to any one form of sexual activity cannot automatically imply consent to any other forms of sexual activity.
- Previous relationships or prior consent cannot imply consent to future sexual acts.
- In order to give effective consent, one must be of legal age.
- Consent can also be withdrawn at any time. It is the responsibility of the person withdrawing consent to communicate, through clear words or actions, that the person no longer wishes to engage in the sexual activity.

The clearest consent is affirmative and active. It is the responsibility of the person who wants to engage in a specific sexual activity to make sure that they have obtained effective consent before initiating that activity. Lack of protest or resistance does not constitute effective consent. Silence or passivity does not constitute effective consent. Relying solely on nonverbal communication during sexual activity can lead to misunderstanding and may result in a violation of this policy. The University urges students to talk with one another before engaging in sexual activity to ensure they both wish to engage in the same activity.

Consent cannot be gained by force. Force is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that overcome resistance or produce consent.

- Physical violence includes, but is not limited to, hitting, pushing, kicking, and/or restraining. Physical violence means that a person is exerting control over another person through physical force.
- Threats include any words or actions that would compel a reasonable person to engage in sexual activity that they would not ordinarily have engaged in. Example: "*Have sex with me or I will hurt you.*" Response: Silence while thinking, "I just want this over."
- Intimidation is an implied threat that menaces or causes reasonable fear in another individual.
- Coercion is unreasonable pressure for sexual activity. Coercive behavior differs from seductive behavior based on the type of pressure someone uses to get consent from another. When someone makes clear to you that they do not want sex, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive. In evaluating coercion, the University will consider:
 - frequency of the application of pressure;
 - intensity of the pressure;
 - isolation of the person being pressured; and
 - duration of the pressure.

NOTE: There is no requirement that a party resists the sexual advance or request, but resistance is a clear demonstration of non-consent. The absence of resistance does not demonstrate the absence of force. All forced sexual activity is by definition non-consensual, but not all non-consensual sexual activity is by definition "forced."

Incapacitation is a state where someone cannot make reasonable decisions because they lack the capacity to give knowing consent (e.g., to understand the "who, what, when, where, why or how" of their sexual interaction). Consumption of alcohol or drugs alone is insufficient to establish

incapacitation. The question of incapacitation is determined on a case-by-case basis. It will include an analysis of whether the responding party knew, or should have known, that the reporting party was incapacitated, or if the responding party played a role in creating the circumstance of incapacity.

Sexual activity with someone whom one should know to be—or based on the circumstances should reasonably have known to be—mentally or physically incapacitated (by alcohol or other drug use leading to unconsciousness or blackout) constitutes a violation of this policy.

This policy also covers a person whose incapacity results from mental disability, sleep, involuntary physical restraint, or from the taking of rape drugs if the responding party knew, or should have known, of the incapacitating condition or was the cause thereof. Possession, use and/or distribution of any of these substances, including but not limited to Rohypnol, Ketamine, GHB, Burundanga, etc., is prohibited, and administering one of these drugs to another student is a violation of this policy.

The University urges students to exercise extreme caution before engaging in sexual activity when either or both parties have been consuming alcohol or using other drugs. The use of alcohol or other drugs can lower inhibitions and create confusion as to whether effective consent is present. If there is any doubt about the level or extent of one's own, or the other party's, impairment, the safest course of action is to forgo or cease any sexual activity. **Being impaired by alcohol or other drugs is no defense under this policy.**

Rules to Remember:

- The person desiring to initiate sexual activity is responsible for obtaining **effective consent**.
- In order to obtain **consent**, permission must be given prior to or simultaneously with the sexual activity in question.
- Effective consent should never be assumed. Lack of protest or resistance does not constitute effective consent. “No” means no, but nothing (silence, passivity, inertia) also means no. A verbal “No,” even if it sounds indecisive or insincere, should always be treated as a denial of effective consent.
- If there is confusion as to whether effective consent is present (e.g., words, gestures, or other indications of hesitation or reluctance), the parties should stop the sexual activity immediately and verbally communicate with each other to resolve the confusion.
- A prior sexual relationship or prior sexual activity does not constitute **consent** to subsequent sexual activity. Past consent does not imply future consent.
- Although **effective consent** is generally evaluated on the basis of an objective standard (“*What should a reasonable person have concluded?*”), it may be evaluated on the basis of a subjective standard (“*What did this specific person conclude?*”) in the context of certain long-term relationships where the evidence shows that the parties have an established pattern of communicating consent that deviates from the objective standard.

Roles of Employees Involved in the Process

Responsible employee is a University employee who is obligated to ensure a report is made of alleged sexual misconduct to the University, usually by contacting the Title IX Coordinator, a dean

of students, or by using the online [reporting form](#). Responsible employees, also known as mandatory reporters, include faculty, student life staff, residential life student staff members, Sewanee police department personnel, coaching staff, supervisors of student employees, domestic and international program leaders, Title IX and deputy Title IX Coordinators, the Vice-Chancellor, and the University Cabinet. A responsible employee who receives a report must report all **known** relevant details about the alleged misconduct, including the date, time, and location of the alleged misconduct, and the names of: the person who provided the report, the individual who experienced the alleged misconduct, the individual(s) accused of committing the alleged misconduct, and any other students involved in the alleged misconduct.

Confidential resources are persons required to keep all information disclosed to them confidential within the legal and ethical bounds of their profession. At the University, these individuals include: University Wellness Center staff and the University Chaplains. Confidential resources may also include public awareness events such as “Take Back the Night” and “Sewanee Monologues,” among others.

Process Facilitator: The University designates a single process facilitator for each report and that designated process facilitator serves all involved parties. The facilitator is available throughout the process to explain disciplinary options, to refer to the police (if appropriate), to provide clarity about the University’s investigation and resolution processes, and interfaces with support persons for participants. The process facilitator can also address interim measures of support in the residence hall, dining hall, curricular and co-curricular experiences. The facilitator participates in both the administrative resolution or hearing panel.

Support Persons: Support is an important part of the process for participants, and participants can choose any support person—a parent, a mentor, a peer, an attorney, etc.

Support persons are required to adhere to specific ground rules:

1. A support person’s role is limited to providing support, guidance and/or advice to the parties throughout the investigation and resolution of the report.
2. Support persons may be present during hearing panel or administrative resolution procedures for the limited purpose of providing support, guidance and/or advice.
3. Support persons may not speak on behalf of the parties or otherwise directly participate in the proceedings.
4. Support persons are permitted for both the respondent and the reporter.
5. The process facilitator will only communicate directly with the involved student.

The investigator or dean may remove or dismiss support persons who become disruptive or fail to abide by the limitations on their participation.

Dean of Students: A dean is responsible for receiving and resolving reports, which can include convening a hearing panel, if necessary.

Investigator: Investigators are assigned to gather relevant information about an alleged incident.

Hearing panel: The hearing panel is a trained group of employees that determines whether enough evidence exists to find that a student is responsible for a violation of University policy(ies) and recommends an appropriate sanction.

Title IX Coordinator: The University has a designated Title IX Coordinator to oversee Title IX compliance, which includes the sexual misconduct process, to ensure reports are resolved in a timely manner.

Police and Police Investigator: The Sewanee Police department, including a trained criminal investigator, is available for students who wish to make a criminal complaint.

Vice-Chancellor: Appeals, when applicable and timely submitted, are resolved by the Vice-Chancellor or a designee(s).

Reporting Sexual Misconduct

Importance of Reporting Sexual Misconduct

The University strongly encourages students who have knowledge of, who have witnessed, or who have experienced sexual misconduct firsthand to report what occurred—both in order to get the support they need and to enable the University to respond appropriately. Under Title IX, once an institution has notice of an act of sexual misconduct, it is required to (1) take immediate and appropriate steps to investigate what occurred; and (2) take prompt and effective action to (a) end any misconduct that occurred; (b) remedy its effects; and (c) prevent its recurrence. Although there is no time limit for the filing of a report of sexual misconduct, the University’s ability to respond effectively may be compromised by the passage of time between the occurrence of an incident and the filing of a report.

Reports can be submitted electronically or in person. Electronic submissions are sent to the Dean of Students Office and copied to the Title IX Coordinator and Sewanee Police Department. In person reports can be made to the Title IX coordinator, deans of students, and/or deans at the School of Theology. Students studying away can report to any of the above; however, such reports should also be made to the study away program leader.

The Title IX Coordinator at the University of the South is Dr. Kelly Malone, 931.598.3368, Gailor Hall 115, kamalone@sewanee.edu or titleix@sewanee.edu. Dr. Malone is charged with monitoring compliance with these laws and regulations. Questions regarding Title IX, as well as concerns and reports of non-compliance, may be directed to her.

Important Notices Aimed to Improve Reporting

- 1. Alcohol and other drug violations disclosed in a report of sexual misconduct:** The University community supports and encourages the reporting of University policy violations, especially sexual misconduct. Sometimes reporters or witnesses are hesitant to report to University officials or participate in grievance processes because they fear that they themselves may be charged with policy violations, such as underage drinking at the time of the incident. It is in the best interest of this community that as many reporters as possible choose to report to University officials and that witnesses come forward to share what they know. To encourage reporting, the University pursues a policy of offering

reporters of sexual misconduct and witnesses reasonable immunity from being charged for policy violations related to the sexual misconduct incident.

2. **Other forms of amnesty:** Similarly, the University encourages students to offer help and assistance to others in need. Sometimes students are hesitant to offer assistance to others for fear that they may get themselves in trouble (for example, a student who has been drinking underage might hesitate to help a friend make a sexual misconduct report to a Dean or the Sewanee Police for fear of being charged with a policy or legal violation). The University pursues a policy of amnesty for students who offer help to others in need.
3. **Protection from Retaliation.** As noted above, retaliation against any person or another student for any reason is a violation considered under the University's "failure to comply" policy. In cases of sexual misconduct, "retaliation" includes intimidation, threats, harassment, and other adverse action threatened or taken against any reporter, respondent, or other persons participating in the conduct process. Retaliation should be reported promptly to the Dean of Students or can be reported to the Title IX Coordinator in cases of sexual misconduct.

Reporting to Police in the Aftermath of Sexual Misconduct

Sexual misconduct may constitute a criminal offense as well as a violation of this policy. Students are urged to report sexual violence immediately to the police, in addition to the University. The police have legal power to issue search warrants to collect forensic evidence, and are also able to assist students in obtaining a court order of protection. Students may contact the police in one of two ways: (1) they can dial 911 for immediate emergency assistance or report directly to the Sewanee Police Department, by calling x1111, or (2) if they seek medical attention at any of the emergency or crisis contact numbers, by asking an employee to call the police on their behalf. The Dean of Students' staff can arrange and/or attend a meeting between students and the police for purposes of filing a report.

Incidents that occur on-campus fall within the jurisdiction of the Sewanee Police Department.

Criminal investigations are separate and independent from University investigations. If a student has filed a University report, the University will attempt to coordinate its investigation with that of the police to the extent possible. The University may delay its investigation temporarily while a law enforcement agency is gathering evidence so as not to interfere with their investigation, but the University will not wait for the conclusion of a criminal investigation or criminal proceedings before commencing (or completing) its own investigation. It is also important to remember that the definition of sexual misconduct under this policy and under the related criminal statutes are not the same, and that the burden of proof for a finding of responsibility under University policy—a "preponderance of the evidence"—is lower than the burden of proof for a finding of guilt under criminal law—"beyond a reasonable doubt." For these reasons, the outcome of any criminal investigation will not determine the outcome of any proceedings under this policy or *vice versa*.

Protective Orders. If an alleged perpetrator represents an ongoing threat to the health or safety of a reporter of sexual misconduct, it may be possible for the reporter to obtain a court-ordered emergency or preliminary protective order. These orders are temporary, and they may be issued if the judge believes that there is an *immediate* threat to health or safety. Later, after a full hearing, the

court may agree to issue a “permanent” protective order in appropriate cases. Protective orders are separate and distinct from no-contact orders. Protective orders may be obtained only from a court of law, and their violation may result in criminal charges. No-contact orders may be obtained directly from Dean of Students and are enforceable through the University code of conduct.

Reporting Options

The University supports two types of reports—anonymous and identifiable.

- 1. Anonymous Reports:** Reporters (other than University employees required to report) may report alleged sexual misconduct *anonymously* online by omitting their name and contact information. In the case of anonymous reporting, the University will not be able to contact reporters to obtain further information about the incident or to offer information, support, and/or interim measures. In addition, the University’s ability to respond to the report will be limited to the information provided. The University nevertheless encourages reporting of sexual misconduct, even anonymous reporting, and will make such use of the reported information as circumstances may allow.
- 2. Identifiable Reports:** The University will preliminarily investigate all identifiable reports of sexual misconduct. Representatives from the Dean of Students office and the Sewanee Police Department will promptly reach out to the reporter (or the involved student, if the reporter is not the student directly affected by the conduct) to advise them as to their University and legal options. They will obtain additional information about the reported incident, if available, and offer support, assistance and, where appropriate, interim measures to address any immediate concerns for the safety of involved persons and/or the University community.

Requests for Confidentiality

If the reporter requests confidentiality—e.g., requests that the information contained in the report be maintained confidentially, that no investigation be conducted, and/or that no disciplinary action be taken—the Dean will consult with the Title IX Coordinator for further evaluation.

1. The University will attempt to honor the reporter’s request if it can do so without compromising the safety of the reporter, third parties identified in the report, or the broader University community. In order to make this determination, the University will weigh the request for confidentiality against the University’s obligation to provide a safe, nondiscriminatory environment for the entire University community.
2. When evaluating a request for confidentiality, the investigator and Title IX Coordinator will meet to consider a range of factors listed below that could provide evidence of increased risk that the alleged perpetrator will commit additional acts of sexual misconduct or other misconduct. The presence of one or more of these factors could lead the University to determine that it should investigate the incident and, if appropriate, pursue disciplinary action against the alleged perpetrator by means of an Administrative Report initiated by the Dean. Factors include but are not limited to:
 - whether there have been other sexual misconduct reports about the same alleged perpetrator;
 - whether the alleged perpetrator has a history of arrests or records from a prior school indicating a history of engaging in sexual misconduct;

- whether the alleged perpetrator threatened further sexual misconduct or other misconduct against the reporter or others;
 - whether the sexual misconduct was committed by multiple perpetrators;
 - whether the sexual misconduct was perpetrated with a weapon;
 - whether the reporter is a minor (under the age of legal consent);
 - whether the University possesses other means to obtain relevant evidence of the alleged sexual misconduct (e.g., security cameras or personnel, physical evidence);
 - whether the report reveals a pattern of perpetration (e.g., via illicit use of drugs or alcohol) at a given location or by a particular group; and/or
 - whether there is any other evidence suggesting predatory behavior by the alleged perpetrator(s).
3. If the University honors a request for confidentiality the reporter should understand that the University's ability to meaningfully investigate the incident and pursue disciplinary action against the alleged perpetrator may be severely compromised. The University may nevertheless take steps to limit the effects of the alleged sexual misconduct and prevent its recurrence without undermining the request for confidentiality by, for example, increasing monitoring, supervision and/or security at locations or activities where the sexual misconduct was alleged to have occurred; providing training and education for students and employees; and revising and publicizing the University's policy on sexual misconduct.
 4. If the University cannot honor a request for confidentiality, the University will share the reported information only with (1) those individuals who are charged with handling the University's response, and (2) those individuals with whom the University must share information in order to conduct an effective investigation and/or implement an effective response so as to address any threat to the safety of the University community. In any case, the University will inform the reporter, in advance, how the University intends to proceed, with whom the reported information will be shared, and whether and to what extent the reporter's identity can be protected.

Note on False Reports: The University will not tolerate intentional false reporting of incidents. It is a violation of the Honor Code to make an intentionally false report of any policy violation, and it may also violate state criminal statutes and civil defamation laws.

Requesting Interim Measures

Students seeking interim measures or additional remedies should speak with a dean of students, who will evaluate and, if warranted, will coordinate the request. A dean may need to take protective measures to ensure a safe and nondiscriminatory environment even when the student does not specifically request that action be taken. Students on a studying away leave, through an independent program, should request support from the away program leader. Students on a studying away leave, run by The University of the South, should request support from the away program leader or the University of the South's dean of students office.

The specific interim measures or additional remedies implemented and the process for implementing those measures will vary depending on the facts of each case. A dean of students will consider, among other factors, the specific need expressed by the reporter or within a report; the severity or pervasiveness of the allegations; any continuing effects on the reporter; the age of the

students involved; and whether the reporter and respondent share the same residence hall, class, or on-campus job location.

Possible interim measures and additional remedies include:

- No-contact order between respondent and reporter
- Limiting access to certain college facilities or activities
- Limiting access to campus to specific times of day
- Alteration of class schedules
- Alteration of on or off campus housing arrangements
- Removal from on-campus housing
- Changing campus work schedules or job assignment
- Suspension from on-campus employment
- Suspension from athletic teams or other student organizations
- Rescheduling of exams, papers, or other assignments
- Provisional suspensions or restrictions in extraordinary circumstances
- Taking an incomplete in a class
- Authorized withdrawal from a class
- Withdrawal from study away program
- Alternative course completion options
- Voluntary leave of absence
- Access to counseling services
- Providing an escort to ensure safe movement between classes and activities
- Increased security at specified locations
- Providing academic support services
- Any other reasonable remedy that can be tailored to the involved individuals

When reporter and respondent are members of the same organization or athletic team, a dean of students will consider ways to permit both students to continue participation, but when such compromise is not possible, the Title IX Coordinator has the discretion to determine whether an involved student can continue participation.

No Contact Order means an order issued by a dean of students directing parties (generally the reporter and respondent(s)) to refrain from having in-person or electronic contact with each other, directly or through proxies.

Reporting Violations of Interim Measures and Additional Remedies

All individuals are encouraged to report concerns about failure of another individual to abide by restrictions imposed by an interim measure or additional remedy. Failure to abide by restrictions imposed by an interim measure or additional remedy is a violation of the University code of conduct.

Filing a Sexual Misconduct Grievance

Who May File a Sexual Misconduct Grievance

Any student may file a grievance against a student for an alleged violation of this policy. Reporters typically file their own grievances and such reports can find multiple paths to resolution based on the reporter, the type of incident, and other key factors. The two options are: (1) Administrative Resolution and (2) Hearing Panel. Both provide opportunities for interim measures and protection from retaliation but they have different procedures (see below).

The University reserves the authority to file a grievance on behalf of an affected individual who has requested confidentiality or is otherwise unable or unwilling to participate in the process. In such situations, the University shall be the reporter and the affected individual shall be considered a witness and will be entitled to receive all notifications due to typical reporter under this policy, including notification regarding the outcome of the resolution procedures.

How to File a Sexual Misconduct Grievance

Sexual misconduct grievances require an initial intake meeting between a dean of students and the reporter to gather preliminary information, to determine interim measures (if not already established) and to outline the paths to resolution. Once a pathway is determined a process facilitator is assigned.

Resolving a Sexual Misconduct Grievance¹

The resolution process offers two pathways: Administrative Resolution and Hearing Panel. Administrative Resolutions are appropriate for less severe violations, including but not limited to non-consensual sexual contact and some forms of exploitation.

Option 1: Administrative Resolution

When a reporter elects for an Administrative Resolution, **a dean provides appropriate notice to the respondent.**

Administrative Resolution provides an opportunity for the reporter to address concerns with the respondent, and the process is facilitated by a dean of students, or a designee. Administrative resolution allows the reporter to communicate their feelings and perceptions regarding the alleged incident, and their wishes and expectations regarding protection in the future. The respondent will have an opportunity to respond.

- A. Administrative Resolution Where Respondent Accepts Responsibility.** If, during the Administrative Resolution proceedings, the respondent chooses to acknowledge their actions and accept responsibility for the alleged violation, the Administrative Resolution will be concluded and the dean of students will propose a sanction. If both the reporter and the respondent agree to such proposed sanction, the report will be resolved without any further rights of appeal by either party. If either the reporter or the respondent objects to the proposed sanction, the dean of students will convene the hearing panel to recommend

¹ Reasonable deviations from these procedures by the University will not invalidate a decision or proceeding unless significant prejudice to a student is caused by such deviation.

appropriate sanctions. The dean will issue a notice of action.

B. Administrative Resolution Where Respondent Contests Responsibility. If, during the Administrative Resolution, the respondent contests the report of alleged sexual misconduct, a dean of students may nevertheless impose a no-contact order and other interim remedial measures based on information derived from initial information gathered and taken together with any other relevant information in the possession of the University.

Option 2: Hearing Panel

When a reporter elects for a **Hearing Panel**, their report will be forwarded by a dean to the investigator, who will commence a prompt, thorough, fair, impartial, and reliable investigation.

Notice: Once an investigation is initiated and before the respondent is interviewed, the dean of students office will notify the reporter and the respondent, in writing, of the commencement of an investigation. Such notice will (1) identify the reporter and the respondent; (2) specify the date, location and nature of the alleged incident to the extent known; (3) identify the investigator; (4) identify the process facilitator; (5) indicate that the reporter has elected a hearing panel; (6) explain the prohibition against retaliation against either party or any witness in the investigation; (7) instruct the parties not to destroy any potentially relevant evidence (including electronic evidence and photographs) in any format; and (8) provide a copy of this policy.

Note on Changing Pathways to Resolution: At any time prior to the completion of the investigator's report (and if the conditions for electing Administrative Resolution are otherwise met), the reporter may decide to change their election from hearing panel to administrative resolution by so notifying the investigator.

Opportunity to Accept Responsibility by Respondent: The respondent, upon learning of the report (and at any time prior to the completion of the investigation and the receipt of the investigator's report), may elect to terminate the hearing panel process by accepting responsibility for the conduct alleged in the report. If the respondent accepts such responsibility, the case may be referred to the hearing panel, which will recommend a sanction to the dean.

Investigations and Reports

Preliminary information: Investigations usually begin with preliminary information, including written statements, reports and/or other information about the incident initially gathered by the student life staff, the Title IX Coordinator or a dean of students. Preliminary reports can be used for determining the need for interim measures or for administrative resolution.

Investigation: Full investigations are requested and delegated by either the Dean of Students or the Title IX Coordinator. The investigation portion of the process typically takes up to 20 class days². The investigator will meet separately with both the reporter and respondent as well as any identified witnesses. The investigator will gather initial information and ensure that the reporter and the respondent have submitted a written statement regarding the incident. The investigator will review

² While the University will make every effort to complete actions within the stated time lines, the University may extend timelines for good cause and with written notice to reporter and respondent that explain the reason for the extension or delay.

each statement with the individual submitting it. As determined by the investigator, those identified witnesses who have immediate knowledge of the event will be asked to submit written statements. The investigator will review any such statement with the witness. The investigator may take notes on any of these meetings. The investigator uses statements and other evidence submitted by all parties to produce a preliminary report.

Review and response: The investigator makes copies of the preliminary report available to each of the parties and the process facilitator, simultaneously. Each of the parties may submit a written statement to the investigator within three (3) class days of the date on which the investigator's report was provided to them. The purpose of such statements is to allow the parties an opportunity to address any perceived factual errors or omissions in the investigator's report and to disclose any evidence that was not previously known or available to the investigator. The investigator will review statements to evaluate relevance and if relevant, then distribute copies of any such statements to both parties and the process facilitator, simultaneously.

Investigation concluded and submitted: After the reporter and respondent have reviewed and submitted responses in investigator produces their final report. The final report will state the factual findings of the investigator, will summarize the information obtained through the investigation, and will attach copies, where available, of relevant supporting documentation. The Title IX Coordinator and/or University's General Counsel may review the investigator's report before it is finalized.

What information may be redacted: The past sexual history or sexual character of a party will not be deemed relevant in the investigation or hearing unless such information is determined to be highly relevant by the investigator and Title IX Coordinator.

What prior conduct violations can be included: While previous conduct violations by the accused individual are not generally relevant as information about the present report, the dean of students and/or the Title IX Coordinator may supply previous report information to the investigator and/or the hearing panel only if:

- The accused was previously found to be responsible, or
- The previous incident was substantially similar to the present allegation, or
- Information indicates a pattern of behavior and substantial conformity with that pattern by the accused individual.

Notice on insufficient evidence: In some cases, the Dean of Students may determine that there is insufficient evidence to warrant continuing toward a hearing panel. The reporter will have a final opportunity to offer new information (such as additional evidence, information, or names of witnesses); in the absence of any new information, the investigation will end and the case will be suspended.

Pathways to Resolution after Investigation

The Dean of Students has two paths to resolve grievances: (1) Administrative Resolution or (2) Hearing Panel.

1. **Administrative Resolution:** If the respondent accepts responsibility for the report or does not accept responsibility for the report, but waives a hearing before the hearing panel, the case can be administratively resolved. The process follows the same path as the hearing panel, but the process only engages the Dean of Students or a designee.
2. **Hearing Panel Resolution:** If there will be a hearing panel review, then with at least five (5) class days notice to both the reporter and respondent, a dean of students will convene the hearing panel for the hearing.

The hearing panel is comprised of a dean of students, and faculty or staff who all are trained to hear cases. The dean chairing the process will select two committee members to review the incident. There are no students on the hearing panel because of the private nature of these cases. The chairperson should avoid selecting board members who have a close relationship with the students involved or who are closely connected to the issue being reviewed and who might have a difficult time rendering an impartial decision. Participants and committee members should discuss the composition of the committee with a dean prior to a hearing. If a committee member has a demonstrable personal bias for or against either party, the dean chairing the committee will not allow that member to serve.

Confidentiality & the Hearing Panel

Throughout the process for resolving a report of sexual misconduct, reasonable efforts will be made to maintain students' confidentiality. At different times in the process, however, it may be important to discuss the alleged incident with witnesses and/or others who have information that is pertinent to the case; or on a need-to-know basis. All students involved in the process are strongly urged to use discretion in discussing the incident or the identities of other student involved in the process. In a small community, public discussion of sexual misconduct cases can be very hurtful and deter others from reporting sexual misconduct.

Hearing Panel Process

- The investigator meets with the dean, hearing panel, and the process facilitator to talk through the investigative process and to answer questions regarding the report.
- A designated dean of students chairs the conduct hearing and advises the students of the allegation, and clarifies any questions of procedure.
- The reporter shares an oral statement; followed by any questions that the dean or hearing panel member may have for the reporter.
- The respondent shares an oral statement; followed by any questions that the dean or hearing panel member may have for the respondent.
- The dean and hearing panel members may choose to hear from witnesses that it deems most relevant. The dean and hearing panel will make that determination based upon the report and the oral statements from the reporter and the respondent.
- If necessary, the dean and hearing panel members may recall the reporter, respondent, or any witness for further questioning.
- All parties involved—the reporter and respondent and any witnesses, will never be in the hearing room at the same time.

- Efforts will also be made to ensure that the students will not wait in the same area outside the hearing room.
- Hearings of the committee (but not the committee's deliberations) will be recorded.
- The hearing concludes.
- The dean and hearing panel carefully evaluates and weighs evidence to determine responsibility based on a preponderance of evidence. If found responsible, the committee will recommend an appropriate sanction to the chair.
- The dean makes a final decision about sanctions, if applicable, and notifies both parties of the decision and sanctions.

Resolution of the Case

Outcome Letters

The Dean of Students will provide written notification to the reporter and respondent of the determination of responsibility as well as any sanctions that may apply. If the student is to be suspended or expelled, the individual must vacate campus within 24 hours, even if the student appeals the decision. Proceedings and decisions will not be disclosed except on a need to know basis. All notes and written material from the hearing will be collected and held by the Dean of Students for seven years, at which time they will be destroyed or, at the dean's discretion, preserved. All such records are part of the educational record of all students involved, and protected from disclosure under a federal law, FERPA. However, FERPA permits the University to disclose the following:

- reporters have a right to be informed of the outcome, in writing, and to be informed of any sanctions that directly relate to them, and to essential findings supporting the outcome when the outcome is one of violation and/or it is equitable to share the essential findings with all parties.
- The University may release publicly the name, nature of the violation, and the sanction for any student who is found in violation of a college policy that is a "crime of violence," including: arson, burglary, robbery, criminal homicide, sex offenses, assault, intimidation (which may encompass stalking and/or bullying), hazing, destruction/damage/vandalism of property, and kidnapping/abduction. The University will release this information to the reporter in any of these offenses regardless of the outcome.

Appeals

How to Appeal

An appeal of a dean of students or a hearing panel decision is no different from any other appeal, except that they are referred to the Vice-Chancellor. In cases of sexual misconduct either party may appeal the decision or the sanction. Both reporter and respondent may appeal the outcome.

Those hearing appeals generally give consideration only to those cases involving the most serious matters and the most significant consequences, such as suspensions or expulsions. Appeals will be reviewed using the following criteria:

- there is new information that substantially alters the understanding of the event(s) in question; and/or
- the discipline process was not followed in a fundamentally fair manner; and/or
- that the disciplinary response is disproportionate to the offense.

If a student wishes to appeal a decision, such an appeal must be made in writing to the Vice-Chancellor's office within three (3) class days after receiving an outcome letter from the dean.

Process for Reviewing an Appeal

If there is an appeal, it will be shared with the other party, who will have three (3) class days to respond in writing.

The Vice-Chancellor may review an appeal directly or appoint a board to review the appeal, making a recommendation to the Vice-Chancellor for a final determination. Reviewing an appeal includes a review of the full investigation, the notice of action and the student's written appeal, and any response from either party.

Decision on Appeal

The Vice-Chancellor may choose to affirm the action of a dean, to affirm the decision but to change the penalty, to refer the case back to the dean and hearing panel for further consideration, or to reverse the decision. The Vice-Chancellor shall notify the parties, in writing, of the final action on the appeal.

Note: Students are afforded only a single appeal. Once an appeal is submitted and concluded, the disciplinary process ends and the decision is final.

Parental Notification

The University reserves the right to notify parents/guardians of dependent students regarding any health or safety risk, change in student status, or conduct situation, particularly alcohol and other drug violations. The University may also notify parents/guardians of non-dependent students who are under age 21 of alcohol and/or drug policy violations. When a student is not dependent, the University will contact parents/guardians to inform them of situations in which there is a significant and articulable health and/or safety risk. The University also reserves the right to designate which college officials have a need to know about individual conduct reports pursuant to FERPA.

Sanctions

A range of sanctions includes but is not limited to:

- Continuation of Interim Measures: A requirement that the short term measures enacted to ensure personal and community safety and a fair investigation and conduct process can be continued indefinitely or for a specific duration;
- Reprimand: A letter of reprimand can be issued for any violation of policy;
- Community Service: A requirement that the respondent undertake a stated number of hours of community service, of the kind, in the manner, and within the timeframes required by the hearing panel or a dean of students;
- Probation: A requirement that a student be on probation for a period of time without any other violations;
- Limitations on Residential or Co-curricular Engagement: Removal from or limitations on a specific residence hall, Greek facility, or a co-curricular program;
- Required meeting with an administrator to facilitate mentorship and accountability;
- Completion of Educational or Training Programs: A requirement that the respondent complete a particular educational or training program within the time frame required by the dean;
- Evaluation by Health or Mental Health Professional: A requirement that the respondent be evaluated by a health or mental health professional and comply with any treatment recommendations prior to returning to the University (if a period of suspension is imposed) or as a condition of continued enrollment at the University (if a period of suspension is not imposed);
- Prohibit from participation in graduation, gowning, or other public ceremony;
- Financial Restitution: An order directing the respondent to reimburse the reporter for damages incurred as a result of the prohibited conduct;
- Suspension Held in Abeyance: Exclusion from classes and other privileges and activities or from the University for a specified period of time, such suspension to be held in abeyance unless and until the respondent is found responsible for any subsequent violation of this policy;
- Suspension: Exclusion from classes and other privileges and activities or from the University for a specified period of time;
- Indefinite Suspension: Exclusion from classes and other privileges and activities or from the University for an unspecified period of time; and
- Expulsion: Permanent termination of student status.
- Targeted training for an organization, a team, or a group of students

A dean and hearing panel may consider any record of past incidents of misconduct, at the University or elsewhere, including violations of the Code of Conduct, as well as the number, timing, nature, and severity of such past incident(s). They will also consider, as part of its deliberations, whether a given sanction will (a) bring an end to the policy violation in question, (b) reasonably prevent the recurrence of a similar violation, and (c) remedy the effects of the violation on the reporter and the University community.

Considerations

Students with Disabilities

The University will make appropriate arrangements to ensure that students with disabilities are provided reasonable accommodations as needed to participate in this process. Requests for accommodations must be made timely to the dean of students. A dean will review the supporting disability related documentation, make a decision about the request, notify the student about approved accommodations, and make arrangements for the accommodations. Accommodations may include, but are not limited to, providing interpreters for the deaf, providing recordings of materials for the blind, and assuring a barrier-free location for the proceedings.

Delegation

Whenever an action may be or is required to be taken under this policy by a dean of students, the action may be taken by the dean's designee. Whenever an action may be or is required to be taken under this policy by the Title IX Coordinator, the action may be taken by the Title IX Coordinator's designee.

Multiple Reports Filed

If a second reporter files a report against a respondent before the resolution process for the initial report has been completed, the dean shall have the discretion to determine the process for resolving multiple reports, e.g., altering timelines.

Multiple Respondents

In the event the report involves more than one respondent, a dean shall have the discretion to determine the process for resolving the report against multiple respondents.

Sexual Misconduct Process Flowchart

