Responsible Official: Title IX Coordinator, VP for Student Affairs

Responsible Office: Human Resources & Student Affairs

Next Review Date: July 2027

TITLE IX AND SEXUAL MISCONDUCT POLICY

POLICY STATEMENT

The University of Mount Olive does not discriminate on the basis of race, sex, color, national or ethnic origin, age, or handicap in the administration of its personnel and educational policies. It admits all qualified students of any race, color, national or ethnic origin to all the rights, privileges, programs, and activities generally accorded or made available to students. The University of Mount Olive is committed to maintaining a community in which learning and working can be conducted in an environment of human dignity and respect. The University stands opposed to all forms of harassment, including sexual and gender-based harassment, and will work to prevent such behavior within the University community. Sexual misconduct is antithetical to the values and standards of the Mount Olive community, is incompatible with the safe, healthy environment that the community expects and deserves, and will not be tolerated.

REASON FOR POLICY/PURPOSE

Title IX is a federal civil rights law that prohibits colleges and universities that receive Federal financial assistance from discriminating on the basis of sex in education programs and activities. Sexual harassment, which includes acts of Sexual Assault, is a form of sex discrimination prohibited by Title IX. Title IX provides:

A. No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance. 20 U.S.C. § 1681

B. Sexual Harassment and Discrimination based on sexual orientation and/or gender identity is also prohibited under Title VII of the Civil Rights Act of 1964 and other applicable statutes.

Under certain circumstances, sexual misconduct (as defined below) constitutes sexual discrimination prohibited by the federal Title IX regulations. Any act of sexual misconduct constitutes a violation of University policy. The University is committed to fostering a community that promotes prompt reporting of all alleged acts of sexual misconduct and the timely and fair resolution of sexual misconduct cases. Creating a safe environment is the responsibility of all members of the University community. This policy is intended to define community expectations, to establish a mechanism for determining when those expectations have been violated, and to protect the rights and needs of Complainants and Respondents.

This Policy applies to all University community members, including students, faculty, staff, and third parties, such as alumni, volunteers, independent contractors, visitors, and any individuals regularly or temporarily employed, studying, living, visiting, conducting business, or having any official capacity at the University ("Third Parties"). This Policy applies to acts of Prohibited Conduct committed by or against students, faculty, staff, or Third Parties. Alleged misconduct subject to this Policy ("Prohibited Conduct") includes both **Title IX Prohibited Conduct** (which is defined by law) and

Non-Title IX Prohibited Conduct (which includes allegations that do not meet the definitions under Title IX, but nonetheless violate the University's Non-Title IX standards, as defined in this Policy). Subject to the definitions of Title IX Prohibited Conduct (which have a limited scope of application), the University will respond to Prohibited Conduct when the conduct:

1. occurs on the University's campus or other property owned or controlled by the University;
2. occurs in the context of the University's employment or education program or activity;
3. occurs off-campus or outside of the University's program or activity, but has continuing adverse effects on or creates a hostile environment for the University's community members while on the University's campus or other property owned or controlled by the University or in an employment or education program or activity of the University.

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OPERATIONAL DEFINITIONS

A. **Complainant**, for the purposes of this Policy, means the person who is alleged to have experienced the Prohibited Conduct, regardless of whether that individual makes a complaint or desires disciplinary action.

B. **Respondent**, for the purposes of this Policy, means the person who allegedly committed a violation of this Policy. 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.

C. **Title IX Coordinator** has ultimate oversight responsibility for handling Title IX related complaints and identifying and addressing any patterns or systemic patterns involving Prohibited Conduct. The Title IX Coordinator can answer questions regarding the process for reporting, investigating, and adjudicating complaints of Prohibited Conduct or concern about issues or University processes, incidents, patterns, or problems related to Prohibited Conduct on campus or in University programs. The Title IX Coordinator ensures training and education of the University's community members, oversees all reports of Prohibited Conduct and coordinates the University's response and/or resolution to all reports. The Title IX Coordinator is a neutral party and is available to meet with any community member as needed to discuss available resources, options and supportive measures.

1. Any person may report Prohibited Conduct (whether or not the person reporting is the person alleged to be the victim of Prohibited Conduct), in person, by mail, by telephone, or by electronic mail, using the contact information listed above, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. Such a report may be made at any time (including during non-business hours) by using the telephone number or electronic mail address, or by mail to the office address, listed for the Title IX Coordinator. Any inquiries or concerns about the University's application of Title IX, and any question of interpretation regarding this Policy, may be addressed to the Title IX Coordinator. The Title IX Coordinator is available in person or by phone or email during regular business hours:

   Cordelia Wilcox, Title IX Coordinator
   Vice President for Human Resources
   1240 N. Breazeale Avenue, Mount Olive, NC 28365
   919.658.7494; cwilcox@umo.edu

2. Any inquiries or concerns about the University's application of Title IX may also be addressed to the U.S. Department of Education Office for Civil Rights:

   U. S. Department of Education, Office for Civil Rights District of Columbia Office
   400 Maryland Avenue, S.W
   Washington, DC 20202-1475
   Telephone: (202) 453-6020
   Facsimile: (202) 453-6021
   Email: OCR.DC@ed.gov

D. An **Investigator** is a neutral party in charge of handling the investigation of a Formal Complaint and who provides a detailed, unbiased report that fully summarizes relevant evidence.

E. **Advisor** – Each party has the right to choose and consult with an Advisor of their choice. The Advisor may be any person, including an attorney. The parties may be accompanied by their respective Advisors at any meeting or proceeding under this Policy. While the Advisors may provide support and advice to the parties at any meeting and/or proceeding, they may not (except when conducting cross-examination as explained below) speak on behalf of the parties or otherwise participate in, or in any manner disrupt, such meetings and/or proceedings. The Title IX Coordinator will have the authority to remove from any meeting, process or hearing an Advisor who does not comply with the expectations of this Policy.

In the event that an investigation proceeds with a hearing and a party does not have an Advisor present at the live hearing, the University must provide an Advisor, without fee or charge to that party, who may be, but is not required to be, an

attorney solely to conduct cross-examination on behalf of that party. At the hearing, the Hearing Chair must permit each party's Advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those 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. Advisors provided by the University will be adults with an understanding of the purpose of cross- examination but will not necessarily have the training or skills of an attorney.

F. A **Report** is a notification of an alleged incident that occurred either on campus or as part of a University or University-recognized program or activity.

G. The **Formal Complaint** is a document submitted by a Complainant and bearing the Complainant's physical or digital signature, or otherwise indicating that the Complainant is the one filing the Formal Complaint, or signed by the Title IX Coordinator requesting that the University investigate the allegations of Prohibited Conduct. At the time of filing a Formal Complaint, a Complainant must be participating in or attempting to participate in the employment or educational program or activity of the University. A complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail (email), by using the contact information listed on the Title IX webpage, or as described in this Policy. Individuals who would like more information about filing a Formal Complaint are invited to contact the Title IX Coordinator for additional information. In the event that the Title IX Coordinator signs the Formal Complaint, this act does not make the Title IX Coordinator the Complainant" for purposes of this Policy.

H. **Education program or activity**, for the purposes of this Policy, includes locations, events, or circumstances over which the University exercised substantial control over both the Respondent and the context in which the sexual harassment occurs. The University's obligations extend to incidents of Title IX Prohibited Conduct that occur off campus if any of three conditions are met: (a) The off-campus incident occurs as part of the University's operations; (b) The University exercises substantial control over the Respondent and the context of alleged Title IX Prohibited Conduct that occurred off-campus; or (3) the incident of Title IX Prohibited Conduct occurs at an off-campus building owned or controlled by a student organization officially recognized by the University.

I. **Supportive Measures** mean non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent before or after the filing of a Formal Complaint or where no Formal Complaint has been filed. Such measures are designed to restore or preserve equal access to the University's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the University's educational environment, or to deter sexual harassment. The Title IX Coordinator can provide a wide range of supportive measures including, but not limited to, counseling, extensions of deadlines or other course-related adjustments, other academic modifications and support, campus escort services, mutual restrictions on contact between the parties, housing modifications, changes in work schedules, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. Supportive measures provided to the Complainant or Respondents will be maintained to the extent reasonable, and to the extent that the measures will not impair the ability of the University to provide the supportive measures. Supportive measures are available regardless of whether a Complainant pursues criminal or disciplinary action through the University. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

1. The Title IX Coordinator also will promptly inform the Complainant and/or Respondent of any action(s) that will directly impact the Complainant and/or Respondent. A Complainant or Respondent shall be afforded a prompt review, reasonable under the circumstances, of the need for, and terms of, any supportive measure that directly affects them, and may do so by contacting the Title IX Coordinator. The Title IX Coordinator on his or her own or at the request of either party retains the discretion to impose and/or modify any supportive measures based on all available information. Supportive measures will remain in effect, unless new circumstances arise which warrant reconsideration of the supportive measures. The availability of supportive measures will be determined by the specific circumstances of each case. Each party shall have the right to submit evidence regarding the propriety of supportive measures. The Title IX Coordinator will consider a number of factors in determining which measures to take, including the needs and requests of the individuals seeking supportive measures; the severity or pervasiveness of the reported Prohibited Conduct; any continuing effects on the Complainant and/or Respondent; whether the Complainant and the Respondent share the same residence hall, dining hall, academic course(s), job location; and whether other judicial measures have been taken to protect the Complainant (e.g., Protective Orders).

2. In some cases, students may choose to seek a leave of absence or a reduced course load; these actions may, in turn, impact matters such as a student's immigration, visa and/or financial aid status. In such cases, the Title IX Coordinator assists the student in coordination with the Vice President for Student Affairs, the Vice President for Academic Affairs, or other appropriate resources.

3. The Title IX Coordinator will ensure individuals receive written notification of all their rights and options, regardless of whether the individual chooses to file a Formal Complaint under this Policy or make a report to law enforcement.

J. **Standard of Evidence** – The standard of proof in all Prohibited Conduct cases will be preponderance of the evidence. This standard requires the Decision-maker(s) to conclude that it is more likely than not that the Respondent engaged in Prohibited Conduct in order for there to be a finding of responsible. This standard of proof differs from the higher standard used in criminal cases, beyond a reasonable doubt. Therefore, there could be instances when the criminal justice system declines to prosecute a case criminally but a finding of responsible is reached under this Title IX and Sexual Misconduct Policy.

K. **Days** means business days when all University offices are open. This does not include weekends, holidays or inclement weather when University offices are closed.

L. **Consent** is an affirmative decision to engage willingly in mutually acceptable sexual activity given by clear words or actions. It is an informed decision made freely and actively by all involved parties. For a sexual encounter to be consensual, each participant must agree to engage in each act of the encounter. Participants should make clear their willingness or lack of willingness to continue at each progression of the sexual interaction and should not make assumptions about consent during the sexual activity, as confusion or ambiguity may arise.

1. Consent may not be inferred from silence, passivity, lack of resistance or lack of active response alone. Consent to one form of sexual activity does not imply consent to other forms of sexual activity. Nor does a current or previous dating or sexual relationship constitute consent to sexual activity in every instance.

2. Either party may withdraw consent at any time during the sexual encounter. Once withdrawal of consent has been expressed by words or actions that indicate a clear desire to end sexual activity, all sexual activity must cease immediately. Sexual conduct will be considered "without consent" if no clear consent, verbal or non-verbal, is given. This includes situations in which an individual's ability to consent freely is taken away by another person or circumstance. Examples may include, but are not limited to, when an individual is incapacitated due to alcohol or drugs, passed out, fearful for the individual's safety or the safety of others, physically forced, intimidated, coerced, mentally or physically impaired, threatened, or confined. The use of alcohol or drugs can limit a person's ability to give consent freely and clearly. Alcohol and other drugs can lower inhibitions and create an atmosphere of confusion over whether consent has been freely and clearly given. The perspective of a reasonable person evaluating another person's physical or verbal functions will be the basis for determining whether one should have known that the use of alcohol or drugs impaired that person's ability to give consent. Being intoxicated or impaired by alcohol or drugs does not diminish one's responsibility to obtain consent and is never an excuse for sexual misconduct.

3. Consent cannot be obtained through force, including physical force, threats, intimidation, or coercion which would compel a reasonable person to engage in unwanted sexual activity against their will. This may include pressure that would compel a reasonable individual to initiate or continue sexual activity against that individual's will.

POLICY/PROCEDURES

This Policy This Policy prohibits specifically defined forms of behavior, generally referred to as "Title IX Prohibited Conduct" and/or "Non-Title IX Prohibited Conduct." These two categories of Prohibited Conduct are detailed below with specific classifications. Title IX Prohibited Conduct and/or Non-Title IX Prohibited Conduct is determined inclusive of the sex, gender, sexual orientation and/or gender identity/expression of involved parties.

A. TITLE IX PROHIBITED CONDUCT

A potential violation of Title IX Prohibited Conduct must meet the following criteria:

1. The conduct is alleged to have occurred in the United States;

2. The conduct is alleged to have occurred in the University's education program or activity, which is defined

as locations, events or circumstances over which the University exercises substantial control over both the Respondent and the context in which the misconduct occurred, or any building owned or controlled by a student organization officially recognized by the University;

If the above criteria are met, the below represent specific covered sexual harassment violations:

1. **Title IX Sexual Harassment** - conduct on the basis of sex that involves an employee of the University conditioning the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct; or an individual engaging in unwelcome conduct determined by a reasonable person to be so severe, pervasive and objectively offensive that it effectively denies a person equal access to the University's education program or activity.

2. **Title IX Sexual Assault** may include any of the following Prohibited Conduct:
    a. Penetration, no matter how slight, of the vagina or anus with any body part of object, or oral penetration by a sex organ of another person, without the consent of the alleged victim;
    b. The touching of the private body parts of another person for the purpose of sexual gratification without the consent of the alleged victim;
    c. Non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law; or
    d. Non-forcible sexual intercourse with a person who is under the statutory age of consent.

3. **Title IX Dating Violence** – Violence, including sexual or physical abuse or the threat of such abuse, committed by a person (i) who is or has been in a social relationship of a romantic or intimate nature with the alleged victim; and (ii) where the existence of such a relationship shall be determined based on a consideration of the following factors: (1) the length of the relationship, (2) the type of relationship, (3) the frequency of interaction between the persons involved in the relationship.

4. **Title IX Domestic Violence** – Violence committed by a current or former spouse or intimate partner of the alleged victim, by a person with whom the alleged victim shares a child in common, by a person who is cohabitating with or has cohabitated with the alleged victim as a spouse or intimate partner, by a person similarly situated to a spouse of the alleged victim or by any other person against an adult or youth alleged victim who is protected from that person's acts under the domestic or family violence laws of the State of North Carolina.

5. **Title IX Stalking** – 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. For purposes of this definition, (i) course of conduct means two or more acts, including, but not limited to, acts in which the alleged stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property; (ii) reasonable person means a reasonable person under similar circumstances and with similar identities to the victim; and (iii) substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

B. NON-TITLE IX PROHIBITED CONDUCT

Conduct that does not meet one or more of the definitions of Title IX Prohibited Conduct, may still be Prohibited Conduct if it falls within the scope of this Policy and meets one of the following definitions:

1. **Non-Title IX Sexual Harassment -** Sexual Harassment is any unwelcome sexual advance, request for sexual favors, or other unwelcome conduct of a sexual nature whether verbal, non-verbal, graphic, physical or other, when conditions (a) and/or (b), below, are present:
   - **a.** submission to or rejection of such conduct is made, either explicitly or implicitly, a term or condition of an individual's employment, academic standing or participation in any program and/or activity of the University or used as the basis for decisions affecting the individual (quid pro quo harassment);
   - **b.** such conduct creates a hostile environment. A hostile environment exists when the conduct is sufficiently severe, pervasive or persistent that it unreasonably interferes with, limits, or deprives an individual from

     participating in or benefitting from the University's education or employment programs and/or activities. The conduct must be deemed severe, pervasive or persistent under both a subjective and objective standard.

     1) Hostile Environment – the determination of whether an environment is "hostile" must be based on the totality of known circumstances, including:
     - the frequency, nature and severity of the conduct;
     - whether the conduct was physically threatening;
     - the effect of the conduct on the Complainant's mental and/or emotional state;
     - whether the conduct was directed at more than one person;
     - whether the conduct arose in the context of other discriminatory conduct;
     - whether the speech or conduct unreasonably interfered with the Complainant's educational or work opportunities or performance (including study abroad), University-controlled living environment, work opportunities, or performance.

A hostile environment can be created by persistent or pervasive conduct or, if sufficiently severe, by a single incident. The more severe the conduct, the less need there is to show a repetitive series of incidents to create a hostile environment, particularly if the harassment is physical. In considering whether a policy violation has occurred, the University will evaluate any issues relating to academic freedom and freedom of speech.

2. **Gender-based harassment** – Gender-based Harassment is any act of aggression, intimidation, or hostility, whether verbal, non-verbal, graphic, physical, or otherwise, even if the act does not involve conduct of a sexual nature, when the acts are based on the sex, gender, sexual orientation or gender identity and (a) and/or (b), below, are present:
   - **a.** submission to or rejection of such conduct is made, either explicitly or implicitly, a term or condition of an individual's employment, academic standing or participation in any program and/or activity of the University or used as the basis for decisions affecting the individual (quid pro quo harassment);
   - **b.** such conduct creates a hostile environment. A hostile environment exists when the conduct is sufficiently severe, pervasive or persistent that it unreasonably interferes with, limits, or deprives an individual from

     participating in or benefiting from the University's education or employment programs and/or activities. The conduct must be deemed severe, pervasive or persistent under both a subjective and objective standard.

3. **Non-Title IX Sexual Assault -** Sexual Assault is having or attempting to have *sexual intercourse* or *sexual contact* with another individual without Consent. *Sexual intercourse* is any vaginal or anal penetration, however slight, with any object or by a penis, tongue, finger or other body part performed by an individual upon another individual. Sexual intercourse also includes any contact, however slight, between the mouth of one individual and the genitalia of another individual.

Sexual contact is any intentional sexual touching, however slight, of the breasts, buttocks, groin, or genitals, whether clothed or unclothed, with any object or body part performed by an individual upon another individual. *Sexual contact* includes making an individual touch another individual with or on the breasts, buttocks, groin or genitals.

4. **Sexual Exploitation -** Sexual Exploitation is purposely, knowingly, or attempting to:
   - **a.** Observe or allowing third parties to observe an individual's genitalia, groin, breasts or buttocks or private sexual activity without the knowledge and consent of the participants, including through a hidden location or through electronic means in a place where there is a reasonable expectation of privacy;
   - **b.** Record or photograph an individual's genitalia, groin, breasts or buttocks or private sexual activity without consent;
   - **c.** Disseminate recordings or photographs of an individual's genitalia, groin, breasts or buttocks or private sexual activity without consent;
   - **d.** Expose genitals or inducing another to expose their own genitals without Consent;
   - **e.** Expose another individual to a sexually transmitted infection(s) without the other's knowledge;
   - **f.** Cause incapacitation of another individual through alcohol, drugs, or any other means, for the purpose of compromising that individual's ability to consent to sexual activity; or
   - **g.** Assist or otherwise facilitate any act of Non-Title IX Prohibited Conduct.

5. **Non-Title IX Intimate Partner Violence** - Intimate Partner Violence includes both dating violence and domestic violence and includes any act of violence or threatened act of violence against a person who is, or has been involved in, a relationship of a sexual, dating, domestic, or other intimate nature with the Respondent. Intimate Partner Violence can encompass a broad range of behavior and may include Sexual or Gender-Based Harassment, Sexual Assault, Sexual Exploitation, Physical Assault, Stalking, and Retaliation.

The University will evaluate the existence of the relationship based upon the Complainant's statement and take into consideration the length of the relationship, the type of relationship, and the frequency of interaction between the individuals involved in the relationship.

6. **Physical Assault** - Physical Assault is threatening or causing physical harm or engaging in other conduct that threatens or endangers the health or safety of any person. The University may address Physical Assault under this Policy when it occurs in the context of other forms of Non-Title IX Prohibited Conduct, such as Sexual Assault, Intimate Partner Violence or is based upon the sex, gender, sexual orientation and/or gender identity or expression of the Complainant.

7. **Non-Title IX Stalking** - Stalking occurs when a person engages in a course of conduct directed at a specific person under circumstances that would cause a reasonable person to fear for the person's safety or safety of others or to suffer substantial emotional distress.

   a. ***Course of conduct*** means two or more acts, including but not limited to, acts in which an individual directly, indirectly or through third parties, by any action, method, device or means follows, monitors, observes, surveils, threatens or communicates to or about another individual, or interferes with another individual's property.
   b. ***Substantial emotional distress*** means significant mental suffering or anguish.
   c. ***Reasonable person*** means a reasonable person under similar circumstances to the victim.

Stalking includes cyber-stalking, a particular form of stalking in which an individual uses electronic media such as the internet, social networks, blogs, cell phones, texts or other similar devices or forms of contact.

8. **Retaliation** - Retaliation is any adverse action taken against an individual because they were involved in the reporting, investigation or resolution of a report of Prohibited Conduct. Retaliation includes threats, intimidation, harassment, coercion, violence or any other conduct that would discourage a reasonable person from engaging in activity protected under this Policy. Activity protected under this Policy may include an individual's right to make a report and/or file a complaint that Prohibited Conduct has taken place, an individual's ability to participate in the complaint resolution process, and/or if an individual's good faith effort to intervene as a bystander. The prohibition against retaliation applies to any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, any witness, or any other individuals who participate (or refuse to participate) in any manner in an investigation, proceeding, or hearing.

   Retaliation may occur even where there is a finding of "not responsible" under this Policy. Good faith actions lawfully pursued in response to a report of Prohibited Conduct are not Retaliation. Retaliation should be promptly reported to the Title IX Coordinator and will be investigated and resolved under this Policy and Procedures.

9. **Discrimination –** Discrimination under this Policy is defined as actions that deprive other members of the community of educational or employment access, benefits or opportunities on the basis of sex, gender identity or expression, or sexual orientation.

10. **Right to Proceed on Conduct Prohibited by Separate Policy** - the University reserves the right to adjudicate other Non-Title IX conduct as defined by policies outside of the scope of the Title IX and Sexual Misconduct Policy in instances when the conduct is associated with an alleged issue of Prohibited Conduct.

C. REQUIRED TRAINING:

Any individual designated by the University as a Title IX Coordinator, investigator, decision- maker, appellate authority or any person designated by the University to facilitate an informal resolution process shall not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent. The University will ensure that Title IX Coordinators, investigators, decision-makers, appellate authorities, and any person who facilitates an informal resolution process, receive training on the definition of sexual harassment, the scope of the University's education program or activity, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.

The University will ensure that decision-makers receive training on any technology to be used at a live hearing and on issues of relevance of questions and evidence, including when questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant. The University will also ensure that investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence. Any materials used to train Title IX Coordinators, investigators, decision-makers, appellate authorities, and any person who facilitates an informal resolution process, will not rely on sex stereotypes and will promote impartial investigations and adjudications of formal complaints of Prohibited Conduct.

D. REQUESTS FOR EXTENSIONS OF TIME:

The Title IX Coordinator may extend any deadlines within this Policy, for good cause shown and documented. The Complainant and Respondent will be notified in writing of any extension, the reasons for it, and projected new timeline(s).

E. OBLIGATION TO PROVIDE TRUTHFUL INFORMATION:

All members of the University community are expected to cooperate fully and provide truthful information in any report or proceeding under this Policy. Providing false or misleading information in bad faith, such as with a view to personal gain or intentional harm to another in connection with an incident of Prohibited Conduct, or employee refusal to perform duties established by this policy, is prohibited and subject to disciplinary sanctions under the University's Non-Title IX policy and/or disciplinary action under the appropriate employee disciplinary policy. Even if a report is later not substantiated, that does not necessarily mean that the information was provided in bad faith.

F. REPORTING PROHIBITED CONDUCT:

The University of Mount Olive strongly supports and encourages prompt reporting of Prohibited Conduct. If you believe you or someone you know has been a victim of Prohibited Conduct, you should report the incident(s) to the University's Title IX Coordinator or to Campus Safety as soon as possible. Because Prohibited Conduct may constitute both a violation of University policy and criminal activity, and because the University grievance process is not a substitute for instituting legal action, the University encourages individuals to report alleged Prohibited Conduct promptly to campus officials and to law enforcement authorities.

Individuals may file a complaint at any time, but the University strongly encourages individuals to file complaints promptly in order to preserve evidence for a potential legal or disciplinary proceeding. The University's investigation and resolution of a complaint (not including an appeal, if applicable) ordinarily will be completed within 80 business days of the receipt of the complaint. This timeframe may be extended for good cause by the Title IX Coordinator.

Any student may file a complaint against other students or faculty or staff of the University, in which case this Policy applies. In addition, a University faculty member or staff employee may file a complaint against other faculty members or staff employees or students of the University under the provisions of this Policy. Students, faculty, and staff employees of the University may also file complaints regarding third parties who are not enrolled at or employed by the University if the conduct giving rise to the complaint is related to the University's academic, educational, or extracurricular programs or activities. The University may not have jurisdiction to discipline third parties, but it can provide a student, faculty or staff employee with support services and, if appropriate, it will conduct an investigation of the incident to ensure that it does not represent a pattern of Prohibited Conduct occurring at the University or involving its students or employees.

1. EMPLOYEE REPORTING RESPONSIBILITIES

The University of Mount Olive is committed to protecting the privacy of all individuals involved in the resolution of a report of Prohibited Conduct. Throughout the reporting, investigation, and resolution of a complaint, including the implementation of supportive measures, the University will make reasonable efforts to protect the privacy interests of all involved individuals in accordance with federal and state law while also conducting a thorough review and response to eliminate, prevent, and address Prohibited Conduct.

Certain employees of the University are designated as either an Actual Knowledge Employee or a Confidential Employee. Actual Knowledge Employees have reporting obligations under this Policy, but will, to the fullest extent possible, maintain the privacy of an individual's information. Confidential Employees do not have a reporting obligation under Title IX and will keep information confidential

(except as required or permitted to by law).

a. Confidential Employees

A Confidential Employee is a licensed medical, clinical or mental health professional, or ordained clergy or staff member in the offices of a licensed medical, clinical or mental health professional, or ordained clergy. A Confidential Employee will not make a report to the University unless there is written consent to do so from the patient/client, there is the risk of imminent threat of harm to self or others, or there is reasonable suspicion of abuse of a minor (someone under the age of 18). The University's Confidential Employees are:

Counseling	Ms. Holly Daly , Student Health Services	919-658-7888
Health	Ms. Holly Daly, Student Health Services	919-658-7888
Victim Advocacy	Ms. Holly Daly, Student Health Services	919-658-7888

Consistent with the Clery Act, any data collected from Confidential Employees about the disclosures of Prohibited Conduct will be done in an aggregate manner and in a way that does not reveal personally identifying information of the parties to include in annual crime statistics, address any systemic concerns, and inform training and education programs.

b. Actual Knowledge Employees

An Actual Knowledge Employee is an employee who upon receipt of allegations of sexual harassment is required to make an immediate report to the Title IX Coordinator. This report must include the Actual Knowledge Employee's name and contact information, and all known details about an incident, including dates, times, locations, names of involved individuals and the nature of the incident. Actual Knowledge Employees differ from Confidential Employees and all other employees of the University due to their ability to institute corrective measures related to an incident of alleged Prohibited Conduct. Actual Knowledge Employees include the Title IX Coordinator, Ms. Cordelia Wilcox, the Vice President for Student Affairs,
Dr. Dan Sullivan and the Campus Safety Officer. The University's obligation to respond under this Policy is only triggered upon notice to an Actual Knowledge Employee.

Unless designated as a Confidential Employee or Actual Knowledge Employee, all other employees of the University are encouraged to make an immediate report to the Title IX Coordinator upon receiving information about an incident of Prohibited Conduct. The report should include the reporting employee's name and contact information so that the Title IX Coordinator can follow up. Student Employees, such as Teaching Assistants, and all other student employees, are encouraged to report to the Title IX Coordinator when disclosures are made to any of them in their capacities as employees. Employees other than Confidential Employees should keep information private but cannot maintain confidentiality. Employees are encouraged to share all known details about an incident with the Title IX Coordinator, including dates, times, locations, names of involved individuals and the nature of the incident. Officers and employees of the University who cannot guarantee confidentiality will maintain privacy to the greatest extent possible. The information provided to a non-confidential resource will be used only as necessary for the Title IX Coordinator to investigate and/or seek resolution.

2. PUBLIC AWARENESS EVENTS

No employees are required to report information shared during public awareness events. Public awareness events including public events or forums at which individuals disclose experiences of sexual

violence or other forms of Prohibited Conduct are not considered notice to the school for the purpose of triggering an individual investigation unless initiated by the Complainant. The University may use any information provided at such events to review policy, inform ongoing education and prevention efforts, and assess climate to learn more about the prevalence of Prohibited Conduct at the University. Further, if the University learns information at a public awareness event that raises safety concerns for the broader community, it may be required to take action to protect the community.

3. CLERY ACT REPORTING

Under the Clery Act, the University is required to issue timely warnings to the University community where certain reported crimes (including some forms of Prohibited Conduct) pose a serious or continuing threat to the University community. The Clery Act also requires the University to maintain, make available to the public, and provide to the United States Department of Education statistics about certain reported crimes in a daily crime log and annual security report. Timely warnings and the University's crime statistics do not include personally identifying information of Complainants.

4. HOW TO REPORT IMMEDIATE ASSISTANCE

Follow the reporting options below if you or someone you know has been a victim of Prohibited Conduct:

Campus Safety
634 Henderson Street
Mount Olive, NC 28365
24 hours a day, 7 days a week
919.658.7520
In person to a Campus Safety Officer

Local Law Enforcement

Dial 911

Call local office at 919.658.5031

In person at 114 East James Street, Mount Olive, NC.

Individuals are strongly encouraged to inform the local Police Department about instances of Prohibited Conduct. Individuals may file reports directly with local law enforcement agencies by dialing 911. Note: Individuals may inform law enforcement authorities about Prohibited Conduct and discuss the matter with a law enforcement officer without making a formal criminal complaint (or a University complaint). Individuals who make a formal criminal complaint may also choose to pursue a University complaint simultaneously.

Individuals may contact any of the following for assistance in filing a report with local law enforcement:

- **Residence Assistants or Head Resident 24 hours a day, 7 days a week**
- **Title IX Coordinator – Cordelia Wilcox, cwilcox@umo.edu or 919-658-7494**
- **Director, Campus Safety – Call local office at 919-658-5031**

5. FILING A REPORT WITH THE UNIVERSITY

The University encourages individuals who have experienced, have knowledge of, or have witnessed Prohibited Conduct to make a report to the University. The University will seek to honor the Complainant's request(s) for anonymity, that an investigation not be pursued and/or that no disciplinary action be taken if it is possible to do so while also protecting the safety and well-being of the Complainant and the University community.

Making a Report to the University does not require participation in any subsequent proceedings by the University, nor is a Formal Complaint required in order for an individual to receive supportive measures.

Although there is no time limit for reporting Prohibited Conduct to the University, the University's ability to respond may diminish over time, as evidence may erode, memories may fade, and Respondents may no longer be affiliated with the University. If the Respondent is no longer a member of the University community, the University will not take disciplinary action, but will provide appropriate supportive measures, assist the Complainant in identifying external reporting options, and take other reasonable steps to respond under Title IX.

Individuals are encouraged to make a direct report of Prohibited Conduct by contacting one of the following individuals or offices:

- **Title IX Coordinator – Cordelia Wilcox, cwilcox@umo.edu or 919-658-7494**
- **Director, Campus Safety – Call local office at 919-658-5031**

Individuals may also file anonymous reports by calling Campus Safety or contact the Title IX Coordinator. Individuals who choose to file anonymous reports are advised that it may be very difficult for the University to follow up or take action on anonymous reports, where corroborating information is limited. Anonymous reports may be used for Clery Act data collection purposes. The Clery Act requires all universities that participate in federal financial aid programs to keep and disclose information about crime on and near their respective campuses.

Any person (i.e., the alleged victim, a bystander, a witness, a friend, or any other person) may report Prohibited Conduct to the Title IX Coordinator, thereby triggering the University's obligation to respond. Upon receipt of such a report, the Title IX Coordinator will reach out to the Complainant, if known, to discuss the availability of supportive measures, regardless of whether a Formal Complaint is filed, consider the complainant's wishes with respect to supportive measures, and explain to the complainant the process for filing a formal complaint. A Formal Complaint, which will trigger the grievance process set forth below, can only be filed by the individual who is the alleged victim of the misconduct or by the Title IX Coordinator.

6. CONFIDENTIALITY & ANONYMITY

A Formal Complaint must contain the complainant's physical or digital signature or otherwise indicate that the complainant is the person filing the Formal Complaint; a Formal Complaint

cannot be filed anonymously. A Complainant's identity may remain confidential from the Respondent for supportive measures (to the extent possible while implementing the supportive measure), but to implement a grievance process to resolve allegations that a Respondent has engaged in Prohibited Conduct against a Complainant, the Complainant's identity must be disclosed to the Respondent, if known.

Where the Complainant requests that personally-identifying information not be shared with the Respondent, that no investigation be pursued, and/or that no further action be taken, the Title IX Coordinator will seek to honor the preferences of the Complainant wherever possible taking into consideration the safety factors listed above and its legal obligations. The Title IX Coordinator will determine whether the Title IX Coordinator will sign a Formal Complaint even if the Complainant declines

to do so. In such a case, neither the Title IX Coordinator, nor the University will become the Complainant or the party to the disciplinary matter. Where the Title IX Coordinator has determined that the University must proceed with a Formal Complaint despite a Complainant's request to the contrary, the Title IX Coordinator will make reasonable efforts to protect the privacy of the Complainant. However, the University's investigation will involve speaking with the Respondent and others who may have relevant information, in which case the Complainant's identity may have to be disclosed. In such cases, the Title IX Coordinator will notify the Complainant that the University intends to proceed with a Formal Complaint, but that the Complainant is not required to participate in the investigation or in any other actions undertaken by the University.

7. EMERGENCY REMOVAL

The University retains the authority to remove a Respondent from the University's program or activity on an emergency basis. If at any point following the receipt of a report of Prohibited Conduct, the University determines that the Respondent poses an immediate threat to the physical health or safety of the Complainant or any other person(s), including the Respondent, the University may temporarily remove the Respondent from any or all of its programs or activities. The imposition of an Emergency Removal does not suggest a finding of responsibility for any Prohibited Conduct.

Before imposing an Emergency Removal, the VP for Student Affairs (or their designee) will undertake an individualized safety and risk analysis concerning the Respondent at the request of the Title IX Coordinator. An Emergency Removal will be imposed only if the Dean of Students (or their designee) concludes that the threat to physical health or safety arises from the allegations of Prohibited Conduct and warrants the removal.

An Emergency Removal may involve the denial of access to some or all of the University's campus facilities, academic program, or other programs or activities. While the University may provide alternative academic or employment opportunities during an Emergency Removal, it is not required to do so. Non-punitive actions taken as Supportive Measures (e.g., changes in housing) do not constitute Emergency Removals.

The Title IX Coordinator will notify the Respondent of the terms imposed in connection with an Emergency Removal. The Respondent has the opportunity to challenge the Emergency Removal upon receipt of that notice. In order to challenge the Emergency Removal, the Respondent shall submit a written statement via email to the Title IX Coordinator, within three (3) business days from the date of the notice of Emergency Removal, explaining why Emergency Removal is not appropriate. The Title IX Coordinator will designate an individual to review the challenge to the Emergency Removal, who may seek additional information from the Respondent or any other involved party to reach their decision. The Emergency Removal will remain in place while the review of the challenge is pending. A decision will be issued as soon as possible under the circumstances. The decision is final and not subject to further appeal.

8. INDIVIDUALS WITH DISABILITIES

The University will make arrangements to ensure that individuals with disabilities are provided appropriate accommodation, to the extent necessary and available, to participate in the steps and procedures outlined in this policy. Requests for accommodation must be made to the Title IX Coordinator.

9. PROTECTING STUDENTS REPORTING PROHIBITED CONDUCT

The Title IX Coordinator or designee will consult with the reporting party or the Complainant regarding protective measures such as changes to campus housing or academic schedules, removing the student's

information from the University directory or issuing a "no contact order."

Retaliation against any person for filing, supporting, or providing information in connection with a complaint of sexual misconduct is strictly prohibited. Violations will be addressed through this Policy. Any person who feels they have been subjected to retaliation should make a report to the Title IX Coordinator.

The University considers the reporting and adjudication of Prohibited Conduct cases on campus to be of paramount importance. The University does not condone underage drinking; however, the University may extend limited immunity from possible sanctioning for illegal alcohol use to the Complainant, Respondent, witnesses, and those reporting incidents or assisting the Complainant or Respondent, provided that they are acting in good faith in such capacity.

10. ADMINISTRATIVE LEAVE

The University may a place a non-student employee Respondent on administrative leave during the pendency of its grievance process after receipt of a formal complaint, subject to any rights that may be available under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act.

G. UNIVERSITY'S INITIAL RESPONSE TO ALL REPORTS OF PROHIBITED CONDUCT:

RECEIVING A REPORT:

Upon receipt of a report of Prohibited Conduct, the Title IX Coordinator or their designee will promptly contact the Complainant to discuss the availability of supportive measures, 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 Title IX Coordinator will make an initial assessment of the reported information and respond to any immediate safety or well-being concerns raised by the report. In this intake assessment, the Title IX Coordinator will conduct a preliminary assessment and:

1. Inform the Complainant of the right to seek medical treatment, and explain the importance of obtaining and preserving forensic and other evidence;
2. Inform the Complainant of the right to contact law enforcement, decline to contact law enforcement, and/or seek a protective order;
3. Inform the Complainant about campus and community resources, including no- contact orders;
4. Inform the Complainant of the right to file a Formal Complaint and the right to seek Informal Resolution after filing a Formal Complaint; ascertain the Complainant's expressed preference for manner of resolution (Informal Resolution, Formal Resolution, or neither); and discuss with the Complainant any concerns or barriers to participating in any investigation and resolution by the University;
5. Explain the University's prohibition against Retaliation and that the University will take prompt action in response to any act of Retaliation;
6. Assess the nature and circumstances of the report, including whether it provides the names and/or any other information that personally identifies the Complainant, the Respondent, any witness, and/or any other third party with knowledge of the reported incident;
7. Ascertain the ages of the Complainant and the Respondent, if known, and, if either
    a. of the parties is a minor (under 18), as required by law, contact the appropriate child protective service agency;
8. Coordinate with appropriate officials of the University to determine whether the report triggers any Clery Act reporting requirements, including entry of the report in the daily crime log and/or issuance of a timely warning, and take steps to meet those obligations;

9. Ensure that the Complainant receives a written explanation of all available resources and options and is offered the opportunity to meet to discuss those resources and options; and
10. Assess, based on the totality of the known circumstances, any threat to the safety or well-being of the Complainant or the University community. This determination will be guided by the following safety factors:
    a. Whether the Respondent has prior history, is the subject of prior reports and/or complaints related to any form of Prohibited Conduct, or has any history of violent behavior;
    b. Whether the Respondent has a history of failing to comply with any no- contact orders issued by the University, other supportive measures by the University, and/or any judicial protective order;
    c. Whether the report is an escalation in Prohibited Conduct by the Respondent;
    d. Whether the Respondent has threatened to commit violence or any form of Prohibited Conduct;
    e. Whether the Prohibited Conduct involved multiple Respondents;
    f. Whether the Prohibited Conduct involved physical violence or use of a weapon;
    g. Whether the report or other available information reveals a pattern of Prohibited Conduct;
    h. Whether the Prohibited Conduct was facilitated through the use of drugs or intoxicants;
    i. Whether the Prohibited Conduct occurred while the Complainant was unconscious, physically helpless or unaware that the Prohibited Conduct was occurring;
    j. Whether the Complainant is (or was at the time of the Prohibited Conduct) a minor (under 18); and/or
    k. Whether any other aggravating circumstances or signs of predatory behavior are present.

In all cases, the initial report, Intake Assessment, and the determinations of the Title IX Coordinator will be documented and retained by the University in accordance with applicable law.

H. PROCEDURES FOR RESOLVING FORMAL COMPLAINTS:

Following an intake assessment and receipt of a Formal Complaint, the Title IX Coordinator will initiate the complaint resolution process. These Procedures offer two forms of resolution of Complaints of Prohibited Conduct: (1) Informal Resolution, which includes a variety of informal options for resolving Formal Complaints, set forth below at Section K, and (2) Formal Resolution, which involves a formal investigation and adjudicatory hearing. The University may consolidate complaints alleging Prohibited Conduct against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one party against the other party, where the allegations of Prohibited Conduct arise out of the same facts or circumstances.

DISMISSAL OF A FORMAL COMPLAINT:

The Title IX Coordinator will dismiss a Formal Complaint for the purposes of any form of Title IX Prohibited Conduct if any of the following circumstances are met:

1. Even if proved, the misconduct alleged in the Formal Complaint would not constitute Title IX Sexual Harassment as defined above;
2. The misconduct alleged in the Formal Complaint did not occur in the University's education program or activity; or
3. The misconduct alleged in the Formal Complaint is not alleged to have occurred in the United States.

Dismissal of Title IX Prohibited Conduct for the foregoing reasons does not preclude the University from proceeding with charges of other forms of misconduct, including Non-Title IX Prohibited Conduct.

Further, if any of the above circumstances are met, the Title IX Coordinator may still dismiss the Formal Complaint for purposes of any form of Title IX Prohibited Conduct and/or Non-Title IX Prohibited Conduct, in the Title IX Coordinator's sole discretion:

1. A Complainant notifies the Title IX Coordinator in writing that they would like to withdraw the Formal Complaint or any allegations raised in the Formal Complaint;
2. The Respondent is no longer enrolled or employed by the University; or
3. If specific circumstances prevent the University from gathering sufficient evidence to reach a determination regarding the Formal Complaint or allegations within the Formal Complaint.

If a Formal Complaint is dismissed, the involved parties will receive simultaneous written electronic notice of the dismissal, including the reason for the dismissal. Any party may appeal the decision by submitting a request for appeal to the Title IX Coordinator by email within seven
(7) business days of the date of the notice from the Title IX Coordinator. The appeal will be determined using the procedures set forth in this Policy.

FORMAL GRIEVANCE PROCEDURE

Written Notice of Allegations/Formal Complaint
Upon receipt of a Formal Complaint, the Title IX Coordinator will provide the following written notice to the parties who are known:

1. Notice of the University's grievance process, including any informal resolution process.

2. Notice of the allegations of Prohibited Conduct, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting Prohibited Conduct, and the date and location of the alleged incident(s), if known.

3. 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.

4. Notice that the parties may have an Advisor of their choice, who may be, but is not required to be, an attorney, and may inspect and review evidence presented.

5. Notice of any provision in the University's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

Ongoing notice requirement. If, during an investigation, the University decides to investigate allegations about the Complainant or Respondent that are not included in the original notice provided, the University will provide notice of the additional allegations to the parties whose identities are known.

Investigation of a Formal Complaint. The Complainant and the Respondent each will be contacted by an Investigator. When investigating a formal complaint and throughout the grievance process, the University will:

1. Ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on the University and not on the parties.
2. Not access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the University obtains that party's voluntary, written consent to do so for a grievance process.
3. Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.
4. Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.
5. Provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the Advisor of their

choice, who may be, but is not required to be, an attorney, and not limit the choice or presence of Advisor for either the Complainant or Respondent in any meeting or grievance proceeding; however, the University may establish restrictions regarding the extent to which the Advisor may participate in the proceedings, as long as the restrictions apply equally to both parties.

6. Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings with a party, with sufficient time for the party to prepare to participate.
7. Provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which the University does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation.
8. Prior to completion of the investigative report, the University will send to each party and the party's Advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties will have 10 Business Days to submit a written response, which the Investigator will consider prior to completion of the investigative report.
9. The University also will make all such evidence subject to the parties' inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.
10. In the absence of good cause, information discoverable through the exercise of due diligence that is not provided to the Investigator during the investigation or designated review and response period will generally not be considered in the determination of responsibility for a violation of the Policy and will not be considered by the Decision-maker(s) or on Appeal.
11. Unless there are significant additional investigative steps required as identified by the Investigator, after receipt and consideration of any additional comments, questions and/or information submitted by the parties during the designated review and response period, create an investigative report that fairly summarizes relevant evidence and, at least 10 business Days prior to a hearing (if a hearing is required under this section or otherwise provided) or other time of determination regarding responsibility, send to each party and the party's Advisor, if any, the investigative report in an electronic format or a hard copy, for their review.

Timeframe. As previously stated, the University's investigation and resolution of a complaint (not including an appeal, if applicable) will be completed within 80 days of the receipt of the complaint; this timeframe may be extended for good cause by the Title IX Coordinator. Any party may request an extension of any deadline by providing the Title IX Coordinator with a written request. The Title IX Coordinator may modify any deadlines contained in this policy as necessary and for good cause and shall notify both parties accordingly.

Prehearing Conference. The Title IX Coordinator or designee will convene a prehearing conference to plan for the hearing and to discuss the following topics: hearing agenda, procedures and protocols, expectation, confirmation of review of evidence by Complainant and Respondent and Advisors. Those present at each such prehearing conference may include Complainant, Respondent, Advisor(s), the Decision-Maker, and Investigator.

The Hearing – The University's grievance process provides for a live hearing.

The Decision-Maker**.** The University of Mount Olive uses the single adjudicator model. The Title IX Coordinator or designee will select the Decision-Maker, who cannot be the same person(s) as the Title IX Coordinator or the investigator(s). The Decision-Maker must be trained to hear cases of Prohibited Conduct, including the topics set out in this Policy. The Title IX Coordinator will share the Formal Complaint and the investigative report with the Decision-Maker.

Notice of the Designation of the Decision-Maker. Promptly after selecting the Decision-Maker, the Title IX Coordinator or designee will provide concurrent written notice to the Complainant and the Respondent, along with their Advisors, setting forth the name of the individual selected as the Decision-Maker. If only a portion of the alleged Prohibited Conduct justifies continuing to the hearing process, the Title IX Coordinator or designee will also

specify in the notice which part(s) of the alleged Prohibited Conduct will be the subject of the hearings.

The parties may challenge the participation of the Decision-Maker on the basis of an actual bias or conflict of interest by submitting a written objection to the Title IX Coordinator or designee within three (3) business days of delivery of the notice of the designation of the Decision-Maker. Such objection must state the specific reason(s) for the objection. The Title IX Coordinator or designee will evaluate the objection and determine whether to alter the designation of the Decision-Maker. Any changes in the designation of the Decision-Maker will be provided in writing to both parties prior to the date of the first hearing.

Hearing Policies and Procedures

1. *Submission of Written Materials by the Parties*. Within five (5) business days of delivery of the notice of designation of the Decision-Maker, the Complainant and the Respondent may provide the Title IX Coordinator or designee with a list of witnesses, if any, that they propose that the Decision-Maker call and a brief description of each proposed witness' connection to or knowledge of the issues in dispute.

2. *Notice of the Hearings*. Not less than five (5) days, but no more than 10 days after delivery of notice of the designation of the Decision-Maker to the parties, the Title IX Coordinator or designee will provide a separate notice to the Complainant, the Respondent, their respective Advisors, and any witnesses or other third parties whose testimony the Decision-Maker deems relevant, requesting such individuals to appear before the Decision-Maker. The notice should set forth, as applicable, the date, time, and location of the relevant individual's hearing. In its notices to the Complainant and the Respondent, the names of the witnesses or other third parties that the Decision-Maker plans to call will be provided.

3. *Advisors at the Hearing.* If a party does not have an Advisor present at the live hearing, the University will provide without fee or charge to that party, an Advisor of the University's choice, to conduct cross-examination on behalf of that party.

4. *Expected Decorum.* The following Expectations of Decorum are to be observed in the hearing, during cross-examination, and as applicable to any meetings associated with resolution of a Formal Complaint; they apply equally to all parties and Advisors. The Title IX Coordinator will have the authority to remove from the meeting, process, or hearing an involved party and/or Advisors who do not comply with the Expectations of Decorum.

    a. Questions must be conveyed in a neutral tone.
    b. Parties and Advisors will refer to other parties, witnesses, Advisors, and University staff using the name and gender used by the person and shall not intentionally mis- name or mis-gender that person in communication or questioning.
    c. No party may act abusively or disrespectfully during the hearing toward any other party or to witnesses, Advisors, or Decision-maker(s).
    d. While an Advisor may be an attorney, no duty of zealous advocacy should be inferred or enforced within this forum.
    e. The Advisor may not yell, badger, or physically "lean in" to a party's or witness's personal space. Advisors may not approach the other party or witnesses without obtaining permission from the Decision-Maker.
    f. The Advisor may not use profanity or make irrelevant ad hominem attacks upon a party or witness. Questions are meant to be interrogative statements used to test knowledge or understand a fact; they may not include accusations within the text of the question.
    g. The Advisor may not ask repetitive questions. This includes questions that have already been asked by the Decision-maker(s), the Advisor in cross-examination, or the party or Advisor in direct testimony. When the Decision-Maker determines aquestion has been "asked and answered" or is otherwise not relevant, the Advisor must move on.
    h. Parties and Advisors may take no action at the hearing that a reasonable person in the shoes of the affected party would see as intended to intimidate that person (whether party, witness, or official) into not participating in the process or meaningfully modifying their participation in the process.

5. *Testimony and Evidence*. The Decision-Maker must permit each party's Advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those 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, notwithstanding the discretion of the University to otherwise restrict the extent to which Advisors may participate in the proceedings.

   At the request of either party, the University will provide for the live hearing to occur with the parties located in separate rooms with technology enabling the decision- maker(s) and parties to simultaneously see and hear the party or the witness answering questions.

Only relevant cross examination and other questions may be asked of a party or witness. Before a Complainant, Respondent, or witness answers a cross-examination or other question, the Decision-Maker must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.

Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the
Complainant's prior sexual behavior with respect to the Respondent and are offered to prove Consent.

6. *Logistics.* 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, with technology enabling participants simultaneously to see and hear each other.

7. *Recording.* The University will create an audio or audiovisual recording of any live hearing and make it available to the parties for inspection and review.

At any time prior to the date of their designated hearing, the Respondent may elect to acknowledge the Respondent's actions and take responsibility for the alleged Prohibited Conduct. In such a situation, the Title IX Coordinator will consult with those individuals identified in the paragraph below, Determination Regarding Responsibility, to obtain proposed sanction(s). If the Complainant and the Respondent agree to such proposed sanction(s), then the complaint will be resolved without a hearing and without any further rights of appeal by any party. If either the Complainant or Respondent objects to such proposed sanction(s), then the hearing will proceed.

DETERMINATION REGARDING RESPONSIBILITY.

Following the conclusion of the hearing(s), the Decision-Maker will issue a written determination regarding responsibility. To reach this determination, the University will apply the preponderance of the evidence standard. Sanctions for a finding of responsibility depend upon the nature and gravity of the misconduct, any record of prior discipline for Prohibited Conduct, or both.

Sanctions imposed by the University include but are not limited to: Probation; Conduct Warning; Suspension; Expulsion; Termination; Organizational sanctions including probation and rescinding recognition; and/or any other educational and/or remedial measures to eliminate, prevent or address the Prohibited Conduct. In the most serious cases, Suspension, Expulsion or Termination is probable.

The written determination will include:

1. Identification of the allegations potentially constituting Prohibited Conduct;
2. A description of the procedural steps taken from the receipt of the formal complaint through the

determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
3. Findings of fact supporting the determination;
4. Conclusions regarding the application of the University's Policy to the facts;
5. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the University imposes on the respondent, and whether remedies designed to restore or preserve equal access to the University's education program or activity will be provided by the University to the complainant; and
6. The University's procedures and permissible bases for the Complainant and Respondent to appeal.

Prior to issuance of a written determination in which a Respondent has been found to violate this policy, the Title IX Coordinator will coordinate with the appropriate University administrator as to the sanction to be imposed. For students, the sanction will be determined by the VP for President of Student Affairs; for faculty, the sanction will be determined by the VP for Academic Affairs; and for staff, the sanction will be determined by the VP for Business and Finance or designee. Determination of the sanction will be made within five (5) business days and communicated to the Title IX Coordinator. The administrator responsible for determination of the sanction will be responsible for its implementation.

The Title IX Coordinator will communicate the determined sanction to the Decision-Maker, who will incorporate it into the written determination. Sanctions will not be effective until the resolution of any timely appeal. However, if it is advisable to protect the welfare of the Complainant, witnesses or members of the University community, the Decision-Maker (or other decision-making body, if applicable) may recommend, and the Title IX Coordinator may determine, that any sanctions be effective immediately and continue in effect until such time as the appeal process is exhausted.

Final Accommodations and Corrective Action. In addition to any sanctions imposed on the Respondent, promptly following the conclusion of the hearings and the Decision-Maker's issuance of a determination of responsibility, the Title IX Coordinator or designee will determine the final accommodations to be provided to the Complainant, if any, and the Title IX Coordinator or designee will communicate such decision to the Complainant and, to the extent that it affects them, to the Respondent.

Final Outcome Letter. Within ten (15) business days following the conclusion of the hearings, the Decision-Maker will issue a written decision letter simultaneously to the Respondent and the Complainant. The determination regarding responsibility becomes final either on the date that the University provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

APPEALS

Both Complainant and Respondent may appeal from a determination regarding responsibility, from the sanction imposed, and from the University's dismissal of a Formal Complaint or any allegations therein, on the following bases:

1. Procedural irregularity that affected the outcome of the matter;
2. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and/or
3. The Title IX Coordinator, Investigator(s), or decision-maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter.
4. The sanction is substantially disproportionate to the severity of the violation.

Appeals of the determination and sanction

Appeals of the determination must be made in writing to the Title IX Coordinator within seven business days (7) days of the date of the final outcome letter. Upon timely receipt, the Title IX Coordinator will do the following:

1. Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties;
2. Select a decision-maker(s) for the appeal (the "Appellate Official") and ensure that the Appellate Official is not the same person as the Decision-Maker(s) who reached the determination regarding responsibility or dismissal, the Investigator(s), or the Title IX Coordinator;
3. Ensure that the Appellate Official complies with the standards set forth in this Policy;
4. Give both parties a reasonable and equal opportunity to submit a written statement to the Appellate Official in support of, or challenging, the outcome;
5. Receive a written decision from the Appellate Official describing the result of the appeal and the rationale for the result; and
6. Provide the written decision of the Appellate Official simultaneously to both parties.

In reviewing an appeal, the Appellate Official will make a determination: (a) that the decision of the Decision-Maker should stand; (b) that the sanction should stand; (c) that the decision of the Decision-Maker should be overturned; (d) that the sanction of the Decision-Maker should be reduced and replaced with a the revised sanction, or set aside or (e) that additional hearings should occur or evidence should be obtained before making an appellate determination, which may or may not include an additional hearing or set of hearings before a different Decision-Maker. In the event of an additional hearing or set of hearings, the Decision-Maker's decision and sanctions will be final and not subject to further appeal.

I. INFORMAL RESOLUTION PROCESS:

Informal Resolution presents the opportunity for the Complainant and Respondent to resolve allegations of Prohibited Conduct without an investigation or hearing. Participation in Informal Resolution in lieu of the Formal Complaint Resolution Process is purely voluntary. As to Title IX Prohibited Conduct, Informal Resolution is available only when a Formal Complaint has been filed and the parties agree to its use in writing. For cases involving Non-Title IX Prohibited Conduct, the Title IX Coordinator may use any form of Informal Resolution and need not strictly follow the procedures set out in this section. Informal Resolution may be used only with the approval of the Title IX Coordinator, who may deem its use inappropriate based on the specific allegations involved or other factors. Informal resolution is not available to resolve a student-Complainant's allegation that a faculty member or a staff employee has engaged in Title IX Prohibited Conduct. Prior to initiating Informal Resolution, the Title IX Coordinator will provide the Parties with written notice disclosing the following:

1. The specific allegations and the specific conduct that is alleged to have occurred;
2. The requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a Formal Complaint arising from the same allegations, if any; provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint,
3. Any consequences resulting from participating in the informal resolution process, including:
    a. that any statements or disclosures made by the parties during the course of the informal resolution will not be considered in a subsequent investigation and Formal Resolution;
    b. that any facilitator chosen by the Title IX Coordinator to oversee informal resolution may not serve as a witness in the event the Formal Resolution process commences; and
    c. identification of any records that will be maintained or could be shared.
4. Any consequences that may result from not participating in the alternative resolution process, including the possibility of the University conducting an appropriate adjudication process;
5. A statement indicating that the decision to accept a complaint does not presume that the conduct at issue has occurred, and that the Respondent is presumed not responsible, unless and until, at the conclusion of

the formal investigation and adjudication processes, there is a determination of responsibility;

6. An explanation that each party may be accompanied by an Advisor;
7. An opportunity for the parties to meet with the Title IX Coordinator separately to learn more about the alternative resolution process and the adjudication process;
8. Information regarding Supportive Measures, which are available equally to the Respondent and to the Complainant;
9. An explanation that the Alternative Resolution process is generally expected to be completed within thirty (30) days, and may be extended for good cause by the Title IX Coordinator and that all parties will be notified, in writing, of any extension and the reason for the extension.
10. The Title IX Coordinator must obtain the parties' voluntary, written consent to the informal resolution process; and
11. The Title IX Coordinator cannot offer or facilitate an informal resolution process to resolve allegations that a faculty member or a staff employee sexually harassed a student.

Informal Resolution can be commenced at any point prior to the conclusion of a Hearing under the Formal Resolution Processes. It may be conducted by an Informal Resolution Facilitator appointed by the Title IX Coordinator. The Complaint, Respondent, Title IX Coordinator or Facilitator may terminate Informal Resolution at any time prior to its completion. If Informal Resolution is terminated, the Formal Resolution Process will promptly commence or resume, as appropriate.

Informal Resolution may take many forms as agreed to between the Complainant, Respondent and Title IX Coordinator, including, but not limited to:

1. If a mutually agreeable resolution cannot be reached, the facilitator shall send each party written notification of that fact and the Title IX Coordinator shall then resume the resolution process with respect to the Formal Complaint. The Title IX Coordinator shall maintain a copy of the written notification in the Title IX Coordinator's confidential file.

2. The outcome of the Informal Resolution will be documented in an agreement or other form that is signed by both the Complainant and the Respondent. Informal Resolution will not be used to impose disciplinary action against the Respondent and will not be reported to third parties; however, it may be taken into consideration in the event of future findings of responsibility for Prohibited Conduct or other violations of the University's policies.

The Informal Resolution process typically should be completed within thirty (30) business days of the parties documenting their agreement to participate. That period may be extended at the discretion of the Title IX Coordinator. The Title IX Coordinator will maintain records of all reports referred for informal resolution.

J. ACADEMIC TRANSCRIPT NOTATIONS:

The Title IX Coordinator will notify the Registrar to include a notation on the academic transcript of each student who has been (1) suspended for, (2) has been expelled (permanently dismissed) for, or (3) withdraws from the University during an investigation for Prohibited Conduct.

K. RETALIATION:

Neither the University or any of its personnel shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation,

proceeding, or hearing in accordance with this process. 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, constitute retaliation.

The exercise of rights protected under the First Amendment do not constitute retaliation, however, for purposes of this Policy. Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding does not constitute retaliation; provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

The University must keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder. Complaints alleging retaliation may be filed according to appropriate University grievance procedures.

L. TRAINING, EDUCATION AND PREVENTION PROGRAMS:

TRAINING FOR TITLE IX STAFF, INVESTIGATORS, ADJUDICATORS, AND OTHER FACILITATORS

Any materials used to train Title IX Coordinators, Investigators, Adjudicators, and any person who facilitates an Informal Resolution process, will not rely on sex stereotypes and will promote impartial investigations and adjudications of Formal Complaints of Prohibited Conduct. All staff in the Office of Title IX Compliance, Investigators, Adjudicators, and any person who facilitates an informal resolution process will receive training on: the definition of sexual harassment and Prohibited Conduct; the scope of the University's education program or activity; how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes (as applicable); and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias. Investigators will receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence. Adjudicators will also receive training on any technology used at a live hearing and on issues of relevance of questions and evidence, including when questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant. All Investigators will receive annual training on issues related to Prohibited Conduct and on how to conduct an investigation that is trauma-informed as to ***all*** parties, fair and impartial, provides parties with notice and a meaningful opportunity to be heard, and protects the safety of Complainants and members of the University's community while promoting accountability.

CONTACTS

Title IX Coordinator
Cordelia Wilcox
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Mount Olive, NC 28365
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Email: cwilcox@umo.edu

U. S. Department of Education, Office for Civil Rights District of Columbia Office

400 Maryland Avenue, S.W
Washington, DC 20202-1475
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Facsimile: (202) 453-6021
Email: OCR.DC@ed.gov

APPROVED BY

President – 3/4/2024

APPENDICES (INCLUDING ANY FORMS/INSTRUCTIONS)

Appendix A. Title IX Training

HISTORY/REVISION DATES

Original adoption date(s): 03/04/2024

Last Amended date: N/A

End Date for Policy (if applicable): N/A

RELATED COMPLIANCE STANDARDS/EXTERNAL POLICY DOCUMENTS:

SACSCOC Standard 13.8 *(Institutional Environment)*

APPENDIX A. TITLE IX TRAINING

TITLE IX AND THE UNIVERSITY OF MT. OLIVE: THE WAY FORWARD

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close loops, fill gaps

PART 106 (TITLE 34, CODE OF FEDERAL REGULATIONS)

Nondiscrimination on the basis of sex in education

- Cite as 34 C.F.R. 106

Sexual harassment, including sexual assault, is unlawful sex discrimination, effective 08.14.20.

34 C.F.R. §106.45 requires Title IX Coordinators, Investigators, Decision-makers, and informal resolution Facilitators receive training specified in the regulation

Why we're here:
Because 34 C.F.R. §106.45 requires everyone in the Title IX process be trained in these regulations and procedures!

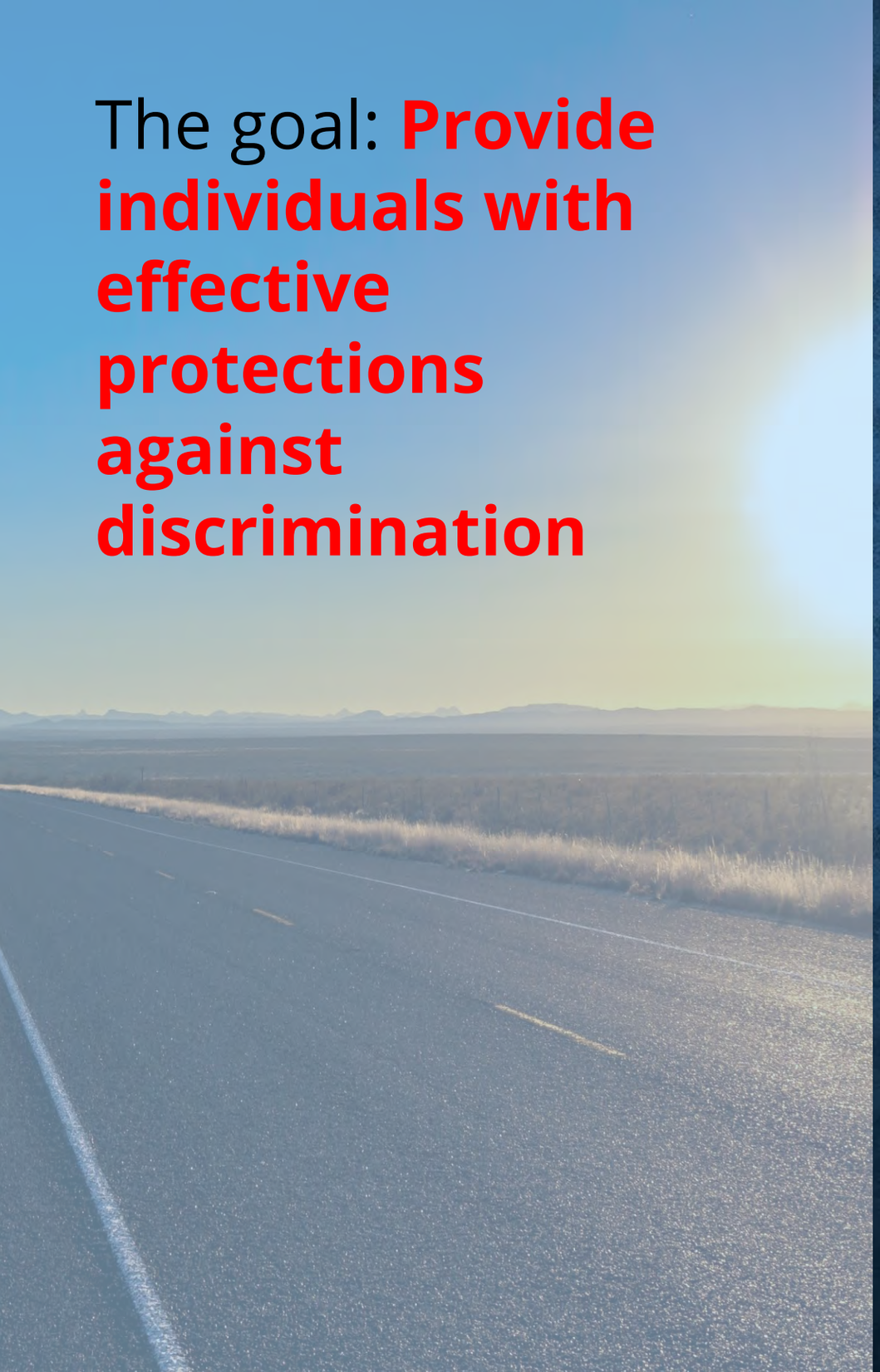
UNDERSTAND

All of the following requirements are grafted onto your existing substantive and procedural rules and regulations.

Every school may have a different process, but every process must comply with the following requirements.

Title IX regulations recognize that sexual harassment, including sexual assault, is unlawful sex discrimination.

Title IX is not a prohibition of sexual misconduct or sexual crimes *per se.*



The goal: **Provide individuals with effective protections against discrimination**

TITLE IX IS DIRECTED AT SCHOOLS, NOT STUDENTS, FACULTY OR EMPLOYEES.

Title IX does not punish people who commit sexual harassment...

it penalizes schools that respond to sexual harassment in a way that amounts to subjecting students to sex discrimination.

34 C.F.R. §106.8

You must notify applicants for admission and employment, of the name/title, office address, electronic mail address, and telephone number of the **Title IX Coordinator**

34 C.F.R. §106.8

You must notify APPLICANTS that your school does not discriminate on the basis of sex and that you are required by Title IX not to discriminate in such a manner.

34 C.F.R. §106.8

Any person may report sex discrimination/harassment (whether or not the person reporting is the victim), in person, by mail, by telephone, or by e-mail, using the Title IX Coordinator's contact info - or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report.

34 C.F.R. §106.8

You must adopt/publish grievance procedures that provide for the prompt and equitable resolution of student and employee complaints alleging sex discrimination/harassment

FORMAL COMPLAINT

Means a document filed by a Complainant or signed by the Title IX Coordinator alleging sexual harassment against a Respondent and requesting that you investigate the allegation of sexual harassment

SEXUAL HARASSMENT

Means conduct on the basis of sex that satisfies one or more of the following:

(1) An employee who conditions the provision of an aid, benefit, or service on an individual's participation in unwelcome sexual conduct;

(2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to your education program or activity; or

(3) “Sexual assault” as defined in 20 U.S.C. 1092(f)(6)(A)(v), “dating violence” as defined in 34 U.S.C. 12291(a)(10), “domestic violence” as defined in 34 U.S.C. 12291(a)(8), or “stalking” as defined in 34 U.S.C. 12291(a)(30).

VAWA – Clery Act

Your Response to
Sexual Harassment

34 CFR §106.44

When you have actual knowledge of sexual-harassment, **you must respond promptly** in a manner that is not deliberately indifferent

You must treat Complainants and Respondents equitably by offering supportive measures to both

Must follow grievance process of compliance with section 106.45 before the imposition of any disciplinary sanctions

ACTUAL KNOWLEDGE

Means notice of sexual harassment or allegations of sexual harassment to your Title IX Coordinator or any official of your school who has authority to institute corrective measures on behalf of your school

YOUR RESPONSE TO SEXUAL HARASSMENT

34 C.F.R. §106.44

Title IX Coordinator must promptly contact the Complainant to discuss the availability of supportive measures, 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 the process for filing a formal complaint to the Complainant

Emergency Removals

34 C.F.R. §106.44

Talk to your GC – ASAP

You can remove a Respondent from school on an emergency basis…If you undertake an individualized safety and risk analysis, determine that an immediate threat to the physical health or safety of any person arising from the allegations of sexual harassment justifies removal, and provide Respondent with notice and an opportunity to challenge the decision immediately following the removal.

RESPONDING TO FORMAL COMPLAINTS OF SEXUAL HARASSMENT

34 C.F.R. §106.45

Be aware: Your treatment of a Complainant or a Respondent in response to a formal complaint of sexual harassment may constitute discrimination on the basis of sex under Title IX.

GRIEVANCE PROCESS

Must be concluded in a “Reasonably Prompt Time Frame”

Good cause for delays may include **considerations** such as the absence of a party, a party’s advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities

34 C.F.R. §106.45

Requires an objective evaluation of all relevant evidence – including both **inculpatory** and **exculpatory** evidence – and provide that credibility determinations may not be based on a person's status as a Complainant, Respondent, or witness

34 C.F.R. §106.45

Requires that the Title IX Coordinator, investigator, Decision-Maker, or any person designated to facilitate an informal resolution process, not have a conflict of interest or bias for or against Complainants or Respondents or current parties

34 C.F.R. §106.45

Requires that ALL persons involved in the Title IX process affirmatively avoid prejudgment of the facts at issue, conflicts of interest, and bias

34 C.F.R. §106.45

Investigators must be trained to seek and develop both inculpatory and exculpatory evidence

34 C.F.R. §106.45

Decision-makers MUST be impartial; must be trained on issues of relevance; on admissibility of evidence, including when questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are irrelevant

34 C.F.R. §106.45

You must publish procedures and permissible bases for Complainant and Respondent to appeal

34 C.F.R. §106.45

You must publish the range of possible disciplinary sanctions and remedies or list the possible disciplinary sanctions and remedies that you may implement following any determination of responsibility

Once you receive or the Title IX Coordinator issues a **formal complaint**:

YOU MUST PROVIDE THE WRITTEN NOTICE TO THE PARTIES WHICH CONTAINS:

Description of your grievance process including any informal resolution process

The allegations of behavior that potentially constitute sexual harassment.

Sufficient details known at the time

Sufficient time to prepare a response before any initial interview

A statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made only at the conclusion of the grievance process

WRITTEN NOTICE ALSO CONTAINS

34 C.F.R. §106.45

The parties may have an advisor of their choice

Right to inspect and review evidence

Any provision in the school code of conduct that prohibits lying during the grievance process

THE INVESTIGATOR MUST

34 C.F.R. §106.45

Give parties equal opportunity to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence

INVESTIGATOR MUST

34 C.F.R. §106.45

Provide **both parties an equal opportunity to inspect and review** any evidence obtained as part of the investigation directly related to a formal complaint, including inculpatory or exculpatory evidence from any source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation. (This includes evidence that you don't intend to offer at the hearing.)

Parties must be given least **10 days to submit a written response** to the evidence, which the investigator will consider prior to completion of the investigative report.

INVESTIGATOR MUST ENSURE THESE STEPS ARE TAKEN:

Report must fairly summarize relevant evidence

At least 10 days before the hearing, must send each party (and the party's advisor) a copy of the investigative report for review and written response

THROUGHOUT THE PROCESS

The parties have equal opportunities to have others present (the advisor of their choice) during any grievance proceeding, or you may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties

NOTICE FOR ALL HEARINGS

You must provide written notice of the date, time, location, participants, and purpose of all hearings, or other meetings, to all parties, with sufficient time for each party to prepare to participate

IMPARTIALITY IS KEY

The report must also summarize the relevant exculpatory evidence, thus underscoring the need for impartiality.

THE HEARING

AT THE HEARING

34 C.F.R. §106.45

You must provide for a live hearing.

The Decision-Maker must permit each party's advisor to **ask the other party and any witnesses all relevant questions** and follow-up questions, including those challenging credibility.

AT THE HEARING

34 C.F.R. §106.45

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. Questions must elicit relevant information.

If **either party asks**, you must provide for the live hearing to occur with the parties located in separate rooms with technology enabling the Decision-Maker(s) and parties to simultaneously see and hear the party or the witness answering questions.

You must create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection and review

MUST RECORD

34 C.F.R. §106.45

You must keep records of investigation and hearing for 7 years.

A WORD ABOUT REPRESENTATION

You must provide a FREE advisor of your choice, to conduct cross-examination on behalf of that party (Hint: **call** the law school if you have one!)

DECISION-MAKER

34 C.F.R. §106.45

The Decision-Maker cannot be the same person as the Title IX Coordinator or the Investigator

SUCCESS STARTS WITH THE DECISION MAKER

Rules on the admissibility of evidence

Understands the meaning of legal **relevance**

Considers **inculpatory** as well as **exculpatory** evidence

Applies the **rape shield law** and the exception thereto

SUCCESS STARTS WITH THE DECISION MAKER

Applies a **presumption of innocence**

Oversees cross-examination

Controls the hearing - particularly in the presence of experienced, **aggressive Respondent's counsel**

Applies either the "preponderance" or the "clear and convincing" standards of proof. Note: must use same standard for students as for faculty and staff respondents.

DECISION MAKER

AFTER THE HEARING ISSUES A WRITTEN DECISION REGARDING RESPONSIBILITY

34 C.F.R. §106.45

Appeals 34 C.F.R. §106.45

YOU MUST OFFER BOTH PARTIES AN APPEAL FROM A DETERMINATION REGARDING RESPONSIBILITY AND FROM YOUR DISMISSAL OF A FORMAL COMPLAINT OR ANY ALLEGATIONS THEREIN, ON THE FOLLOWING BASES:

Procedural irregularity that affected the outcome of the matter

The Title IX Coordinator, investigator(s), or decision-maker(s) conflict of interest or bias for or against any party

New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter;

You may offer an appeal equally to both parties on additional bases.

QUESTIONS?

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