

## INFORMATION ONLY

PROCEDURE TITLE:	REPORTING & INVESTIGATING DISCRIMINATION, SEXUAL HARASSMENT AND RETALIATION
PROCEDURE NO.:	5.01:2REV
RELATED POLICY:	5.01REV
PAGE NO.:	1 OF 30
RESPONSIBLE ADMINISTRATOR(S):	TITLE IX COORDINATOR, DEAN OF STUDENTS, HR DIRECTOR
EFFECTIVE DATE:	8/27/2020
NEXT REVIEW DATE:	8/2023
APPROVED BY:	PRESIDENT

### 1.0 INTRODUCTION AND PURPOSE STATEMENT

- 1.1 These procedures apply only to qualifying allegations of sexual harassment (including sexual assault, dating violence, domestic violence and stalking, as defined below) involving students, staff, administrators or faculty members.
- 1.2 These procedures shall ensure that all complaints based on sex received by the University are reviewed and responded to promptly and in a fair and equitable manner. Additionally, when the University has actual knowledge of an allegation of sexual harassment, it will not respond in a way that is deliberately indifferent.
- 1.3 This procedure further serves to provide additional focus on sexual harassment and to ensure compliance with laws that serve to prevent sexual violence, including the Jeanne Clery Act and the Violence Against Women Reauthorization Act.

### 2.0 JURISDICTION AND APPLICATION

- 2.1 This procedure applies to conduct that:
  - 2.1.1 Meets the definition of sexual harassment of a person in the United States who is participating in or attempting to participate in the University educational (including employment) program at the time of filing the complaint; and
  - 2.1.2 Allegedly takes place on the campus or on property owned or controlled by the University; or
  - 2.1.3 Allegedly takes place at an academic or non-academic University-sponsored event; or
  - 2.1.4 Involves allegations that the effects of off-campus misconduct effectively deprived someone of access to Shawnee State University's educational program; and/or

- 2.1.5 Occurs off campus and the University exercised substantial control over the Respondent and the context of the alleged sexual harassment; and/or
- 2.1.6 Allegedly, occurred at an off-campus building owned or controlled by a student organization officially recognized by the University.
- 2.2 Regardless of where conduct occurs, the University will assess reports and complaints to determine whether the alleged conduct occurred in the context of its employment or educational program or activity and/or has continuing effects on campus or in an off-campus sponsored program or activity.
- 2.3 This procedure applies to all aspects of the University's programs and operations and applies to all employees, students, visitors, agents, and volunteers.

### 3.0 RIGHTS OF THE COMPLAINANT AND THE RESPONDENT

- 3.1 Whether the parties engage in the Informal or Formal Resolution processes discussed below, the University will provide:
  - 3.1.1 a prompt and equitable response to allegations of discrimination and harassment;
  - 3.1.2 information and assistance with supportive measures that may be reasonably available and necessary for protection and support;
  - 3.1.3 information about how to access confidential resources on and off campus and other forms of support available through the University and in the community;
  - 3.1.4 written notice of the alleged conduct, potential policy violations at issue, and details about the process;
  - 3.1.5 an adequate, reliable, thorough and impartial process conducted by individuals free from conflict of interest and bias;
  - 3.1.6 a process that includes the presumption that the respondent is not responsible for a policy violation unless and until a determination regarding responsibility is made at the conclusion of the process;
  - 3.1.7 the opportunity for an advisor of choice who may attend all meetings and proceedings related to the report and/or complaint;
  - 3.1.8 timely notice of any meeting at which the party's presence is required, with sufficient time to prepare for the meeting;

- 3.1.9 autonomy to decline to participate in an investigation or resolution under the policy, although the University may choose to continue the process even if the Complainant and/or Respondent does not participate;
- 3.1.10 the right to identify witnesses, submit suggested questions in writing during the investigation, and provide evidence during the investigation and resolution;
- 3.1.11 timely and equal access to any information that is used in the investigation and resolution;
- 3.1.12 prompt remedial action if prohibited conduct is determined to have occurred;
- 3.1.13 regular communication about the progress of the process and of the resolution;
- 3.1.14 timely written notice of the outcome, remedies, sanctions and rationale supporting these decisions;
- 3.1.15 the opportunity to appeal the determination as to responsibility and sanction;
- 3.1.16 information about the right to be free from retaliation;
- 3.1.17 interpreters and/or translators upon request as needed;
- 3.1.18 the right to request reasonable accommodations; and
- 3.1.19 no orders restricting parties from discussing the case with others.

#### 4.0 REPORTING CONSIDERATIONS

##### 4.1 Reporting Options

Complaints or notices of alleged policy violations, or inquiries about or concerns regarding Policy 5.01 and this procedure, may be made internally to:

Title IX Coordinator and EEO Officer  
Shawnee State University Human Resources  
Administration Building, Room 017  
940 2<sup>nd</sup> Street  
Portsmouth, OH 45662  
(740) 351-3010  
Email: [titleix@shawnee.edu](mailto:titleix@shawnee.edu)  
Web: <https://www.shawnee.edu/campus-life/title-ix>

Reports of sexual harassment, discrimination based on sex, or retaliation can be made to any Deputy Title IX Coordinator. To see a complete list of Title IX team members and their responsibilities follow this link: <https://www.shawnee.edu/campus-life/title-ix/report-incident>

- 4.2 The University has determined that the following administrators are officials with authority to address and correct harassment, discrimination, and/or retaliation. Officials with Authority listed below may also accept notice or complaints on behalf of the University.
  - 4.2.1 University President and Vice Presidents
  - 4.2.2 Associate Provost
  - 4.2.3 Dean of Students
  - 4.2.4 Director of Human Resources
  - 4.2.5 Deputy Title IX Coordinators
- 4.3 To ensure a prompt, effective response, individuals are strongly encouraged to make reports or file complaints with the individuals in section 4.1 or 4.2. However, the University has also classified all employees as mandated reporters of any knowledge they have that a member of the community is experiencing harassment, discrimination, and/or retaliation. Any employee who fails to promptly report information or a complaint of sexual harassment to an individual listed in section 4.1 or 4.2 will be subject to discipline.
- 4.4 Reports of sexual harassment, all forms of discrimination and retaliation can be made internally using Shawnee State University's electronic complaint form at the following website: <https://www.shawnee.edu/complaint>.
- 4.5 Anonymous reports can be submitted through the same complaint form listed above. Anonymous reports will not lead to a formal investigation unless there is a compelling threat to the health and safety of the University or an individual. However, the University may take other appropriate steps designed to eliminate the reported conduct, prevent its recurrence, and remedy its effects. Additionally, without the reporting party's information, follow up communication is not possible and without the complaint's information, the University will not be able to discuss or provide supportive measures.
- 4.6 If a Complainant would like the details of an incident to be kept confidential, the Complainant may speak with counselors in the University's Counseling and Psychological Services or employees in the SSU Health Clinic who have a professional license requiring confidentiality or are supervised by a person with such professional license. These individuals will maintain confidentiality when acting under the scope of their licensure, professional ethics, and/or professional credentials, except

in extreme cases of immediacy of a threat or danger or abuse of a minor/individual with a disability, or when required to disclose by law or court order.

4.7 Inquiries may be made externally to:

Office for Civil Rights (OCR)  
U.S. Department of Education  
600 Superior Avenue East, Suite 750  
Cleveland, OH 44114  
Tel: (216) 552-4970 Fax: (216) 522-2573  
Email: [OCR.Cleveland@ed.gov](mailto:OCR.Cleveland@ed.gov)

You may also file a complaint with OCR using OCR's electronic complaint form at the following website: <http://www.ed.gov/about/offices/list/ocr/complaintintro.html>.

4.8 Employees may also choose to file a complaint with the Equal Employment Opportunity Commission or Ohio Civil Rights Commission. Complaints can be made externally to:

Equal Employment Opportunity Commission  
550 Main Street, Suite 10-191  
Cincinnati, OH 45202  
Tel: 1-800-669-4000 Fax: 513-246-0218  
TTY: (800) 669-6820

Ohio Civil Rights Commission  
30 East Broad Street, Fifth Floor  
Columbus, OH 43215  
614-466-2785  
[civ.intake@civ.ohio.gov](mailto:civ.intake@civ.ohio.gov)

4.9 When criminal conduct is alleged, a complainant may contact campus or local law enforcement to file a police report.

SSU Department of Public Safety  
Art Annex Building  
940 2<sup>nd</sup> Street  
Portsmouth, OH 45662  
Tel: (740) 351-3232

Portsmouth Police Department  
728 2<sup>nd</sup> Street  
Portsmouth, OH 45662  
Tel: 911 (immediate threat) or (740) 353-4101

## 5.0 SUPPORTIVE MEASURES

- 5.1 The University will offer supportive measures as non-disciplinary, non-punitive individual services to the Complainant and/or the Respondent. The services offered will be appropriate, reasonably available and without fee or charge, and will be kept as confidential as possible.
- 5.2 Student interim supportive measures include, but are not limited to:
  - 5.2.1 Mutual no contact orders
  - 5.2.2 Change in housing assignments
  - 5.2.3 Information about the availability of off-campus resources
  - 5.2.4 Counseling
  - 5.2.5 Health services
  - 5.2.6 Safety resources, including safety escort service
  - 5.2.7 Academic support
  - 5.2.8 Change in University work or class schedule and/or location
- 5.3 Employee interim measures include, but are not limited to:
  - 5.3.1 Mutual no contact orders
  - 5.3.2 Information about the availability of off-campus resources
  - 5.3.3 Employee Assistance Program (EAP)
  - 5.3.4 Safety resources, including safety escort service
  - 5.3.5 Change in University work schedule and/or location
- 5.4 Actual Knowledge
  - 5.4.1 Actual knowledge means notice of sexual harassment or allegations of sexual harassment to the University's Title IX Coordinator or any officials with authority to institute corrective measures.
  - 5.4.2 Once the University receives actual knowledge of sexual harassment in an education program or activity of the University against a person in the United States, the University will respond in a manner that is not deliberately indifferent.

## 5.5 Timeliness of Report

- 5.5.1 There is no time limit on reporting violations of this policy internally, but prompt reporting is required for mandated reporters.
- 5.5.2 If the Complainant is no longer participating or attempting to participate in a University educational (including employment) program at the time of filing the complaint, the University may not be able to take disciplinary action. However, the University may provide assistance in identifying external reporting options.
- 5.5.3 If the Respondent is no longer subject to the University's jurisdiction, the University is not obligated to investigate, but may provide supportive measures and/or remedies if appropriate.
- 5.5.4 Acting on complaints affected by significant passage of time is at the discretion of the Title IX Coordinator, who may document allegations for future reference, offer supportive measures and/or remedies, and/ or institute informal or formal actions.

## 5.6 Formal Complaint

- 5.6.1 In order to ensure that a report of sexual harassment is officially resolved, a formal complaint must be filed with the Title IX Coordinator in person, by mail or by electronic mail by using the contact information for the Title IX Coordinator. The formal complaint must include the Complainant's physical or digital signature and must request that the University investigate and resolve the allegation.
- 5.6.2 A Formal Complaint is required to initiate either the investigation and hearing process or the University's informal resolution process.
- 5.6.3 Under certain conditions, the Title IX Coordinator may sign the formal complaint, but will not be considered the "Complainant" under the Title IX process.
- 5.6.4 Where a complainant desires to initiate a grievance process, the Complainant cannot remain anonymous or prevent the Complainant's identity from being disclosed to the Respondent.

## 6.0 PROHIBITED CONDUCT

- 6.1 Federal regulations provide for certain procedures that must be used in the case of conduct that meets the definition of sexual harassment under Title IX. Where conduct does not meet certain threshold requirements under Title IX, but may be prohibited by the University, the complaint will be dismissed under Title IX and referred to Process

B, which is the Student Code of Conduct, University policies and procedures, or Faculty and Staff Collective Bargaining Agreements procedures, as applicable.

6.2 Sexual Harassment, as an umbrella category, includes the offenses of sexual harassment, sexual assault, domestic violence, dating violence, and stalking, and is defined as:

6.2.1 Conduct on the basis of sex that satisfies one or more of the following:

6.2.1.1 **Quid Pro Quo.** An employee conditioning University educational benefits, aids or services on participation in unwelcome sexual conduct;

6.2.1.2 **Unwelcome Conduct.** Conduct that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's education program or activity; or

6.2.1.3 **Sexual Assault.** Sexual Assault is dating violence, domestic violence, or stalking as defined in Section 24 at the end of this procedure.

## 7.0 RETALIATION

7.1 Acts of alleged retaliation should be reported immediately to the Title IX Coordinator and will be promptly investigated. The University will take appropriate and available steps to protect individuals who fear that they may be subjected to retaliation.

7.2 Members of SSU's community are prohibited from taking or attempting to take materially adverse action by intimidating, threatening, coercing, harassing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by law or policy, 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 under this policy and procedure.

7.3 The University will vet all complaints and reports alleging sexual misconduct carefully to ensure that no individual is denied the due process rights provided under this procedure to the extent they are required by law.

7.4 Charging an individual with a violation for making a materially false statement in bad faith in the course of a proceeding under policy 5.01 does not constitute retaliation.

7.5 Counter Claims

7.5.1 The University is obligated to ensure that the grievance process is not abused for retaliatory purposes. The University permits the filing of



counterclaims but uses an initial assessment, described below, to assess whether the allegations in the counterclaim are made in good faith.

7.5.2 Counterclaims made with retaliatory intent will not be permitted and may constitute as a violation of Policy 5.01.

7.5.3 Counterclaims determined to have been reported in good faith will be processed using the grievance procedures below. Counterclaims can be resolved through the same investigation as the principal complaint, or separately, at the discretion of the Title IX Coordinator.

## 8.0 ROMANTIC AND SEXUAL RELATIONSHIPS IN SUPERVISORY AND INSTRUCTIONAL SETTINGS

8.1 Consensual romantic or sexual relationships in which one party retains a direct supervisory or evaluative role over the other party are unethical, create a risk for real or perceived coercion, and are expressly a violation of this policy. Furthermore, the possibility of a future amorous relationship may distort the present instructional or advising relationship.

8.2 Persons with direct supervisory, evaluative, grading, coaching, counseling, or academic advising responsibilities who are involved in such romantic or sexual relationships must bring those relationships to the attention of their supervisor. This will likely result in the necessity to remove the employee from the supervisory, evaluative, grading, or academic advising responsibilities.

8.3 Shawnee State University does not intrude upon private choices regarding personal relationships when these relationships do not violate the policies of the University, cause harm to the safety or wellbeing of members of campus community, or increase the risk of harm to the safety or wellbeing of members of campus community.

## 9.0 CLASSROOM AND INSTRUCTIONAL SETTINGS

The classroom and other instructional settings may provide special circumstances since academic freedom protects the expression of ideas, even if controversial or offensive. However, prohibited conduct will not be exempt from Policy 5.01 or this procedure merely because it occurs in an instructional setting. The investigation relating to alleged offensive conduct will consider the legitimate pedagogical context, and appropriate deference will be afforded to the presentation or discussion in an instructional setting of sexual topics that are mature, controversial, graphic or explicit and not considered sexual harassment, even if some persons find these topics offensive.

## 10.0 COMPLAINT ASSESSMENT

10.1 Following receipt of a complaint or notice of an alleged violation of Policy 5.01, the Title IX Coordinator will engage in an initial assessment, typically within one to five (1-5) business days. The steps in an initial assessment can include:

- 10.1.1 If notice is given absent a formal complaint, the Title IX Coordinator will seek to determine if the person wishes to make a formal complaint, and will assist them in doing so, if desired.
- 10.1.2 If they do not wish to do so, the Title IX Coordinator will determine whether to initiate a complaint on the grounds that a violence risk assessment indicates a compelling threat to health and/or safety.
- 10.1.3 If a formal complaint is received, the Title IX Coordinator will assess its sufficiency and will work with the Complainant to make sure it is correctly completed.
- 10.1.4 The Title IX Coordinator will reach out to the Complainant to offer supportive measures and to ensure they are aware of their right to have a Support Person.
- 10.1.5 The Title IX Coordinator will work with the Complainant to determine whether the Complainant prefers a supportive and remedial response, an informal resolution option, or the formal investigation and grievance process.
- 10.1.6 If a supportive and remedial response is preferred, the Title IX Coordinator will work with the Complainant to identify their wishes, assess the request, and implement it accordingly. No Formal Grievance Process will be initiated in such situations, though the Complainant can elect to initiate one later, if desired.
- 10.1.7 If an informal resolution option is preferred, the Title IX Coordinator will assess whether the complaint is suitable for informal resolution, and may seek to determine if the Respondent is also willing to engage in informal resolution.
- 10.1.8 If a Formal Grievance Process is preferred, the Title IX Coordinator will determine if the alleged misconduct falls within the scope of Title IX.
- 10.1.9 When Title IX is implicated, the Title IX Coordinator will initiate the formal investigation and grievance process, directing the investigation to address, based on the nature of the complaint:
  - 10.1.9.1 A single incident, and/or
  - 10.1.9.2 A pattern of alleged misconduct, and/or
  - 10.1.9.3 A culture/climate issue.
- 10.1.10 When Title IX is not implicated, the Title IX Coordinator will dismiss the Title IX complaint, assess which policies may apply, and refer the matter for resolution.

- 10.1.11 Dismissing a complaint under Title IX is solely a procedural requirement and does not limit the University's authority to address a complaint with another process and other remedies.

## 11.0 VIOLENCE RISK ASSESSMENT

- 11.1 The Title IX Coordinator may determine that the University's Behavioral Intervention Team (BIT), as part of the initial assessment, should conduct a Violence Risk Assessment (VRA). A VRA is used to assess any potential violence or danger to anyone in the campus community. A VRA can aid in ten critical and/or required determinations, including:

- 11.1.1 Emergency removal of a Respondent on the basis of an immediate threat to physical health/safety;
- 11.1.2 Whether the Title IX Coordinator should pursue/sign a formal complaint absent a willing Complainant;
- 11.1.3 Whether to put the investigation on the footing of incident and/or pattern and/or climate;
- 11.1.4 To help identify potential predatory conduct;
- 11.1.5 To help assess and identify grooming behaviors;
- 11.1.6 Whether it is reasonable to try to resolve a complaint through informal resolution, and what modality may be most successful;
- 11.1.7 Whether to permit a voluntary withdrawal from the University by the Respondent;
- 11.1.8 Whether to impose a transcript notation or communicate with a transfer university about a Respondent;
- 11.1.9 Assessment of appropriate sanctions/remedies (to be applied post-hearing); and/or
- 11.1.10 Whether to provide a campus-wide warning of a threat that a serious crime is ongoing or may be repeated, or whether to impose a campus ban under Policy No. 5.36.

## 12.0 EMERGENCY REMOVAL

- 12.1 The University may remove a respondent on an emergency basis under Policy 5.01 whether a grievance process is underway or not.

- 12.2 The University will follow the five step process in determining the necessity of an emergency removal:
    - 12.2.1 Conduct a prompt individualized safety and risk analysis;
    - 12.2.2 Determine if there is an immediate threat to the “physical health or safety” of one or more individuals;
    - 12.2.3 Determine whether the threat arises from allegations of sexual harassment;
    - 12.2.4 Evaluate the applicability of disability laws to the removal decision; and
    - 12.2.5 Consider the appropriateness of supportive measures in lieu of an emergency removal.
  - 12.3 Any individual who is removed pursuant to this section will be notified that they may formally challenge the removal by appealing to the Title IX Coordinator.
  - 12.4 The limitations in this procedure do not preclude the University from removing or banning an individual from campus on grounds set forth in other University policies or procedures.
  - 12.5 Non-student employees who are alleged of or under investigation for alleged sexual harassment may be placed on paid or unpaid administrative leave pursuant to Policy 4.51, section 6.
- 13.0 MANDATORY AND DISCRETIONARY DISMISSAL
- 13.1 The University must dismiss a formal complaint or any allegations therein if, at any time during the investigation or hearing, it is determined that:
    - 13.1.1 The conduct alleged in the formal complaint would not constitute sexual harassment as defined in section 6.2, even if proved; and/or
    - 13.1.2 The conduct does not fall with the University’s Title IX jurisdiction, as set forth in Sections 2.1.1 through 2.1.6, above.
  - 13.2 The University may dismiss a formal complaint or any allegations therein if, at any time during the investigation or hearing:
    - 13.2.1 The Complainant notifies the Title IX Coordinator in writing that they would like to withdraw the formal complaint or any allegation; or
    - 13.2.2 The Respondent is no longer enrolled in or employed by the University; or
    - 13.2.3 Specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

- 13.3 Upon any dismissal, the University will promptly send written notice of the dismissal and the rationale for doing so simultaneously to the parties.
- 13.4 A dismissal decision is appealable by any party under the procedures for appeal below. A decision not to dismiss is also appealable following the University's decision on whether a Respondent was or was not responsible for a policy violation, by any party claiming that a dismissal was required or appropriate. A Complainant who decides to withdraw a complaint may later request to reinstate it or refile it.

#### 14.0 INFORMAL RESOLUTION

- 14.1 The informal resolution process can only be initiated after the filing of a formal complaint. To initiate the informal resolution process, both parties must voluntarily provide written consent to the Title IX Coordinator.
- 14.2 An informal resolution cannot be offered to an employee who is alleged to have sexually harassed a student.
- 14.3 Informal resolution can include three different approaches:
  - 14.3.1 The Title IX Coordinator can resolve the matter informally solely by providing supportive measures.
  - 14.3.2 The parties may agree to resolve the matter through an alternate resolution mechanism such as mediation; or
  - 14.3.3 The Respondent may accept full responsibility for violating the policy, and agree to accept a sanction and end the resolution process. This can occur at any point in the resolution process prior to a finding.
- 14.4 Anyone who serves as a facilitator for the informal resolution process must receive training on the following:
  - 14.4.1 The definition of sexual harassment under policy 5.01;
  - 14.4.2 The scope of the University's education programs and activities;
  - 14.4.3 How to conduct the informal resolution process; and
  - 14.4.4 How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, or bias.
- 14.5 The Title IX Coordinator has the discretion to determine the type of informal resolution for each case.
- 14.6 Prior to any informal resolution, the Title IX Coordinator will issue both parties a written notice disclosing:

- 14.6.1 the allegations;
  - 14.6.2 the requirements and procedures of the informal resolution process; and
  - 14.6.3 any consequences resulting from participating in the informal resolution process, including records that will be maintained or could be shared.
- 14.7 Either party has the right to withdraw from the informal resolution process at any time prior to the resolution. If an informal resolution cannot be reached, the case will be moved to the formal resolution process.
- 14.8 Informal resolutions will be completed within (30) calendar days after initiation of the process and must be signed off by both parties and the facilitator and/or the Title IX Coordinator.
- 14.9 When a resolution is accomplished, the appropriate sanction or responsive actions will be promptly implemented in order to effectively stop the harassment or discrimination, prevent its recurrence, and remedy the effects of the discriminatory conduct on the Complainant and the community. This result is not subject to appeal once all parties indicate their written assent to the terms of resolution.
- 14.10 Violations of an informal resolution agreement will be reviewed by the Title IX Coordinator and may be referred to the formal resolution process or to the appropriate University official for review and possible sanctions.
- 15.0 INTERFERING WITH AN INVESTIGATION
- 15.1 Any party, witness, or other individual who interferes with a University investigation will be in violation of Policy 5.01 and this procedure and will be subject to discipline in accordance with the applicable University process. Interfering with an investigation includes, but is not limited to, the following:
- 15.1.1 Falsification, distortion, and/or misrepresentation of information at any point during the investigation or resolution process;
  - 15.1.2 Witnesses or parties tampering with or destroying evidence, or deliberately misleading an official conducting an investigation;
  - 15.1.3 Attempting to discourage an individual's participation in the investigation or resolution process; or
  - 15.1.4 Attempting to influence the impartiality of an investigator or decision-maker.
- 15.2 A University finding that sexual harassment or sexual discrimination did not occur or that there was a lack of sufficient evidence to prove a claim of sexual

harassment/discrimination does not necessarily mean that a false allegation or report has been made.

## 16.0 SUPPORT PERSON

Parties may have one individual (example: friend, family member, union representative or student ombudsman) present during any investigation meeting, student hearing, or other disciplinary proceeding that the party is noticed to attend. The support person does not serve as a spokesperson and may not unreasonably interject or interfere during any interview, meeting or hearing. If a support person is determined to be unreasonably interfering with the meeting or proceeding, they may be required to leave.

## 17.0 ADVISOR

### 17.1 Right to an advisor

17.1.1 Each party may have an advisor present with them for all meetings, interviews, and hearings. The parties may provide whomever they wish as an advisor such as a friend, mentor, family member, attorney, or any other individual.

17.1.2 If any party does not have an advisor for a prehearing and live hearing, the University will provide one at no cost to the party. However, the University cannot guarantee equal advisory rights, e.g., if one party selects an advisor who is an attorney, the University is not obligated to provide an attorney.

### 17.2 Advisor Participation

17.2.1 Parties will be required to sign a consent form that authorizes the University to share information directly with their advisors.

17.2.2 Advisors will not be able to speak on behalf of or advocate for their advisees except as provided in sections 17.2.3 through 17.2.6, below.

17.2.3 Advisors are permitted to but not required to participate in the informal resolution process, where advisors will be permitted to ask questions and advise their party.

17.2.4 Advisors will receive access to the investigation report unless the advisee requests in writing that it not be provided. Advisors are not required to attend interviews. Advisors can ask clarifying questions if not disruptive. Advisors may not answer questions on behalf of their advisee or provide factual information regarding the allegations.

17.2.5 Advisors are required to attend pre-hearing meetings with the Hearing Officer to review the University's live hearing procedures and submit any

cross-examination questions for review. Advisors are encouraged at this meeting to ask questions about their role and participation at the hearing. Any disclosures should also be made at the pre-hearing.

- 17.2.6 Advisors are required to attend the live hearings. Advisors will be responsible for asking relevant questions to the other party or parties including witnesses. The questioning will be conducted orally, directly and in real time. Advisors may not make opening or closing statements and may not object to questions posed by an opposing party's advisor. The Hearing Officer has the discretion to disallow questions as inappropriate, harassing, intimidating, irrelevant or redundant. Each Hearing Officer will be trained and provided a written guide. The Hearing Officer may remove an advisor who fails to conform to these requirements. In such an occurrence, the hearing may need to be continued to allow for appointment of a new advisor.
- 17.2.7 The parties are expected to provide timely notice to the Title IX Coordinator if they change advisors. It is assumed that if a party changes advisors, consent to share information with the previous Advisor is terminated, and a release for the new advisor must be secured. Parties are expected to inform the Title IX Coordinator of the identity of their hearing advisor at least two (2) business days before the pre-hearing.

## 18.0 FORMAL RESOLUTIONS

18.1 A Formal Resolution can only be pursued after a formal complaint has been filed.

### 18.2 Investigators

- 18.2.1 Upon determination that the Formal Resolution process will be used, the Title IX Coordinator will promptly appoint one or more Title IX Deputies to conduct the investigation.
- 18.2.2 The Title IX Coordinator will vet the assigned investigators to ensure there are no actual or apparent conflicts of interest or disqualifying biases. The parties may, at any time during the resolution process, raise any concern regarding bias or conflict of interest, and the Title IX Coordinator will determine whether the concern is reasonable and supportable. If so, another Deputy will be assigned.
- 18.2.3 The University will operate with the presumption that the Respondent is not responsible for the reported misconduct unless the Respondent admits responsibility for a policy violation or is determined to be responsible for a policy violation by the preponderance of evidence. Throughout the investigation and subsequent proceedings, the burden is on the University to gather sufficient evidence to make a determination and to prove that a violation occurred. The University, however, may not obtain any party's



health or mental health treatment records without the party's written voluntary consent.

### 18.3 Standard of Review

The decision-maker will apply the preponderance of evidence standard to determine whether a violation of this policy has occurred for both students and employee Respondents. Therefore, if a violation of Policy 5.01 is found, the behavior is more likely than not to have occurred.

### 18.4 Investigation Timeline

18.4.1 The University will make a good faith effort to complete the resolution process within a sixty-to-ninety (60-90) calendar day time period including appeal, which can be extended as necessary for cause by the Title IX Coordinator, who will provide notice and a rationale for any extensions or delays to the parties, as well as an estimate of how much additional time will be needed to complete the process.

18.4.2 The process may also be extended if necessary due to holidays and academic breaks, illness, and unavailability of parties or witnesses.

18.4.3 The University may postpone its investigation under circumstances including but not limited to a request from law enforcement to temporarily delay the investigation, the need for language assistance, the absence of parties and/or witnesses, and/or delays necessitated by accommodations for disabilities or other health conditions.

18.4.4 The University will communicate in writing to parties and advisors the anticipated duration of any delay and the reason and provide status updates if necessary. The University will promptly resume its investigation and resolution process as soon as feasible. During a delay, University will implement supportive measures as deemed appropriate.

18.4.5 The University's processes are not typically altered or precluded on the grounds that civil or criminal charges involving the underlying incident(s) have been filed or when criminal charges have been dismissed or reduced.

### 18.5 Witness Participation

18.5.1 Witnesses (as distinguished from the parties) who are employees of the University are required to cooperate in the University's investigation and resolution process. Failure of such witnesses to cooperate with and/or participate in the investigation or resolution process constitutes a violation of policy and may warrant discipline.

18.5.2 Although in-person interviews for parties and all potential witnesses are preferred, circumstances may require individuals to be interviewed remotely. Skype, Zoom, FaceTime, WebEx, or similar technologies may be used for interviews if the investigator(s) determine that timeliness or efficiency dictate a need for remote interviewing. The University will take appropriate steps to reasonably ensure the security/privacy of remote interviews.

## 18.6 Recording of Interviews

No unauthorized audio and/or video recording is permitted during investigation meetings and hearings. If investigator(s) elect to audio and/or video record interviews, all involved parties will be notified, and each party will have the opportunity to request a copy of the transcript.

## 18.7 Notice of Investigation

18.7.1 The parties will receive written notice that an investigation has been initiated, along with a copy of these procedures. The notice of investigation will include:

18.7.1.1 the identities of the parties involved;

18.7.1.2 the specific section of the policy allegedly violated;

18.7.1.3 the conduct alleged to constitute the potential violation(s);

18.7.1.4 the approximate date and time and location of the alleged incident, if known;

18.7.1.5 notice to the parties about the right to both an advisor, who may be but is not required to be an attorney, and a separate support person;

18.7.1.6 the result of the complaint assessment and whether it is being investigated as a potential violation of sexual harassment under Title IX;

18.7.1.7 the name of the investigator(s) and the right to challenge their participation for conflict of interest or actual bias;

18.7.1.8 a statement that the Respondent is presumed not responsible for the alleged conduct;

18.7.1.9 a statement that the determination of responsibility will be determined at the conclusion of the formal resolution process;

18.7.1.10 information about false statements and retaliation.

## 18.8 Evidentiary Considerations

18.8.1 The following will not be considered relevant evidence:

- 18.8.1.1 incidents not directly related to the possible violation, unless they evidence a pattern;
- 18.8.1.2 the character of the parties; or
- 18.8.1.3 questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, 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.

18.8.2 The evidence obtained during the investigation that is directly related to the allegations raised in the formal complaint will be made available to the parties and their advisors, including the evidence the University will not rely on in reaching a determination regarding responsibility, and inculpatory or exculpatory evidence. The parties and their advisor may request new evidence to be considered that was not submitted previously, and/or that other witnesses be considered that were not available for interview but who may have direct relevant information. All parties will have (10) business days to review the evidence and provide a written response to the investigators prior to the completion of their report. The investigators will consider all such responses in completing their report.

## 18.9 Investigation Report

18.9.1 After the parties' deadline to provide written responses has elapsed, the investigators will compile a report. The investigation report will include but not be limited to:

- 18.9.1.1 the timeline of the investigation;
- 18.9.1.2 all parties' accounts of events;
- 18.9.1.3 a summary of evidence gathered;
- 18.9.1.4 areas of corroboration;

- 18.9.1.5 areas of contradiction;
- 18.9.1.6 an assessment of whether or not the evidence, if believed, would meet the definition of sexual harassment; and
- 18.9.1.7 an appendix containing all of the evidence.
- 18.9.1.8 A copy of the investigation report will be sent to each party and their advisor, if any, at least ten (10) business days prior to any hearing.

## 18.10 Pre-Hearing Meeting

- 18.10.1 A pre-hearing meeting will be held remotely or in person with each party, their advisor, their support person and the Hearing Officer.
- 18.10.2 The Hearing Officer will notify all of the individuals listed in section 18.10.1 of the date, time and format of the pre-hearing. The Advisor and the Hearing Officer are required to participate; the other parties are encouraged to participate.
- 18.10.3 During the pre-hearing the.
- 18.10.4 At the pre-hearing, advisors are encouraged to discuss potential questions for cross-examination to obtain guidance on relevancy.
- 18.10.5 Advisors and parties have the opportunity to raise any issue of bias or conflict at the pre-hearing.

## 18.11 Notice of a Hearing

- 18.11.1 No less than ten (10) business days prior to the hearing, the Title IX Coordinator or the Chair (see section 18.12.1, below) will send notice of the hearing to the parties. Once mailed, emailed, and/or personally served, notice will be presumptively delivered. The notice will contain:
  - 18.11.1.1 A description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable procedures, and a statement of the potential sanctions/responsive actions that could result.
  - 18.11.1.2 The time, date, and location of the hearing.
  - 18.11.1.3 Information about the option for the live hearing to occur with the parties located in separate rooms using technology that enables the Decision-maker(s) and parties to see and hear a party or witness answering questions. Such a request must be

raised with the Title IX Coordinator at least five (5) business days prior to the hearing.

18.11.1.4 A list of all those who will attend the hearing, along with an invitation to object to any Decision-maker on the basis of bias at least two (2) business days prior to the hearing.

18.11.1.5 Information on how the hearing will be recorded and about access to the recording or transcript after the hearing.

18.11.1.6 A statement that if any party or witness does not appear at the scheduled hearing, the hearing may be held in their absence, and the party's or witness's statements given prior to the hearing will not be considered by the Decision-maker(s). For compelling reasons, the Chair may reschedule the hearing.

18.11.1.7 Notification that the parties may have the assistance of an advisor of their choosing at the hearing. The party must notify the Title IX Coordinator if they do not have an advisor, and the University will appoint one.

18.11.1.8 A copy of all the materials provided to the Decision-maker(s) about the matter, unless they have been previously provided.

18.11.1.9 An invitation to contact the Title IX Coordinator to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing. Such requests should be made at least seven (7) business days prior to the hearing.

18.11.2 Hearings for possible violations that occur near or after the end of an academic term (assuming the Respondent is still subject to Policy 5.01) that are not resolved prior to the end of term will typically be held immediately after the end of the term or during the summer, as needed, to meet the (60-90) calendar day goal for resolution.

## 18.12 Hearing Officer(s)/Decision Makers

18.12.1 The University will designate a single decision-maker/hearing officer or a three-member hearing panel at the discretion of the Title IX Coordinator based on availability. With a panel, one of the three members will be appointed Chair by the Title IX Coordinator. [Hereinafter, references to the Chair will mean the single Hearing Officer when appropriate].

18.12.2 The hearing officers/decision makers will not have any previous involvement with the investigation.

18.12.3 The Title IX Coordinator cannot serve as a decision maker but can serve as a facilitator for the hearing.

### 18.13 Live Hearing

18.13.1 The live hearing may be conducted in-person or at the University's discretion may be held live virtually.

18.13.2 All live hearings will be recorded and the recordings will be property of Shawnee State University. A transcript will be made available to the parties for review and inspection at their request during the pendency of the process.

18.13.3 Participants at the hearing shall include the hearing officer(s), all parties, advisors to parties, support person(s), witnesses, investigators, and the Hearing Facilitator. All participants will sign an acknowledgement that they are required to maintain the confidentiality of proceedings. During the hearing, witnesses will be separated and called into the hearing room when it is their turn to answer questions.

18.13.4 In hearings involving more than one respondent or in which two (2) or more complainants have accused the same individual of substantially similar conduct, the default procedure will be to hear the allegations jointly.

18.13.5 The Title IX Coordinator may permit the investigation and/or hearings pertinent to each respondent to be conducted separately if there is a compelling reason to do so. In joint hearings, separate determinations of responsibility will be made for each respondent with respect to each alleged policy violation.

18.13.6 During the hearing, the Hearing Officer or panel must evaluate all evidence and questions to determine their relevance. Before any party or witness answers a question from an advisor, the Hearing Officer or panel must determine whether the question is relevant and briefly explain any decision to exclude a question as not relevant or request rephrasing. Questions that seek discovery of privileged information will not be permitted unless the person holding the privilege has waived the privilege. The Hearing Officer must document all questions excluded or modified with the rationale.

18.13.7 All parties and witnesses must be willing to submit to cross-examination and answer all questions, in order for their statements prior to or at the hearing be fully admissible. If a party or witness does not submit to cross-examination because either they do not attend the hearing, or they attend but refuse to answer questions, the Hearing Officer/Panel must not rely on any statement of that party or witness in reaching a determination regarding

responsibility. However, evidence provided that is other than a statement by the party or witness may be considered.

18.13.8 The Hearing Officer/Panel may not draw any inference solely from a party's or witness's absence from the hearing or refusal to answer cross-examination or other questions.

18.13.9 If a party's advisor refuses to comply with the University's rules of decorum for the hearing, the University may require the party to use a different advisor. If a University-provided advisor refuses to comply with the rules of decorum, the University may provide a substitute advisor to conduct cross-examination on behalf of that party.

#### 18.14 Deliberation

18.14.1 The Hearing Officer/Panel will deliberate in closed session to determine whether the Respondent is responsible or not responsible for the policy violations in question based on the preponderance of evidence. A simple majority vote is required to determine the finding. The Hearing Facilitator may be present during deliberation to help procedurally, but may not address the substance of the allegations.

### 19.0 NOTICE OF OUTCOME & SANCTIONS

19.1 The Chair/Decision-maker will prepare a Notice of Outcome letter and share it with the parties and their advisors within (5) business days of making a determination.

19.2 Six items will be included in the outcome letter:

19.2.1 Identification of the allegations potentially constituting sexual harassment as defined in Policy 5.01 and applicable procedures;

19.2.2 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;

19.2.3 Findings of fact supporting the determination;

19.2.4 Conclusions regarding the application of the University's code of conduct, University policies and procedures or collective bargaining agreements to the facts;

19.2.5 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

19.2.6 The University's procedures and permissible bases for the Complainant and Respondent to appeal.

19.3 When there is a finding of responsibility on one or more of the allegations, the Decision-maker(s) will review any pertinent conduct history and will determine the appropriate sanction(s).

19.4 Possible sanctions for students are official warnings, disciplinary probation, deferred suspension, suspension, and dismissal.

19.5 Possible corrective actions for employees are set forth in other University disciplinary policies and procedures, or in the employees' collective bargaining agreement, where applicable.

19.6 The Title IX Coordinator will be responsible for implementing any remedies.

## 20.0 APPEALS

20.1 Both the Complainant and Respondent may appeal the outcome, including the finding of responsibility (or no responsibility) and/or the sanction. The request for appeal must be submitted in writing within five (5) business days of the delivery of the Notice of Outcome.

20.2 The burden of proof lies with the party requesting the appeal. The grounds for appeal are as follows:

20.2.1 Procedural irregularity that affected the outcome of the matter;

20.2.2 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

20.2.3 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.

20.3 All appeal procedures must be implemented equally for all parties.

20.4 When one party appeals, the other party must be notified in writing.

20.5 The Appeal Decision-maker(s) must be different from anyone who made the determination regarding responsibility or dismissal and must not be either the Investigator or the Title IX Coordinator.

20.6 The Appeal Decision-maker(s) must be free from conflict of interest and bias.



- 20.7 Both parties must be given a reasonable, equal opportunity to submit a written statement in support of, or challenging, the responsibility determination and/or dismissal and/or sanctions, whichever issue(s) are the subject of the appeal.
- 20.8 The outcome of the appeal must be in writing, and must include the rationale. The written decision must be provided simultaneously to both parties.
- 20.9 The determination is final when all parties receive written notification of the results of any appeal or if no appeal is filed, the date on which the appeal would no longer be considered timely.

## 21.0 RECORDS

- 21.1 The University will maintain records for seven years of any sexual harassment investigation, including those relating to responsibility determinations, sanctions imposed on a respondent, remedies provided to a complainant designed to restore or preserve equal access to the University's programs or activities, any appeal and its result, and any informal resolution and the result therefrom.
- 21.2 The University must also create and maintain for a period of seven years records of any actions, including supportive measures, taken in response to a report or formal complaint of sexual harassment, as well as records that document the basis for the University's conclusions and indicating that it has taken measures designed to preserve access to the institution's educational program or activity.
- 21.3 The University must also create and maintain for a period of seven years all materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process. The University will make these materials available on its website.

## 22.0 TRAINING

- 22.1 The University will ensure that Title IX Coordinators, investigators, decision-makers, and persons who facilitate an informal resolution process receive training on the definitions of sexual harassment in Policy 5.01 and this procedure, 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 issues of neutrality, conflicts of interest, and bias.
- 22.2 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.

- 22.3 The University will ensure that investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence.
- 22.4 Any materials used to train Title IX Coordinators, investigators, decision-makers, 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 sexual harassment.

### 23.0 REVISION OF POLICY AND PROCEDURES

- 23.1 This procedure under Policy 5.01 will only take effect for cases filed on or after August 14, 2020.
- 23.2 If laws or regulations change – or court decisions alter – the requirements in a way that impacts this procedure, this procedure will be construed to comply with the most recent statutes, regulations and court holdings.

### 24.0 DEFINITIONS

As used in this procedure:

- 24.1 *Advisor* means a person chosen by a party or appointed by the University to conduct cross-examination for the party at the hearing.
- 24.2 *Business days* means all days with the exception of Saturdays, Sundays, and University-recognized holidays.
- 24.3 *Calendar days* has its common meaning, however, when the last calendar day by which an action must be taken (i.e., deadline) falls on a Saturday, Sunday, or University-recognized holiday, the deadline will be extended to the next business day.
- 24.4 *Complainant* means an individual who is alleged to be the victim of conduct that could constitute harassment or discrimination based on sex; or retaliation for engaging in a protected activity.
- 24.5 *Consent*, as used in sections 18.8.1.3, 24.22.1 through 24.22.4, and 24.22.6 means permission that is clear, knowing, voluntary, and expressed prior to engaging in and during an act. Consent must be clear and unambiguous for each participant throughout any sexual encounter. Consent is active, not passive. Silence, in and of itself, cannot be interpreted as consent. Consent can be given by words or actions, as long as those words or actions create mutually understandable clear permission regarding willingness to engage in (and the conditions of) sexual activity.
- 24.5.1 Consent to any one form of sexual activity cannot automatically imply consent to any other forms of sexual activity.
- 24.5.2 Consent may be withdrawn at any time.

- 24.5.3 Consent must be freely given (without compulsion or duress).
  - 24.5.4 Consent must be given by a person legally capable of consenting.
  - 24.5.5 Consent cannot be obtained through fraud.
  - 24.5.6 Previous relationships or prior consent cannot imply consent to future sexual acts;
  - 24.5.7 Consent cannot be given by an individual who one knows to be – or based on the circumstances should reasonably have known to be – substantially impaired (e.g., by alcohol or other drug use, unconsciousness or blackout, etc.).
  - 24.5.8. Substantial impairment is a state when an individual cannot make rational, reasonable decisions because she/he lacks the capacity to give knowing consent (e.g., to understand the “who, what, when, where, why, or how” of their sexual interaction).
  - 24.5.9 Substantial impairment may result from other physical or mental conditions including mental disability, lack of sleep, involuntary physical restraint, or from the consumption of alcohol or other drugs.
  - 24.5.10 Being impaired by alcohol or other drugs will never function as a defense for any behavior that violates this policy.
  - 24.5.11 An individual cannot consent who has been coerced, including being compelled by force, threat of force, or deception; who is unaware that the act is being committed; or who is coerced by a supervisory or disciplinary authority.
- 24.6 *Dating Violence* means violence committed by a person who has been in a social relationship of a romantic or intimate nature with the Complainant, where the existence of such a relationship shall be determined by:
- 24.6.1 the length of the relationship;
  - 24.6.2 the type of relationship; and
  - 24.6.3 the frequency of interaction between the persons involved in the relationship.

For the purpose of this definition, dating violence includes sexual or physical abuse. Dating Violence does not include acts covered under the definition of domestic violence.

- 24.7 *Domestic Violence* is a crime of violence committed by a current or former spouse or intimate partner of the Complainant, by a person with whom the Complainant shares a child in common, by a person cohabitating with or who has cohabitated with the Complainant as a spouse or intimate partner, by a person similarly situated to a spouse under the laws of Ohio, or by any other person against an adult or youth complainant who is protected from that person's acts under the domestic or family violence laws of the location where the crime occurred.
- 24.8 *Education program or activity* means locations, events, or circumstances where Shawnee State University exercises substantial control over both the Respondent and the context in which the sexual harassment or discrimination occurs and includes any building owned or controlled by a student organization that is officially recognized by the University.
- 24.9 *Finding* means a conclusion by the preponderance of evidence that the conduct did or did not occur as alleged.
- 24.10 *Formal Grievance Process* means the procedure set forth in Sections 18 through 20, above.
- 24.11 *Hearing Decision-maker or Panel* refers to those who have decision-making and sanctioning authority within the University's Formal Grievance process.
- 24.12 *Investigator* means the person or persons charged by the University with gathering facts about an alleged violation of this Policy, assessing relevance and credibility, synthesizing the evidence, and compiling this information into an investigation report.
- 24.13 *Mandated Reporter* means an employee of the University who is obligated by policy to share knowledge, notice, and/or reports of harassment, discrimination, and/or retaliation with the Title IX Coordinator.
- 24.14 *Official with Authority (OWA)* means an employee of the University explicitly vested with the responsibility to institute corrective measures on behalf of the University in response to allegations of harassment, discrimination, and/or retaliation.
- 24.15 *Parties* include the Complainant(s) and Respondent(s), collectively.
- 24.16 *Process A* means the Formal Grievance Process.
- 24.17 *Process B* means the administrative resolution procedures such as the student code of conduct, University disciplinary policies and procedures, or faculty and staff collective bargaining agreements.
- 24.18 *Quid Pro Quo* is conduct on the basis of sex where an employee of the University conditions the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct.

- 24.19 *Remedies* are post-finding actions directed to the Complainant and/or the community as mechanisms to address safety, prevent recurrence, and restore access to the University's educational program.
- 24.20 *Respondent* means an individual who has been reported to be the perpetrator of conduct that could constitute harassment or discrimination based on sex, or retaliation for engaging in a protected activity.
- 24.21 *Resolution* means the result of an informal or formal grievance process.
- 24.22 *Sanction* means a penalty imposed by the University on a respondent who is found to have violated policy 5.01.
- 24.23 *Stalking* is a course of conduct directed at a specific individual that would cause a reasonable person to suffer substantial emotional distress or fear for her, his, or others' safety. For the purpose of this definition:
- 24.23.1 *A course of conduct* includes two or more acts, including but not limited to, those in which the alleged perpetrator directly, indirectly, or through third parties, by any action, method, device, or means, followed, monitored, observed, surveilled, threatened, or communicated to or about the Complainant, or interfered with the Complainant's property.
- 24.23.2 *Substantial emotional distress* means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.
- 24.23.3 *Reasonable person* means a fictional person who approaches a situation with an ordinary degree of reason, prudence, care, foresight, and intelligence.
- 24.24 *Sexual Assault* is defined as an offense that meets the definition of rape, sodomy, sexual assault with an object, fondling, incest or statutory rape as used under the uniform crime reporting system.
- 24.24.1 *Rape* is defined as using penetration, no matter how slight, of the vagina or anus with any body part or object or oral penetration by a sex organ of another person without consent of the Complainant.
- 24.24.2 *Sodomy* is oral or anal sexual intercourse with another person, forcibly and/or against that person's will; or not forcibly against the person's will where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.
- 24.24.3 *Sexual Assault with an Object* is use of an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, forcibly and/or against that person's will; or not

forcibly or against the person's will where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.

- 24.24.4 *Fondling* is defined as the touching of the private body parts of another person (buttocks, groin, breasts), for the purpose of sexual gratification, forcibly, and/or against that person's will (non-consensually), or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
- 24.24.5 *Incest* is defined as non-forcible sexual intercourse between persons who are related to each other, within the degrees wherein marriage is prohibited. In Ohio, this means individuals closer in kin than second cousins may not have sexual intercourse.
- 24.24.6 *Statutory rape* is defined as non-forcible sexual intercourse with a person who is below the statutory age of consent. In Ohio, state law prohibits sex with any individual under the age of 13; additionally, individuals over the age of 18 may not have sex with individuals under the age of 16.
- 24.24.7 *Sexual Harassment* is the umbrella category including the offenses of sexual assault, stalking, and dating violence and domestic violence. Sexual Harassment includes unwelcome conduct, determined by a reasonable person to be so severe, and pervasive, and objectively offensive, that it denies a person equal access to the University's education program or activity.
- 24.25 *Title IX Coordinator* is the official designated by the University to ensure compliance with Title IX of the Education Amendments Acts of 1972 and the University's Title IX program. References to the Coordinator throughout this policy may also encompass a designee of the Coordinator for specific tasks.

#### History

Effective: 01/19/91

Revised: 08/24/2020; 08/14/2020; 10/14/16, Merges Procedures 5.01:2 and 5.01:4  
08/01/14, Replaced Interim Procedure 5.01:2 Eff. 09/13/13  
09/13/13, Replaced Interim Procedure 5.01:2 Eff. 01/10/16  
01/10/06, Policy 5.03, Unlawful and Prohibited Discrimination,  
Converted to Interim Procedure 5.01:2