TITLE IX GRIEVANCE PROCEDURES

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I. INTRODUCTION

The Title IX Grievance Procedure addresses allegations of Title IX Sexual Harassment subject to the Title IX Regulations adopted by the U.S. Department of Education (USDOE), effective August 14, 2020. Conduct that falls outside the scope of the Title IX Regulations (i.e., power-based violence) may be addressed by applying BOR's Uniform Policy. The Title IX Grievance Procedure and its terms supersede any policies pertaining to the investigation or adjudication of "sexual harassment" as defined in this protocol.

II. SCOPE

The USDOE's Title IX Regulations apply to both:

1. Conduct on the basis of sex that constitutions **"sexual harassment"** (§106.30); and
2. Conduct that relates to an institution's **"education program or activity"** against a person in the United States on or after August 14, 2020.

A. SEXUAL HARASSMENT (§106.30)

Sexual harassment is defined as conduct on the basis of sex that satisfies one or more of the following criteria:

1. An employee of the institution conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;

2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity; and/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).

B. EDUCATION PROGRAM OR ACTIVITY

An education program or activity includes locations, events, or circumstances in which an institution exercises substantial control over both the Respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by an institution. The Title IX Regulations exclude any education program or activity that does not occur in the United States. (§106.44(a).)

Conduct that does not satisfy the USDOE's jurisdictional requirement, such as off-campus behavior alleged to have an on-campus effect, may be addressed under alternative procedures such as the overarching BOR's Policy addressing Power-Based Violence.

III. OVERVIEW OF KEY TERMS

For purposes of this Title IX Grievance Procedure, key terms are defined as follows:

Actual Knowledge: Notice of sexual harassment or allegations of sexual harassment to an institution's Title IX Coordinator or any official of an institution who has authority to institute corrective measures on behalf of the institution.

Complainant: An individual who is alleged to be the victim of conduct that could constitute sexual harassment.

Formal Complaint: Under the Title IX Grievance Policy, a document filed by a Complainant or signed by the Title IX Coordinator alleging sexual harassment against a Respondent and requesting that the institution investigate the allegation. At the time of filing a Formal Complaint, a Complainant must be participating in or attempting to participate in the education program or activity of the institution with which the Formal Complaint is filed. A Formal Complaint may be filed with the Title IX Coordinator in person, by mail, by e-mail, or by any additional method designated by the institution.

Respondent: An individual alleged to be the perpetrator of conduct that could constitute sexual harassment under Title IX.

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

1. An employee of the institution conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity; and/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).

Supportive Measures: Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the parties 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 education

program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the institution's educational environment, or deter sexual harassment. Supportive Measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.

IV. TIME FRAME TO RESOLVE GRIEVANCE

An institution's policy shall include reasonably prompt time frames for conclusion of the grievance process, including reasonably prompt time frames for filing and resolving appeals and informal resolution processes if the institution offers informal resolution processes, and a process that allows for the temporary delay of the grievance process or the limited extension of time frames for good cause with written notice to the Complainant and the Respondent of the delay or extension and the reasons for the action. Good cause 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.

V. FORMAL GRIEVANCE PROCESS

This section outlines the steps taken to initiate a grievance and procedural requirements for investigations and adjudications of Formal Complaints in accordance with federal regulations.

A. FILING A FORMAL COMPLAINT

A Formal Complaint is a document filed by a Complainant or signed by the Title IX Coordinator alleging sexual harassment as defined by the Title IX Regulations against a Respondent and requesting an institution investigate the allegation of sexual harassment. The submission of a Formal Complaint and its receipt by the Title IX Coordinator triggers the Formal Grievance Process.

A Formal Complaint must be in writing and may be filed with the Title IX Coordinator in person, by mail, or by e-mail. The Formal Complaint must contain the Complainant's physical or digital signature, or some other indication that the Complainant is the person filing it. (§106.30.) At the time of filing a Formal Complaint, a Complainant must be participating in or attempting to participate in the education program or activity.

When an institution receives an allegation of conduct that falls within the scope of the Title IX Grievance Procedure, whereby it meets both the Title IX Regulations' definition of "sexual harassment" and their jurisdictional requirements (see Section II), but no

Formal Complaint is filed, then the Title IX Regulations prevent an institution from administering a formal grievance process (including any informal or early resolution) that permits the imposition of any disciplinary sanctions or other actions against a Respondent. Supportive Measures, however, may still be offered.

B. TITLE IX COORDINATOR FILING COMPLAINT

A Title IX Coordinator may sign a Formal Complaint to initiate or continue the Title IX Formal Grievance Procedure, if necessary, to fulfill an institution's duty under Title IX to not be deliberately indifferent to actual knowledge of sexual misconduct.

Signing a Formal Complaint does not make a Title IX Coordinator a Complainant or otherwise a party.

C. WITHDRAWAL

After filing a Formal Complaint, a Complainant may withdraw their Formal Complaint at any time by providing written notice to the Title IX Coordinator. That withdrawal concludes the Title IX Formal Grievance Procedure process unless the Title IX Coordinator takes action under Subsection B of this Section.

D. CONSOLIDATION

Institutions, at their discretion, may consolidate Formal Complaints alleging sexual harassment against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances.

E. MANDATORY DISMISSAL

If the conduct alleged in the Formal Complaint does not satisfy the requirements of sexual harassment as defined by §106.30, an institution must dismiss the Formal Complaint under this grievance process. However, the Title IX Coordinator will transfer the Complaint to BOR's Policy addressing power-based violence for review and possible investigation and resolution.

The institution will notify the parties simultaneously and in writing that the Formal Complaint is being dismissed for the purposes of the Title IX Grievance Process, and of the transfer if applicable. Each party may appeal this dismissal using the procedures outlined in an institution's policy.

F. PERMISSIVE DISMISSAL

An institution may dismiss a Formal Complaint or any allegations therein, if at any time during the investigation or hearing:

a. A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations therein;
b. The Respondent is no longer enrolled in or employed by the institution; or
c. Specific circumstances prevent the institution from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.

Upon dismissal, the institution must promptly send written notice of the dismissal and reason(s) simultaneously to the parties.

VI. INITIAL STEPS AND DETERMINATION OF APPROPRIATE PROCEDURES

Upon Actual Knowledge of a Report of alleged conduct, the Title IX Office should perform an initial assessment consistent with information outlined in Section X(B) in BOR's Policy which includes making initial contact with the potential Complainant of the Report and offering information to include Supportive Measures.

If the initial assessment reveals that the alleged conduct does meet the definition of sexual harassment as contained within the USDOE's Title IX Regulations, the investigation must proceed pursuant to the Title IX Formal Grievance Procedures below. If the alleged conduct does not meet the USDOE's definition of sexual harassment, the investigation will proceed pursuant to BOR's Policy addressing Power-Based Violence.

VII. INVESTIGATION

A. NOTICE

Upon receipt of a Formal Complaint, the institution must provide written notice of the following to known parties:

a. The investigation and adjudication process, including any informal processes;
b. Allegations of sexual harassment, including sufficient details known at the time. Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting sexual harassment, and the date and location of the alleged incident, if known;

c. 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;
d. The parties may have an advisor of their choice, who may be, but is not required to be, an attorney;
e. The parties may inspect and review evidence;
f. The parties are prohibited from knowingly making false statements or knowingly submitting false information during the investigation and adjudication process; and
g. If the institution decides to investigate additional allegations not included in the original notice, it must provide notice of the additional allegations to the parties whose identities are known.

B. INVESTIGATION PROCEDURE

The Title IX Coordinator shall appoint an Investigator to investigate the allegations documented in the Formal Complaint. The investigation may include, among other steps, interviewing the Complainant, the Respondent, and any witnesses; reviewing law enforcement investigation documents if applicable; reviewing relevant student or employment files; and gathering and examining other relevant documents, social media posts, and other evidence.

The Investigator will attempt to collect all relevant information and evidence. Following the investigation, the Investigator will draft an investigation report succinctly describing all collected information. The Investigator will not make any determination as to whether a policy violation has occurred or recommend potential sanctions.

While investigating the allegations of any Formal Complaint of sexual harassment, the Investigator will conduct an objective evaluation of all relevant evidence. Relevant evidence is any evidence that may tend to make the allegations at issue more or less likely to be true. (See §106.45(b)(1)(ii).)

In assessing allegations of sexual harassment, institution's policies must state whether the standard of evidence to be used to determine responsibility is the preponderance of the evidence standard or the clear and convincing evidence standard, apply the same standard of evidence for Formal Complaints against students as for Formal Complaints against employees, including faculty, and apply the same standard of evidence to all Formal Complaints of sexual harassment.

When investigating a Formal Complaint and throughout the investigation and adjudication process, the Institution must:

1. Ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on the institution and not on the parties;

2. Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence;

3. Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence;

4. Provide the parties with the same opportunities to have others present during any investigation or adjudication 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 institution may establish restrictions regarding the extent to which an advisor may participate in the proceedings, as long as the restrictions apply equally to both parties' advisors;

5. Provide written notice to each party of the date, time, location, participants, and purposes of each Formal Grievance Process meeting in which they are invited to participate, with sufficient time for the party to prepare to participate;

6. 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 institution 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 the conclusion of the investigation.

    i. Prior to completion of the investigative report, the institution must send the report 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 must have at least 10 days to submit a written response, which the investigator will consider prior to completion of the investigative report.
    ii. The institution must make available at any hearing all such evidence subject to the parties' inspection and review, to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination; and

7. Create an investigative report that fairly summarizes relevant evidence and, at least 10 days prior to the hearing, send to each party and each

party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response.

C. HEARINGS

Institutions must provide for a live hearing. An Adjudicator will consider all of the evidence presented and determine whether a Respondent is responsible for a violation of this protocol. The Adjudicator will not be the same person as the Title IX Coordinator or the investigator. Cases will be adjudicated by a trained third-party Adjudicator.

At the request of either party, an institution must provide for the live hearing to occur with the parties located in separate rooms, with technology enabling the Adjudicator and parties to simultaneously see and hear the party or the witness answering questions. Institutions will create a transcript or recording (audio or audiovisual) of any adjudicative hearing to be made available to the parties for inspection and review pursuant to FERPA.

At the live hearing, the Adjudicator 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. 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. (106.45(b)(6)(i).) Only relevant cross-examination and other questions may be asked of a party or witness. Advisors may be present solely to advise or support the party and are prohibited from speaking directly to the Investigator, Adjudicator, other parties, or witnesses during the hearing, except for conducting cross examination.

Before a Complainant, Respondent, or witness answers a cross-examination or other question, the decision maker(s) must first determine whether the question is relevant and explain any decision to exclude a question as not relevant. If a party does not have an advisor present at the live hearing, the institution must provide, without fee or charge to that party, an advisor of the institution's choice, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party.

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.

If a party or witness does not submit to cross-examination at the live hearing, the decision maker(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility provided, however, that the decision-maker(s)

cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.

Live hearings may be conducted with all parties physically present in the same geographic location or, at the institution's discretion, any or all parties, witnesses, and other participants appearing at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other.

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

D. DETERMINATION REGARDING RESPONSIBILITY

The Adjudicator, must issue, simultaneously to both parties, a written determination regarding responsibility, which must include:

a. Identification of the allegations potentially constituting sexual harassment;
b. A description of the procedural steps taken from 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;
c. Findings of fact supporting the determination;
d. Conclusions regarding the application of the institution's policy to the facts;
e. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any sanctions the institution will impose on the Respondent, and whether remedies designed to restore or preserve equal access to the education program or activity will be provided to the Complainant; and
f. Procedures and permissible bases for parties to appeal.

The determination regarding responsibility becomes final either on the date that the recipient 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.

E. SANCTIONS

Institutions should describe the range of sanctions for employees and students.

VIII. APPEALS

Institutions must offer both parties an appeal of a determination regarding responsibility, and of a recipient's dismissal of a Formal Complaint or any allegations therein, on the following bases:

a. A procedural irregularity that affected the outcome of the matter;
b. New evidence that was not reasonably available at the time that the determination regarding responsibility or dismissal was made, which could affect the outcome of the matter; or
c. 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.

An institution may offer an appeal equally to both parties on additional bases. For all appeals, the institution must:

1. Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties;
2. Ensure that the decision maker(s) for the appeal is not the same person as the decision maker(s) who reached the previous determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator;
3. Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome;
4. Issue a written decision describing the result of the appeal and the rationale for the result; and
5. Provide the written decision simultaneously to both parties.

IX. INFORMAL RESOLUTION

At any time prior to reaching a determination regarding responsibility, the institution may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication. An institution may not offer an informal resolution process unless a Formal Complaint is filed. An institution may not require the parties to participate in an informal resolution process and will not require them to waive their rights to a Title IX Formal Grievance process. (§106.45(b)(9).)

An institution must:

1. Provide written notice to the parties disclosing:
    i. The allegations;

ii. The requirements of the informal resolution process, including the circumstances under which it precludes the parties from resuming a Formal Complaint arising from the same allegations; iii. The fact 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 investigation and adjudication process with respect to the Formal Complaint; and iv. Any consequences resulting from participation in the informal resolution process, including the records that will be maintained or could be shared;

2. Obtain the parties' voluntary, written consent to the informal resolution process; and

3. Not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

X. RECORDKEEPING

Each institution must maintain, for seven (7) years, records of:

1. Each sexual harassment investigation, including any determination regarding responsibility and any audio or audiovisual recording or transcript required, any disciplinary sanctions imposed on the Respondent, and any remedies provided to the Complainant designed to restore or preserve equal access to the education program or activity;
2. Any appeal and the result thereof;
3. Any informal resolution process and the result therefrom; and
4. All materials used to train Title IX Coordinators, investigators, decision makers, and any person who facilitates an informal resolution process.

Each institution must make these training materials publicly available on its website. Each institution must create and maintain for seven (7) years records of any actions, including any Supportive Measures, taken in response to a report or Formal Complaint of Sexual Harassment. In each instance, the institution must document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to its education program or activity. If an institution does not provide a Complainant with Supportive Measures, then it must document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The documentation of certain bases or measures does not limit the institution in the future from providing additional explanations or detailing additional measures taken.