

## Employee Title IX Policy and Process

### Definition and Statement of Policy

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#### **I. Preamble**

The University does not discriminate on the basis of sex or gender in any of its education or employment programs and activities, and it does not tolerate discrimination or harassment on the basis of sex or gender. The requirement not to discriminate on the basis of sex extends to admissions and employment at the University. Title IX of the Education Amendments of 1972 (Title IX) provides, “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.” In the intervening half century since the law’s passage, federal guidance on how to implement the law have evolved to recognize that sexual harassment, including sexual assault, are forms of discrimination prohibited under Title IX. In May 2020, the U.S. Department of Education issued revised Title IX regulations which provide prescriptive procedural requirements for responding to reports and formal complaints of sexual harassment, including sexual assault, dating violence, domestic violence, and stalking. DePauw University also believes that harassment and/or violence based on gender or sex are a barrier to equal access to education. The following policy is intended to comply with current federal Title IX regulations by providing a prompt and equitable process to conduct addressed by the Title IX regulations. The policy also addresses conduct outside of the Title IX regulations that DePauw University also considers to constitute discrimination based on gender and/or sex.

The University prohibits sexual misconduct and interpersonal violence encompassing a broad spectrum of behaviors, including sexual harassment, sexual assault, dating violence, domestic violence, and stalking as defined by the Title IX regulations (collectively, Title IX Sexual Harassment). The University also prohibits retaliation against any persons who, in good faith, discloses or makes a formal complaint of sexual misconduct or interpersonal violence or who testifies, assists, or participates or refuses to participate in any manner in an investigation or resolution process under this Policy. Collectively, these behaviors are referred to in this policy as prohibited conduct. The University does not tolerate any form of sexual misconduct or interpersonal violence, and will promptly respond to any disclosure of prohibited conduct made to either the Title IX Coordinator or the University police, DePauw Police. Individuals who are found responsible for engaging in prohibited conduct in violation of this Policy are subject to disciplinary action by the University, up to and including termination. Conduct that potentially violates state law may result in a separate criminal prosecution.

The University has designated a Title IX Coordinator to oversee the implementation of this policy and to ensure compliance with Title IX and its implementing [regulations](#), relevant portions of the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act), as amended by the Violence Against Women Reauthorization Act of 2013 (VAWA), Title VII of the Civil Rights Act of 1964, and other applicable law. This Policy is overseen by the Title IX Coordinator. Disclosures of prohibited conduct can be made to the Title IX Coordinator or, if the prohibited conduct is potentially a crime, reported to DePauw Police.

It is the responsibility of every member of the University community to foster an environment free from prohibited conduct. All members of the community are strongly encouraged to take reasonable and prudent actions to prevent or stop an act of prohibited conduct. This may include direct intervention when safe to do so, enlisting the assistance of others, contacting law enforcement, or seeking assistance from a person in authority. The University also encourages all members of the community to report prohibited conduct and to participate in any subsequent investigation. Community members who choose to exercise these positive responsibilities will be supported by the University and protected from retaliation.

## **II. Scope**

This Policy applies to conduct committed by a University Employee when the prohibited conduct occurs in the University's education program or activity.

The University's Education Program or Activity includes all of the University's operations, including: 1) locations, events, or circumstances over which the University exercises substantial control over both the Respondent and the context in which conduct occurs; and 2) any building owned or controlled by a student organization that is officially recognized by the University. The Title IX regulations, which direct the University's response to reports of Title IX Sexual Harassment, do not draw a line between on-campus, off-campus, or online conduct, provided the conduct occurred in an Education Program or Activity in the United States. Examples include University-sponsored, University-funded or University-supported study off campus, research, internship, mentorship, summer session, conferences, meetings, social events, or other affiliated programs or premises.

Formal Complaints against University Students or Student Organizations, and the rights of Student Complainants, are addressed under the University's Sexual Misconduct and Interpersonal Violence Policy in the Student Handbook. Other University policies (including but not limited to the Protected Class Harassment Policy, Minors on Campus Policy, and Consensual Relations Policy) address areas of University concern outside the Title IX framework.

### III. Key Policy Definitions

**Administrator:** Employees who are part of University leadership at the cabinet level or who serve in the capacity of assistant/associate vice president (or similar title) over an operational area of the University.

**Advisor:** an individual who provides the Complainant or Respondent support, guidance or advice. An Advisor may be any person, including an attorney. The University discourages having a Witness serve as an Advisor.

**Coercion:** unreasonable pressure to participate in an activity that is sufficient to overcome an individual's freedom of will whether to voluntarily consent to participate in the activity. Additional guidance about Coercion can be found in Section VIII.

**Complainant:** the individual who reportedly experienced prohibited conduct, regardless of whether the individual makes a Formal Complaint or participates in an investigation of prohibited conduct.

**Confidential Resource:** individuals who have the legally-protected ability to maintain the confidentiality of a disclosure. Additional guidance about Employee disclosure responsibilities can be found in Section IV.

**Consent:** Clear, knowing and voluntary agreement to participate in sexual activity. Consent can be given by words or actions, as long as those words or actions create mutually understandable clear permission regarding willingness to engage in (and the conditions of) sexual activity. Consent is active, not passive. Silence, in and of itself, cannot be interpreted as Consent, and relying on nonverbal communication alone may not be sufficient to establish consent. Additional guidance about Consent can be found in Section VIII.

**Decision Panel:** the panel of decision-makers that reviews evidence, determines responsibility for Policy violations, and decides appropriate disciplinary action.

**Decision Panel Meeting:** the meeting during which the Decision Panel hears live testimony from parties and Witnesses, including questioning from the Decision Panel and Advisors, in order to determine credibility of evidence.

**Designated Employees:** University employees who are required to immediately disclose all details of prohibited conduct of which they become aware to the Title IX Coordinator. Additional guidance about employee disclosure responsibilities can be found in Section IV.

**Employee:** all individuals employed by DePauw University regardless of employment status or employee definition. Employees include 1) all part-time, full-time, term, interim, temporary, or on-call employees; 2) exempt and non-exempt employees; and 3) faculty, staff, student employees (for conduct committed in their role as an employee only), and administrators.

**Formal Complaint:** a document filed by a Complainant or signed by the Title IX Coordinator alleging prohibited conduct against a Respondent and requesting that the University investigate the conduct. Formal Complaints may be made for conduct that is prohibited in Section VII of this Policy.

**Incapacitation:** a state where a person is unable to give consent because they are temporarily or permanently incapable of appraising or controlling their own conduct, physically unable to verbally or otherwise communicate consent or unwillingness to an act, asleep, unconscious, or unaware that sexual activity is occurring. Additional guidance about Incapacitation can be found in Section VIII.

**Interpersonal Violence:** dating violence, domestic violence, and stalking, as those terms are defined in Section VII of the Policy.

**Intimidation:** communicating a threat to another person such that a reasonable person in such a circumstance would be placed in fear.

**Respondent:** the Employee who has been accused of prohibited conduct.

**Student:** any person pursuing studies at the University, including: (a) a person who is enrolled; (b) a person who is not currently enrolled, but who was enrolled at the time of the alleged violation; (c) a person who, while not currently enrolled, has been enrolled in the University and may reasonably be expected to seek enrollment at a future date; or (d) an accepted student who has paid a deposit.

**Student Organization:** a group consisting of a number of students who have followed the University requirements for recognition.

**Supportive Measures:** non-disciplinary, non-punitive individualized services designed to restore or preserve equal access to the University's education programs or activities without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the educational environment, or deter prohibited conduct.

**Title IX Coordinator:** the University Employee who coordinates the University's compliance with Title IX and administers this Policy, including receiving and reviewing disclosures and Formal Complaints under this Policy, implementing Supportive Measures and Protective Measures, overseeing the Title IX Process (investigations, adjudications, and sanctioning); ensuring appropriate education and training for students and Employees; and ensuring appropriate action to eliminate, prevent, and address prohibited conduct.

**Violence:** the use, attempted use, or threatened use of physical force against the person or property of another.

**Witness:** any individual other than a Complainant or Respondent who provides evidence regarding a Formal Complaint.

#### **IV. Disclosures, Confidentiality, and Preservation of Evidence**

DePauw strongly encourages anyone who experiences or Witnesses prohibited conduct to talk with someone promptly about what happened and disclose the conduct to the University so that they can get any support they need and so DePauw can respond appropriately. Section XVII of this policy identifies community and campus resources, including emergency resources, medical resources and Confidential Resources.

##### ***Options for Disclosing or Seeking Assistance:***

A Complainant or Witness may choose to:

- Seek assistance from a Confidential Resource (see below), who will not report the disclosure to the Title IX Coordinator;
- Disclose incidents of conduct prohibited under this Policy directly to the Title IX Coordinator or a Designated Employee (see below), who is obligated to report the disclosure to the Title IX Coordinator;
- Report incidents of conduct that may violate state law to DePauw Police (the University's police department), who are obligated to report the disclosure to the Title IX Coordinator, or to another appropriate external law enforcement agency.

A Complainant or Witness may make a disclosure to the University, report to law enforcement, to neither, or to both. The Title IX Process and law enforcement investigations operate independently of one another, although the University will coordinate information with DePauw Police where the Complainant or Witness has elected to report to law enforcement or as otherwise required by law.

***Privacy and Confidentiality:***

The University is committed to protecting the privacy of all individuals involved in a disclosure of prohibited conduct under this Policy. Except as otherwise permitted by law, as required to conduct an investigation or Decision Panel Meeting under this Policy, and as required in an external legal proceeding, the University will not share the identity of a Complainant, Respondent or Witness. The University will also maintain as confidential any Supportive Measures provided to the Complainant, to the extent that maintaining such confidentiality would not impair the University's ability to provide the Supportive Measures. All Employees who are involved in the University's response to harassment and discrimination, including the Title IX Coordinator, investigators and adjudicators, receive specific training and guidance about safeguarding private information, including the protections set forth in Title IX, the Clery Act and Family Educational Rights and Privacy Act ("FERPA"). The University is precluded by law from restricting the parties' ability to discuss the allegations under investigation or to gather and present relevant evidence, although the University may encourage privacy to maintain the integrity of the investigation.

Privacy and confidentiality have distinct meanings under this Policy.

*Privacy:* refers to the discretion that will be exercised by the University in the course of any investigation or disciplinary processes under this Policy. Information related to a disclosure of prohibited conduct will be handled discreetly and shared with a limited circle of University Employees or designees who need to know in order to assist in the assessment, investigation, and resolution of the disclosed conduct and related issues.

*Confidentiality:* refers to the statutory protections provided to individuals who disclose information in legally-protected or privileged relationships, including professional mental health counselors, medical professionals, and ordained clergy (Confidential Resources). These Confidential Resources must maintain the confidentiality of communications disclosed within the scope of the provision of professional services. Confidential Resources will not disclose protected information unless: 1) given permission by the patient/client; 2) there is an imminent threat of harm to self or others; 3) the conduct involves suspected abuse of a minor under 18 year of age; or, 4) as otherwise required or permitted by law or court order. Similarly, medical and counseling records cannot be released without the individual's written permission or unless permitted or required consistent with ethical or legal obligations.

***Employee Disclosure Responsibilities:***

Different University employees have different abilities to maintain information as confidential. Confidential Resources, as defined below, are not required to share any information with the Title IX Coordinator. Other University employees, referred to as Designated Employees, are required to immediately share with the Title IX Coordinator all known information, including the identities of the parties, the date, time and location, and any details about the disclosed incident with the Title IX Coordinator. Employees with reporting obligations will only share the disclosure with the Title IX Coordinator (and no other administrators) unless otherwise required by law. The report of a disclosure

to the Title IX Coordinator does not obligate a Complainant to take any action or participate in any process unless they voluntarily choose to do so.

***Seeking Assistance from a Confidential Resource:***

A Complainant or Witness may seek assistance from an individual who has the legally protected ability to maintain the confidentiality of the conversation, identified above as Confidential Resources. University Employees who are Confidential Resources include ordained clergy acting in a pastoral care capacity. University Employees may consult Confidential Resources through their employment benefits or otherwise whom they may use for support and guidance, regardless of whether they make a disclosure to the University or participate in a University investigation. Complainants can reach the Center for Spiritual Life at 765-658-4615.

***Designated Employees:***

Designated Employees include all faculty and staff who are not otherwise Confidential Resources.

Designated Employees may provide support and assistance to a Complainant, a Witness, or a Respondent, but because of their roles at the University, they cannot promise confidentiality or anonymity or withhold information from the Title IX Coordinator about prohibited conduct which is disclosed to them in the course of their employment. Some Employees, because of the nature of their positions, may also be required to report to the Title IX Coordinator disclosures of prohibited conduct of which they learn even outside of the scope of their employment. Employees with these enhanced reporting obligations include all administrators, department chairs and program directors, supervisors, human resources staff, DePauw Police personnel, and Campus Security Authorities.

Even when information is shared by a Designated Employee with the Title IX Coordinator, the Complainant retains the discretion to choose whether to file a Formal Complaint. In some instances, the Title IX Coordinator may file a Formal Complaint on behalf of a Complainant. Where a Complainant requests to maintain their anonymity, or not to pursue an investigation, the Title IX Coordinator will determine whether the Complainant's request can be honored as described further below.

***Disclosing Prohibited Conduct to the Title IX Coordinator:***

DePauw strongly encourages Complainants and third-parties to immediately disclose incidents of prohibited conduct to the Title IX Coordinator. An individual does not need to know whether they wish to request any particular course of action or how to label what happened in order to disclose an incident of prohibited conduct. A Complainant is advised to seek immediate medical treatment and preserve physical evidence following an incident of prohibited conduct even if they have not decided whether they wish to disclose the incident or make a Formal Complaint with the University. When a disclosure is made to the University, the Complainant will receive written notification about Supportive Measures and resources within the University and community. The University will make reasonable efforts to respond to disclosures of prohibited conduct, regardless of how the information was brought to the University's attention or the extent to which the Complainant wishes to participate or be involved. An individual may disclose prohibited conduct in person, by telephone, or online as follows:

Title IX Coordinator: Juliann Smith  
Email: [juliannsmith@depauw.edu](mailto:juliannsmith@depauw.edu) or [titleixcoordinator@depauw.edu](mailto:titleixcoordinator@depauw.edu)  
Phone: 765-658-4155  
Online: [Report An Incident Of Sexual Misconduct](#)

***Timeframe for Disclosing:***

Complainants and other disclosing individuals are encouraged to disclose any violation of this Policy as soon as possible in order to maximize the University's ability to respond promptly and effectively. There is no time limit for disclosing; an individual may disclose prohibited conduct under this Policy at any time without regard to how much time has elapsed since the incident(s) in question. If at the time of disclosure, the Complainant is not participating in, or seeking to participate in, the University's Education Program or Activity, the ability to file a Formal Complaint may be limited. If the Respondent is no longer actively employed at the time of the disclosure, the University may not be able to take disciplinary action against the Respondent. In all reports of prohibited conduct, however, the University will still seek to provide reasonably available Supportive Measures for the Complainant, and take steps, as available and appropriate, to address the concerns raised. In addition, the University will assist the Complainant in identifying and contacting law enforcement and other external enforcement agencies.

***Reporting Potential Criminal Conduct to Law Enforcement:***

A Complainant has the right to report, or decline to report, potential criminal conduct to law enforcement. The University will upon request assist a Complainant in contacting law enforcement at any time, including during a Title IX Process. Under limited circumstances that are deemed to pose a threat to the health or safety of any University community member, the University may independently notify law enforcement.

If a criminal complaint is made, it must proceed via the county, state, or federal criminal justice system with jurisdiction over the conduct. DePauw Police Officers are fully sworn law-enforcement officials and may take reports and complete criminal investigations. Employees interested in filing criminal charges may also seek assistance directly from other law enforcement agencies. DePauw Police can assist the Complainant with the involvement of local police. The filing of criminal charges does not preclude pursuing the administrative Title IX process.

In instances where a criminal complaint is made against a current Employee, and where the conduct occurs on campus or elsewhere within the United States as part of the University's Education Program or Activity, a concurrent Title IX Process will also commence where a Formal Complaint is filed by the Complainant or signed by the Title IX Coordinator. DePauw Police investigators will share available information with the Title IX Office to aid in the administrative process.

Definitions of crimes involving sexual or interpersonal violence under the Indiana Criminal Code can be found here:

<http://iga.in.gov/legislative/laws/2017/ic/titles/035#35-42-4>

***Anonymous Disclosures:***

An individual can make a disclosure of conduct prohibited under this Policy to the University without disclosing one's name at <http://www.depauw.edu/studentacademiclife/title-ix/report-an-incident-of-sexual-misconduct> or by calling the Campus Conduct Hotline at (866) 943-5787. Depending on the level of information available about the incident or individuals involved, the University's ability to respond to or investigate an anonymous disclosure may be limited.

***Preservation of Evidence:***

It is important to preserve all evidence related to any disclosure of prohibited conduct, including but not limited to letters, notes, emails, text messages, social media posts, and/or voicemails. Employees should comply with any University directive issued regarding document holds or other preservation of evidence contained within University information technology systems or physical facilities that could be relevant to

a Formal Complaint. Employees are encouraged to seek prompt medical attention in cases of sexual assault and to preserve all evidence of the incident.

***Clery Reporting:***

Campus Security Authorities (CSA) include members of DePauw Police or other individuals who have responsibility for campus security, as well as other individuals to whom students or Employees may disclose crimes, as well as individuals who have significant responsibility for student campus activities. They are all required to share nonidentifiable information for consideration of Timely Warnings and inclusion in crime statistic data.

Any disclosure of alleged sexual assault or interpersonal violence shall be included in crime statistics in accordance with the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (the Clery Act). These statistics will be made without disclosing the names of either the Complainant or the Respondent. If the University determines that matters of public safety are involved, the University may disclose the name of an Employee who has been reasonably deemed to pose an active threat to the campus in Timely Warning or Emergency Notifications if this information is necessary to address that threat.

## **V. Supportive Measures**

***Supportive Measures:***

Supportive Measures are non-disciplinary, non-punitive individualized services designed to restore or preserve equal access to the University's Education Programs or Activities without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the educational environment, or deter prohibited conduct.

Supportive Measures are offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent. Supportive Measures are available to the Complainant regardless of whether the Complainant makes a Formal Complaint. The options for Supportive Measures will be discussed upon receipt of a disclosure and will be outlined in writing. Supportive Measures are also available to a Respondent. Examples of Supportive Measures that may be implemented include, but are not limited to:

- issuing mutual no-contact directives to each of the parties;
- assisting in requesting a criminal restraining order;
- rearranging work schedules or spaces if available;
- assisting with local law enforcement; and,
- adjustments to job responsibilities.

The availability of Supportive Measures will be determined by the specific circumstances of each disclosure. The University will consider a number of factors in determining which measures to take, including:

- the needs of the Employee seeking Supportive Measures;
- the severity or pervasiveness of the disclosed conduct;
- any continuing or disproportionate effects on the Complainant;
- whether the Complainant and the Respondent share the same job location(s); and,

- whether judicial measures have been taken to protect the Complainant (e.g., protective orders).

The University will work in good faith to implement the requirements of judicially issued protective orders and similar orders, to the extent that doing so is within its authority.

Any Supportive Measures will not disproportionately impact the other party. Requests for Supportive Measures may be made to the Title IX Coordinator. The Title IX Coordinator is responsible for ensuring the implementation of Supportive Measures and coordinating the University's response with the appropriate offices on campus. The Title IX Coordinator has the discretion to provide and/or modify any Supportive Measure based on all available information and is available to meet with a Complainant or Respondent to address any concerns about the provision of Supportive Measures. The University will maintain the confidentiality of any Supportive Measures provided under this policy to the extent practicable and will promptly address any violation of Supportive Measures.

***Emergency Removal and other Restrictive Forms of Supportive Measures:***

In contrast, other forms of Supportive Measures may involve more restrictive actions. Such Supportive Measures, listed below, are typically only available when the University has an articulable factual foundation that would support the taking of a restrictive measure against a Respondent prior to the conclusion of the investigation or in lieu of an investigation. More restrictive Supportive Measures may include:

- Emergency removals
- Unilateral no-contact directives

*Unilateral No Contact Directive:* At times it becomes necessary to restrict an Employee's privileges and/or prohibit contact with specified individuals, or specific locations, by issuing a "no contact" directive. This directive is issued when it is believed necessary to protect a person's safety and preserve a peaceful environment for all students and Employees to work, study and live on campus. Violation of a "no contact" directive issued in relation to a violation of this Policy is considered violation of this Policy and may result in University action that could include paid or unpaid interim administrative leave from the University.

*Emergency removal:* The University may remove a Respondent from the University's Education Program or Activity on an emergency basis, provided that the University undertakes an individualized safety and risk analysis, and determines that an immediate threat to the physical health or safety of any student, Employee, or other individual arising from the disclosed misconduct justifies such measures.

During any emergency removal, the Respondent may be denied access to the campus and/or placed on paid or unpaid administrative leave. Specific details of the emergency removal will be outlined in written communication to the Employee.

*Challenging a Restrictive Supportive Measure:* Upon receipt of notice of a restrictive Supportive Measure, a Respondent may challenge the decision in writing to the Vice President for Finance and Administration or their designee. Upon review of the challenge, the Vice President or their designee may continue the Supportive Measure for a designated period, may determine conditions for the termination of the Supportive Measure, or take any other action in the best interest of the University. If the Supportive Measure is upheld after the Respondent's challenge, it shall be reviewed periodically by the Vice President or their designee to determine whether there is a continuing threat to health or safety that warrants the Supportive Measure's continuation.

All individuals are encouraged to disclose to the Title IX Office any concerns about the failure of another to abide by any restrictions imposed through Supportive Measures. In the event of an immediate health or safety concern, individuals should contact 911 immediately. The University will take immediate action to enforce a previously implemented Supportive Measure, and disciplinary penalties can be imposed for failing to abide by a University-imposed Supportive Measure.

The Title IX Coordinator will create and maintain records of any Supportive Measures offered and provided; the Title IX Coordinator must also maintain records regarding any decision not to provide Supportive Measures.

## **VI. Rights of Employees**

DePauw strives to ensure that all Employees, whether Complainants or Respondents, are afforded the following rights:

- To be treated respectfully and equitably by University Employees and officials.
- To receive a prompt, fair, and impartial resolution process.
- To have disclosures responded to promptly and sensitively, which may include the provision of Supportive Measures and/or an investigation following a Formal Complaint.
- To have a Formal Complaint investigated appropriately, and addressed competently by trained individuals free from conflict of interest or bias.
- To have a support person or Advisor of one's own choosing present during any meetings concerning this Policy, including the review of the case file and Decision Panel Meeting.
- To have an Advisor provided at the Decision Panel meeting if the party does not have an Advisor.
- To obtain assistance in requesting a criminal restraining order from the State if so desired.
- To receive assistance from University officials and staff with any Supportive Measures if such measures are reasonable and requested.
- To receive timely notice of a Formal Complaint and of any meetings concerning this Policy at which their presence will be requested or required, including sufficient details to prepare for such meeting.
- To be promptly notified, in writing, of decisions related to the investigation and determination regarding responsibility to the extent permitted by the law, regardless of whether or not one participates in the process.
- To have irrelevant prior sexual history and legally privileged information (unless waived by the person holding the privilege) be made inadmissible during any process to determine responsibility for prohibited conduct.
- To discuss the disclosed conduct under investigation with others to gather relevant evidence, to present witnesses and other evidence, and to ask relevant questions of the other party or Witnesses through their Advisor, during any Decision Panel Meeting.
- To have an objective evaluation of all relevant evidence – including both inculpatory and exculpatory evidence – and to have credibility determinations made without consideration of a person's status as a Complainant, Respondent, or Witness during any process to determine responsibility for prohibited conduct.
- To receive timely and equal access to all evidence obtained as part of an investigation that is directly related to the disclosed conduct, regardless of whether the information will be relied on in reaching a determination regarding responsibility.
- To appeal the dismissal of a Formal Complaint or the outcome of an adjudication.
- To decline to answer some or all questions posed by an Investigator, Decision Panel member, or Advisor, with the qualification that such refusal to answer during a Decision Panel Meeting may

impact the ability of the Decision Panel to consider any of their statements in making their determination on responsibility.

- To be free from any form of retaliation by members of the University community.

Complainants also have the following rights:

- To not be discouraged from disclosing to the University or reporting to law enforcement, whether on-campus or off-campus, and to be supported by University Employees or officials in so doing.
- To meet with the Title IX Coordinator to discuss the availability of Supportive Measures and the process for filing a Formal Complaint, to have their wishes considered with respect to Supportive Measures, and to receive reasonably available Supportive Measures with or without the filing of a Formal Complaint.
- To submit a written statement to be considered by the Decision Panel when determining sanctions, indicating the impact the disclosed conduct has had on them and hopes they may have for disciplinary action assigned to the Respondent.

Respondents also have the following rights:

- To be presumed not responsible for the disclosed conduct until a determination regarding responsibility is made at the conclusion of a Title IX Process.
- To submit a written statement to be considered by the Decision Panel when determining disciplinary action, indicating any factors they would like the Decision Panel to take into consideration in imposing disciplinary action, if the Decision Panel finds the Respondent responsible for violating the Policy.

## **VII. Prohibited Conduct**

This Policy prohibits Sexual Harassment as defined in the Title IX regulations, which includes Sexual Assault, Dating Violence, Domestic Violence, and Stalking (collectively, Title IX Sexual Harassment), and Retaliation. Conduct under this Policy is prohibited regardless of the sexual orientation, gender, gender identity, or gender expression of the Complainant or Respondent. The University prohibits the following conduct:

1. Sexual Harassment: (A) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies the Complainant equal access to the University's education program or activity; or (B) An Employee of the University conditioning the provision of an aid, benefit, or service of the University on a Complainant's participation in unwelcome sexual conduct.
2. Sexual Assault: Having or attempting to have sexual contact with another individual without consent or where the individual cannot consent because of age or temporary or permanent mental incapacity (see below for definition of consent and incapacitation).<sup>1</sup> Sexual contact includes:
  - A. sexual intercourse (anal, oral, or vaginal), including penetration with a body part (e.g., penis, finger, hand, or tongue) or an object, or requiring another to penetrate themselves with a body part or an object, however slight; or

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<sup>1</sup> The statutory definition of sexual assault referenced by the Title IX regulations also includes having or attempting to have sexual contact between persons who are related to each other within the degrees where marriage is prohibited by law.

- B. sexual touching of the private body parts, including, but not limited to, contact with the breasts, buttocks, groin, genitals, or other intimate part of an individual's body for the purpose of sexual gratification.
3. Dating Violence: Violence committed by a person—
    - A. who is or has been in a social relationship of a romantic or intimate nature with the victim; and
    - B. where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) The length of the relationship; (ii) The type of relationship; (iii) The frequency of interaction between the persons involved in the relationship.
  4. Domestic Violence: felony or misdemeanor crimes of Violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.
  5. Stalking: engaging in a course of conduct directed at a specific person that would cause a reasonable person to—
    - A. fear for his or her safety or the safety of others; or
    - B. suffer substantial emotional distress.
  6. Retaliation: Conduct against an individual for the purpose of interfering with any right or privilege secured under Title IX, or because the individual has made a disclosure or complaint, testified, assisted, or participated or refused to participate in any manner in a Title IX Process. Retaliation includes intimidation, threats, coercion, or discrimination for the purpose of interfering with any right or privilege secured by Title IX. The exercise of rights protected under the First Amendment does not constitute Title IX Retaliation. A good-faith pursuit by either party of civil, criminal or other legal action does not constitute Title IX Process Retaliation.

## **VIII. Statement on Consent and Incapacitation**

Consent is clear, knowing, and voluntary agreement to participate in sexual activity. Consent can be given by words or actions, as long as those words or actions create mutually understandable clear permission regarding a willingness to engage in (and the conditions of) sexual activity. Consent is active, not passive. Silence, in and of itself, cannot be interpreted as consent, and relying on nonverbal communication alone may not be sufficient to establish consent.

Consent to any one form of sexual activity does not automatically imply consent to any other forms of sexual activity. Previous relationships or prior consent do not imply consent to future sexual acts. Even in the context of a relationship, there must be mutual consent to engage in sexual activity each time it occurs. Consent to engage in sexual activity with one person is not consent to engage in sexual activity with any other person.

When it is unclear whether someone consents to activity, it is the responsibility of the person who initiates the activity to ensure that their partner clearly communicates consent. To continue to engage in sexual activity without consent from their partner is a violation of this Policy.

Consent can be withdrawn by either party at any point. Once consent is withdrawn, the sexual activity must cease immediately.

Consent must be mutually understandable. That is, a reasonable person would have to consider the words or actions of the parties to indicate that there was a clear agreement to engage in the given activity with each other at the same time.

Consent cannot be obtained through force, coercion, or taking advantage of another person's incapacitation. Force is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that overcome resistance or produce consent. Note: There is no requirement that a party actively resist the sexual advance or request, but resistance is a clear demonstration of non-consent. Sexual activity that is forced is by definition nonconsensual, but lack of physical force or coercion does not indicate consent.

Coercion is unreasonable pressure for sexual activity that is sufficient to overcome an individual's freedom of will whether to voluntarily consent to participate in the sexual activity. Coercive conduct includes intimidation and express or implied threats of immediate or future physical, emotional, reputational, financial or other harm to the Complainant or other that would reasonably place an individual in fear and that is employed to compel someone to engage in sexual activity.

Consent cannot be given by minors, by mentally disabled persons, or by otherwise physically or mentally incapacitated persons. Consent cannot be gained by taking advantage of the incapacitation of another, where the person initiating sexual activity knew or reasonably should have known that the other was incapacitated.

Incapacitation is the inability, temporarily or permanently, to give consent because an individual is incapable of appraising or controlling their own conduct, physically unable to verbally or otherwise communicate consent or unwillingness to an act, asleep, unconscious, or unaware that sexual activity is occurring. People who are unconscious, asleep, unaware the sexual activity is occurring, incapacitated as a result of alcohol or drugs (whether consumed voluntarily or involuntarily), or who are physically or mentally incapacitated cannot give consent.

Incapacitation is an important and specific concept. Incapacitation means that a person lacks the ability to make informed, rational judgments about whether or not to engage in sexual activity. A person who is incapacitated is incapable of recognizing what is going on around them. An incapacitated person is not able to recognize the sexual nature or extent of the situation they are in. To engage in sexual activity with a person one knows or should know is incapacitated is a violation of this Policy.

When alcohol or other drugs are involved, incapacitation is a state beyond drunkenness or intoxication. A person is not necessarily incapacitated merely as a result of drinking or using drugs; the level of impairment must be significant enough to render the person unable to give consent. The impact of alcohol and other drugs varies from person to person, and a person's level of intoxication may vary based upon the nature and quality of the substance imbibed, the person's weight, tolerance, ingestion of food and other circumstances. A person's level of impairment may also change rapidly.

In evaluating consent in cases of potential incapacitation, the University asks two questions: (1) Did the person initiating sexual activity know that the other party was incapacitated? and, if not, (2) Should a sober, reasonable person, in the same situation, have known that the other party was incapacitated? If the answer to either of these questions is "yes," consent was absent and the conduct is likely a violation of this Policy.

One is not expected to be a medical expert in assessing incapacitation. One must look for the common and obvious warning signs that show that a person may be incapacitated or approaching incapacitation. Although every individual may manifest signs of incapacitation differently, typical signs often include slurred or incomprehensible speech, unsteady manner of walking, combativeness, emotional volatility, vomiting, or incontinence. A person who is incapacitated may not be able to understand some or all of the following questions: “Do you know where you are?” “Do you know how you got here?” “Do you know what is happening?” “Do you know whom you are with?”

One should be cautious before engaging in sexual activity when a party has been drinking alcohol or using drugs. The use of alcohol or other drugs may impair a party’s ability to determine whether consent has been sought or given. If one has doubt about a party’s level of intoxication, the safe thing to do is to forego all sexual activity. A Respondent’s intoxication will not excuse the Respondent from the obligation to obtain consent as described in this Policy.

## **IX. Overview of Title IX Process**

The Title IX Process is an administrative process that is informed by Title IX and the relevant provisions of VAWA. The Title IX Coordinator provides oversight of a prompt, fair, and equitable process in both cases. While the parties involved have certain procedural rights, the procedures described are not intended to constitute legal proceedings.

The Title IX Process is described in greater detail in Section XI below. The University utilizes this decision model in which the Title IX Coordinator, or their designee, investigates and the Decision Panel resolves Formal Complaints of prohibited conduct and any other related violations. The Decision Panel shall use the designated process described in the subsequent section to determine facts and responsibility for the disclosed conduct and any applicable sanctions.

### ***Initial Assessment***

Upon receiving notice of prohibited conduct, the Title IX Coordinator will conduct an initial assessment by promptly contacting the Complainant to address any immediate physical safety and emotional support needs, 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, provide a copy of the Policy, and explain to the Complainant their rights under the Policy (see Section VI) and their options for addressing the prohibited conduct, including both formal and informal resolution and the process for making and resolving a Formal Complaint. The Complainant may request Supportive Measures only, or may make a Formal Complaint. Alternatively, as described below, the Title IX Coordinator may determine that it is appropriate to file a Formal Complaint even in the absence of a Formal Complaint filed by a Complainant. After the filing of a Formal Complaint, the Complainant may decide to seek either formal or informal resolution. A Complainant is always entitled to reasonably available Supportive Measures, regardless of whether a formal or informal resolution process is initiated. As part of the initial assessment, the Title IX Coordinator will be responsible for determining whether the disclosed conduct falls within the scope of the Policy and which resolution options are appropriate. If the disclosed conduct falls within the scope of the Policy, the University may move forward with an informal resolution, Title IX Process, or University Process, as appropriate. If not, the University may be required to dismiss any Formal Complaint received. If the disclosed conduct does not fall within the scope of the Policy, the Title IX Coordinator may forward information regarding the disclosed conduct to other appropriate individuals within the University for appropriate handling as outlined below.

Required and optional dismissals and commencement of a formal Title IX Process or University Process are described in Section XI below.

The University will seek to complete the Initial Assessment as promptly as possible, typically within ten (10) business days. There may be circumstances, however, where the Initial Assessment takes longer based on the availability of the Complainant or other necessary information, the need to gather additional information, or other factors outside of the University's control. The University also understands that a Complainant may need additional time to make decisions regarding their options, which may impact the timing of the conclusion of the Initial Assessment.

The Title IX Office will document each report or request for assistance, including requests for supportive measures, as well as the response to any such report or request; and will review and retain copies of all reports generated as a result of any investigation. The University will maintain the records in accordance with the provisions of Section XV below.

***Requests for Anonymity and Process Options:***

Even when choosing to disclose prohibited conduct, a Complainant may request that their name or other personally-identifiable information not be shared with the Respondent, that no Formal Complaint or investigation be pursued, or that no disciplinary action be taken. In these instances, before taking any further investigative steps, the Title IX Coordinator will discuss the Complainant's concerns and seek to address and remedy barriers to disclosing or participation in a process to address the prohibited conduct. The University will balance any request for anonymity with its obligation to provide a safe and nondiscriminatory environment for all members of the DePauw community. The Title IX Coordinator will evaluate the risk to public or individual safety, will provide Supportive Measures and timely warnings to address those issues, and may choose to file a Formal Complaint in the Title IX Coordinator's name and proceed with the Title IX Process with or without the participation of the Complainant. The Title IX Coordinator will balance the Complainant's request for anonymity and/or that no Formal Complaint or investigation be pursued against the following factors in reaching a determination whether the request can be honored:

- The totality of the known circumstances;
- The nature and scope of the alleged conduct, including whether the disclosed behavior involves the use of a weapon;
- The respective ages and roles of the Complainant and Respondent;
- The risk posed to any individual or to the campus community by not proceeding, including the risk of additional violence;
- Whether there have been other disclosed incidents of prohibited conduct or other misconduct by the Respondent;
- Whether the disclosed incident reveals a pattern of misconduct related to prohibited conduct (e.g., via illicit use of drugs or alcohol) at a given location or by a particular group;
- The Complainant's interest in the University's not pursuing an investigation or disciplinary action and the impact of such actions on the Complainant;
- Whether the University possesses other means to obtain relevant evidence;
- Fairness considerations for both the Complainant and the Respondent;
- The University's obligation to provide a safe and non-discriminatory environment; and
- Any other available and relevant information.

The Title IX Coordinator will consider what other steps may be possible or appropriate when the Respondent is unknown or the Complainant requests anonymity, and what other measures or remedies might be considered to address any effects of the disclosed behavior on the campus community. The Title IX Coordinator will make a determination regarding the appropriate manner of resolution under the Policy. The University will seek resolution consistent with the Complainant's request, if it is possible to do so, based upon the facts and circumstances, while also protecting the health and safety of the Complainant and the University community.

Where the Title IX Coordinator determines that a Complainant's request(s) can be honored, including a request for Supportive Measures only, the University may nevertheless take other appropriate steps to respond to the disclosed conduct and seek to prevent recurrence or remedy its effects on the Complainant and the University community. In addition to Supportive Measures for the Complainant, those steps may include providing targeted training and prevention programs, and/or providing or imposing other remedies. The Title IX Coordinator may later reconsider disclosed conduct and institute action under this Policy if any new or additional information becomes available, and/or if the Complainant subsequently decides that they would like to make a Formal Complaint.

In those instances when the Title IX Coordinator determines that the University must proceed with an investigation despite the Complainant's request that it not occur, the Title IX Coordinator will notify the Complainant that the University intends to initiate a Formal Complaint and investigation, but that the Complainant is not required to participate in the investigation or in any of the proceedings or actions taken by the University.

The University's ability to fully investigate and respond to alleged prohibited conduct may be limited if the Complainant requests anonymity or declines to participate in an investigation. The University will, however, pursue other steps to limit the effects of the potential prohibited conduct and prevent its recurrence. In all cases, the final decision on whether, how, and to what extent the University will make a Formal Complaint and conduct an investigation, and whether other measures will be taken in connection with disclosed prohibited conduct, rests solely with the Title IX Coordinator.

### ***Obligation to Provide Truthful Information***

DePauw takes disclosures of sexual harassment, including sexual assault and interpersonal violence, seriously. Disclosures that are made in good faith, whether the outcome results in a finding of responsibility or not, are not considered to be false reports. However, if a Complainant, Respondent, Witness, or third party who discloses a violation of this Policy is later found to have intentionally misled or made false claims of prohibited conduct under this Policy, they may be subject to disciplinary action under the [Employee Guide](#).

### ***Standard of Proof:***

The standard for determining responsibility is a preponderance of evidence (more likely than not that the disclosed conduct happened). If a Respondent is found responsible by the Decision panel for a violation of the Employee Title IX Policy, the Decision Panel will determine disciplinary action for the University to issue.

### ***Timeframes:***

The University will proceed with the Title IX Process in a timely manner, and will seek to complete the process (from initial assessment through disciplinary action, not including any appeal that is filed by a party) in approximately seventy-five (75) calendar days following the notice of allegations provided after

receipt of the Formal Complaint. This Policy designates reasonably prompt time frames for the major stages of the Title IX Process, but the University may extend any time frame in this Policy for good cause, including extension beyond 75 calendar days. An extension may be required for good cause to ensure the integrity and thoroughness of the investigation; to comply with a request by law enforcement; in response to accommodate the unavailability of the parties or Witnesses; accommodate delays by the parties; or for other legitimate reasons, including but not limited to the complexity of the investigation, the need for language assistance or accommodation of disabilities, and the severity and extent of the alleged misconduct. While requests for delays by the parties may be considered, the University cannot unduly or unreasonably delay the prompt resolution of a Formal Complaint under this policy. The University will notify the parties in writing of any extension of the timeframes for good cause and the reason for the extension.

Although cooperation with law enforcement may require the University to temporarily suspend the fact-finding portion of an investigation under this Policy, the University will promptly resume its investigation as soon as it is notified by the law enforcement agency that the agency has completed the evidence gathering process. The University will not, however, wait for the conclusion of a criminal proceeding to begin its own investigation and, if needed, will take immediate steps to provide appropriate Supportive Measures.

#### ***ADA Accommodations:***

It is the policy and practice of the University to provide reasonable accommodations related to the Title IX Process for Employees with officially documented restrictions as a result of a disability. It is the responsibility of the Employee to inform the Title IX Coordinator of their need for an accommodation, provide documentation of their restrictions as a result of a disability from Human Resources, and request the accommodation that they need. Employees may be required to sign a waiver of confidentiality to allow the Title IX Coordinator to communicate with Human Resources regarding the reasonableness of the requested accommodations and other potential alternatives to the requested accommodation. Accommodations are not retroactive.

## **X. Informal Resolution**

Informal Resolution is a voluntary process that may result in the parties and the University agreeing on a resolution of the allegations of a Formal Complaint in lieu of an investigation and/or adjudication under the Title IX or University Process. Where the parties agree to consider an Informal Resolution and the Title IX Coordinator concludes that it may be appropriate, the University will work with the Complainant and Respondent to craft an Informal Resolution process based on the unique circumstances of the parties and the disclosed prohibited conduct. Both parties must agree to the Informal Resolution process voluntarily and in writing. An Informal Resolution may be requested at any time between the making of a Formal Complaint and the commencement of a Decision Panel Meeting to determine responsibility. Informal Resolution will not be permitted to resolve reports of an Employee engaging in Title IX Sexual Harassment against a Complainant who is a Student.

Potential elements of an Informal Resolution include but are not limited to targeted or broad-based educational programming or training, supported direct confrontation of the Respondent through restorative justice or mediation practices, and/or indirect action by the Title IX Coordinator. Measures designed to maintain the Complainant's access to the educational and employment activities of the University and to eliminate a potential hostile environment may also be included regardless of whether they disproportionately impact the Respondent, if agreed to by the parties. An Informal Resolution does not necessarily involve the Respondent admitting to a Policy violation or taking disciplinary action against

the Respondent; however, the parties may agree on a resolution that includes such elements. Likewise, although relevant information disclosed during an Informal Resolution is not necessarily excluded from any subsequent Title IX Process, the parties may agree on a resolution structure that does so. The University will not compel a Complainant to engage in mediation, to directly confront the Respondent, or to participate in any particular form of Informal Resolution. The decision to pursue Informal Resolution will be made when the University has sufficient information about the nature and scope of the conduct, which may occur at any time after a Formal Complaint is received.

Participation in Informal Resolution is voluntary for both the Complainant and Respondent, and any party can request to end Informal Resolution and pursue the Title IX or University Process at any time prior to the completion of the terms of the Informal Resolution. Information shared within an Informal Resolution is not admissible as evidence in any formal process that might result after a withdrawal from the Informal Resolution. The Title IX Coordinator will maintain records of all disclosed prohibited conduct and conduct referred for Informal Resolution, which will typically be complete within seventy-five (75) calendar days of the parties' agreement to engage in Informal Resolution.

If the parties are interested in pursuing Informal Resolution, the Title IX Coordinator (or a designee) will send written notices to the parties describing:

1. The details of the conduct at issue;
2. The requirements of the Informal Resolution;
3. The circumstances under which the parties are precluded from resuming a Formal Complaint arising from the same allegations;
4. The right to end the Informal Resolution process at any time prior to completion and resume the Formal Complaint process;
5. The consequences resulting from participating in the Informal Resolution;

The Title IX Coordinator will maintain records of all disclosed prohibited conduct and conduct referred for Informal Resolution, which will typically be complete within seventy-five (75) calendar days of the parties' agreement to engage in Informal Resolution.

## **XI. Investigation and Resolution Process**

The University investigates and resolves issues related to Formal Complaints of prohibited conduct, and any other related violations. While the parties involved will have certain procedural rights, the procedure described is an administrative process and not intended to constitute a legal proceeding. The University shall use the process described below to determine facts and responsibility for the disclosed conduct by impartially weighing the credibility of the evidence and whether it meets the preponderance of evidence standard.

### ***Notice of Formal Complaint and Commencement of Process/Dismissal of Complaint:***

1. A Complainant may make a Formal Complaint of prohibited conduct if they are participating in or attempting to participate in the University's Education Program or Activity at the time the Formal Complaint is made. Alternatively, the Title IX Coordinator may file a Formal Complaint on behalf of a Complainant.

2. The Title IX Coordinator will ask the Complainant questions to gather information related to jurisdiction for the Formal Complaint and will then evaluate the available information surrounding the Formal Complaint to determine whether: (a) the conduct could, if proved, constitute a violation of Title IX Sexual Harassment; (b) the conduct occurred in the University's Education Program or Activity, and (c) the conduct occurred in the United States. If all three of the conditions above are met, the Formal Complaint will proceed under the Title IX Process. If any of the conditions are not met, the Formal Complaint must be dismissed under the Title IX Process but will be forwarded to the Associate Vice President of Human Resources for review under other University policies. The decision to dismiss a Formal Complaint under this Policy and/or to refer disclosed conduct to Human Resources will be communicated in writing to the Complainant generally within (3) days of receipt of the Formal Complaint and is subject to appeal as provided in Section XIII.
3. If the requirements of Paragraph 2 are met for a Title IX Process to commence, the Title IX Coordinator will provide both the Complainant and Respondent with a written notice of allegations in the Formal Complaint that includes (a) a description of the Title IX Process (b) sufficient details of the disclosed conduct constituting a violation of the Policy to prepare a response, including the identities of the parties, if known, the disclosed conduct which could be a violation of the Policy, and the date and location of the disclosed conduct, (c) the potential Policy violations at issue; (d) a statement that the Respondent is presumed not responsible for the disclosed conduct and that a determination regarding responsibility is made at the conclusion of the Title IX Process; (e) the name of the assigned investigator and an opportunity to object to the investigator on the basis of bias or conflict of interest; (f) a statement that the party may have an Advisor of their choice, who may be but is not required to be an attorney, and that if the party does not have an Advisor present at the Decision Panel Meeting, the University will provide them an Advisor to ask questions of the other party and Witnesses; (g) a statement that the parties may inspect and review evidence at the conclusion of the investigation phase; (h) a statement about preservation of evidence; and (i) the prohibition against retaliation. Typically, the parties will receive notice of the allegations in the Formal Complaint within three (3) business days of the date the Formal Complaint was received by the Title IX Coordinator. If, in the course of the investigation of the Formal Complaint, information is gathered that indicates that additional violations may warrant investigation as well, the Title IX Coordinator will send revised notice to the parties to include those potential violations. After notifying the Respondent of the Formal Complaint, the Title IX Coordinator will also meet with the Respondent to explain the investigation/adjudication process, available resources, and Supportive Measures.
4. If a Complainant or Respondent believes that the assigned investigator(s) may have a conflict of interest or bias which could result in their inability to provide a fair investigation to the Complainant or Respondent, the Complainant or Respondent should notify the Title IX Coordinator immediately, in writing, of this concern, including an explanation or reason for the conflict of interest or bias. If the Title IX Coordinator determines an actual conflict exists, the Title IX Coordinator will assign a new investigator.
5. At any time during the investigation or Decision Panel Meeting, certain circumstances may occur that make dismissal of a Formal Complaint appropriate, including written notification to the Title IX Coordinator that the Complainant wishes to withdraw the Formal Complaint, the Respondent is no longer employed by the University, or specific circumstances prevent the University from gathering evidence sufficient to make a determination of responsibility for the disclosed

conduct. In such cases, written notice of the decision to dismiss will be provided to the parties, and such decision is subject to appeal as provided in Section XIII of this Policy.

6. For a Formal Complaint that is dismissed under this subsection which is subsequently found after full investigation pursuant to other University policy to constitute severe or pervasive harassment based on sex (including sexual orientation, gender identity, or gender expression), the Formal Complaint will be reinstated to determine any responsibility under this Policy in accordance with the provisions below.

***Investigation of a Formal Complaint:***

7. The investigators shall conduct a fair, impartial and thorough investigation, which may include, but is not limited to, interviews or written statements with the Complainant, the Respondent, and relevant Witnesses, as well as collection of available evidence, including electronic and social media communications, documents, photographs, and communications between the parties. The investigation is designed to provide both parties a full, equal, and fair opportunity to be heard, to submit relevant inculpatory or exculpatory information, and to identify fact or expert witnesses. Neither party's ability to discuss the disclosed conduct under investigation or to gather and present relevant evidence will be restricted.
8. The Complainant and the Respondent are encouraged to have an Advisor(s) to assist during the investigation and adjudication of a Formal Complaint. The Advisor may be an attorney. The University will provide a list of trained Advisors from its administrative staff, and can assist in connecting the Employee and an Advisor from the list if requested by an Employee. An Advisor accompanying an Employee at any meeting may provide support, guidance or advice to the Employee during the meeting, but may not otherwise participate in the meeting except as provided below regarding questioning during a Decision Panel Meeting in the Title IX Process or unless requested to do so by the University. An Advisor may not in any manner delay, disrupt, or interfere with meetings and/or proceedings. Advisors should plan to make themselves reasonably available, and the University will not unduly delay the scheduling of meetings or proceedings based on the Advisor's unavailability. An Advisor may be asked to meet with a University administrator in advance of any participation in the proceedings to understand the expectations of the role, privacy considerations, and appropriate decorum. Advisors who are unable or unwilling to adhere to the University's expectations may not be permitted to continue participating in the Title IX Process.
9. The University, not the parties, is responsible for the burden of proof and the burden of gathering relevant evidence to the extent reasonably possible. Both the Complainant and Respondent will be asked to identify Witnesses and provide other relevant information, such as documents, communications, photographs, and other evidence. Both parties are encouraged to provide all relevant information in a timely manner to facilitate prompt resolution. In the event that a party declines or delays in voluntarily providing material information, the University's ability to conduct a prompt, thorough, and equitable investigation may be impacted. All parties or Witnesses whose participation is invited or expected will be provided written notice of the date, time, location, participants, and purpose of all meetings, including investigative interviews or Decision Panel Meetings, with sufficient time for the party to prepare to participate.

10. The investigators may visit relevant sites or locations and record observations through written, photographic, or other means. In some cases, the investigators may consult medical, forensic, technological, or other experts when expertise on a topic is needed in order to achieve a fuller understanding of the issues under investigation. The University will not consider polygraph results.
11. In general, the University cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, attorney, clergy member, or other recognized professional or paraprofessional acting or assisting in that capacity, and which are maintained in connection with the provision of services to the party, unless that party gives their voluntary, written consent to do so. In those instances, the relevant information from the records must be shared with the other party.
12. The investigators will review all information identified or provided by the parties and will determine the relevance of the information developed or received during the investigation.
13. Prior or subsequent conduct of the Respondent may be considered in determining pattern, knowledge, intent, motive, or absence of mistake. For example, evidence of a pattern of prohibited conduct by the Respondent, either before or after the incident in question, regardless of whether there has been a prior finding of a policy violation, may be deemed relevant to the determination of responsibility for the prohibited conduct under investigation. The determination of relevance of pattern evidence will be based on an assessment of whether the previous or subsequent conduct was substantially similar to the conduct under investigation or indicates a pattern of similar prohibited conduct. The investigators (and the Decision Panel chair during a Decision Panel Meeting) will determine the relevance of this information and both parties will be informed if evidence of prior or subsequent conduct is deemed relevant.
14. The sexual history of the Complainant is not relevant, except in two circumstances: (1) to show that someone other than Respondent committed the conduct; and, (2) where the Respondent alleges the sexual contact was consensual, evidence of the manner and nature of how the parties communicated consent in the past may be relevant in assessing whether consent was communicated in the reported conduct. As set forth in the consent definition, the mere fact of a current or previous dating or sexual relationship, by itself, is not sufficient to constitute consent and, even in the context of a relationship, consent to one sexual act does not constitute consent to another sexual act, and consent on one occasion does not constitute consent on a subsequent occasion.
15. The University expects all members of the University community to cooperate fully with the investigation and Title IX Process. It is understood that there may be circumstances in which a Complainant or Respondent wish to limit their participation, and the University will respect the choice of the Complainant or Respondent as to how to engage in the Title IX Process. The University may, however, move forward with the investigation without the participation of a party or parties. No adverse inference will be drawn from a party's election to not participate in the Title IX Process.
16. The University may consolidate Formal Complaints of 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 prohibited conduct arises out of the same facts or circumstances.

17. At the conclusion of the fact-gathering portion of the investigation, the investigators will provide to each party and their Advisor, if any, the opportunity to review evidence that is directly related to the disclosed prohibited conduct, including any 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. The parties will have ten (10) business days to submit a written response, which the investigators will consider prior to completion of the investigative report. The investigators will consider requests made in writing for additional Witnesses or submission of new evidence, and the investigators will provide each party notice of the submission of additional information and provide an abbreviated opportunity to review and respond. The investigators will also consider written requests for additional time to review the evidence. The Complainant and Respondent are not permitted to remove evidence from its secure physical location, nor make copies, downloads, screenshots, printouts, photographs, or any other reproduction electronic or otherwise, of the information provided for review.
18. The investigators will prepare an investigative report that fairly summarizes relevant evidence, both inculpatory and exculpatory, and provide the Complainant and Respondent, and their Advisors, with an opportunity to review the investigative report and provide a written response. Access to the final investigative report will be provided to each party and their Advisor, if any, at least ten (10) business days prior to the Decision Panel Meeting for the parties' review and written response.

***Decision Panel Meeting and Determination Regarding Responsibility:***

19. Upon completion of the investigation of a Formal Complaint, the Title IX Coordinator shall assign a Decision Panel consisting of three (3) members (including the Decision Panel Chair) to hold a live meeting ("Decision Panel Meeting") during which they will review evidence and hear live statements from the parties and Witnesses including answers to relevant questions. The Title IX Coordinator will provide the parties and all Witnesses who will be requested to participate written notice including details on the date, time, and location of the Decision Panel Meeting, the anticipated Witness list, and the names of the Decision Panel members, at least ten (10) business days in advance of the Decision Panel Meeting. The Title IX Coordinator will consider written requests from either party for a reasonable delay in the date of the Decision Panel Meeting, if such delay is necessary to maintain the fairness and integrity of the Title IX Process. The request must be made no later than three (3) business days before the original scheduled date of the Decision Panel Meeting.
20. A party may add Witness(es) to the list of those named in the notice only if they were not known at the time of the completion of the final investigative report. The party must provide the Witness's name, contact information (if not a University Student or Employee), an explanation of why the Witness was previously unavailable, and a brief description of what information the Witness is expected to provide at the Decision Panel Meeting, at least three (3) business days prior to the date of the Decision Panel Meeting. The Witness will be interviewed by the investigators and an addendum to the investigative report completed. The Title IX Coordinator

has the discretion to reschedule the Decision Panel Meeting to allow the parties equal and timely access to any new information.

21. If a Complainant or Respondent believes that an assigned Decision Panel member may have a conflict of interest or bias which could result in their inability to provide a fair determination regarding responsibility and/or sanctions to the Complainant or Respondent, the Complainant or Respondent should notify the Title IX Coordinator immediately, in writing, of this concern, including an explanation or reason for the conflict of interest or bias. If the Title IX Coordinator determines an actual conflict exists, the Title IX Coordinator will assign a new Decision Panel member.
22. The Decision Panel Meeting will be conducted with the parties located in separate rooms with technology enabling the Decision Panel and participants to simultaneously see and hear each other. However, if all parties and the Title IX Coordinator agree, the Decision Panel Meeting may alternately be conducted with all parties physically present in the same location. An audio or audiovisual recording or transcript of the Decision Panel Meeting will be created and maintained by the Title IX Office and will be available to the parties for inspection and review.
23. Decision Panel Meetings shall not be publicized or open to the public; only participants in the meeting (Decision Panel members, the parties, their respective Advisors, and Witnesses), the Title IX Coordinator, or another University Employee as deemed appropriate by the Title IX Coordinator may be present. All participants shall hold matters relating to the Decision Panel Meeting in strict confidence. Witnesses are not permitted to attend Decision Panel Meetings to observe; their role is limited to giving their statements and answering questions.
24. The Complainant and Respondent shall have the opportunity to attend the hearing and to hear and respond to evidence and questions posed by the Decision Panel, and will be provided copies of all directly related evidence for reference at the hearing. The Complainant and Respondent may not directly question one another. However, each party's Advisor is permitted to directly ask the other party and any Witnesses relevant questions and follow up questions, provided that the Decision Panel will determine whether any question to be asked by an Advisor is relevant prior to the party or Witness answering. If a question is determined to not be relevant, the Decision Panel chair will explain the decision to exclude the question. If a party does not have an Advisor present at the Decision Panel Meeting, the University will provide a trained member of its administrative staff at no cost to the party to serve as the party's Advisor for purposes of asking questions of the other party and Witnesses during the Decision Panel Meeting.
25. In the event the Complainant, Respondent, or a Witness is unable or unwilling to attend the Decision Panel Meeting, the Decision Panel may still proceed with the meeting. However, any determination of facts and responsibility for the conduct disclosed in the Formal Complaint shall be based upon evidence presented at the Decision Panel Meeting through testimony, written statements or summaries of interviews, and no inference about the determination regarding responsibility may be made solely on a party or Witness's absence from the Decision Panel Meeting. Notwithstanding the above, if a Complainant, Respondent, or a Witness is unable or unwilling to attend the Decision Panel Meeting, or does not agree to answer a question posed by the Decision Panel or an Advisor, the Decision Panel must not rely on any statement of that party or Witness in reaching the determination regarding responsibility. No inference about the determination regarding responsibility may be made solely on the party or Witness's absence

from the Decision Panel Meeting, or their refusal to answer a question from the Decision Panel or Advisor.

26. At the conclusion of the Decision Panel Meeting, the Decision Panel will assess the credibility and weight of the evidence and make a determination regarding responsibility for a violation of University Policy. If the Decision Panel determines that the Respondent is responsible for violation of University Policy, it will also make a determination regarding appropriate disciplinary action to be taken (see Section XII Disciplinary Actions below). The Complainant may submit a statement about the impact of the prohibited conduct on them to the Decision Panel for consideration in its determination regarding disciplinary action, and the Respondent may submit a statement about factors that could mitigate the disciplinary action taken. Decisions regarding responsibility will be made by a preponderance of the evidence standard by majority vote of the Decision Panel. The decisions regarding responsibility and disciplinary action will be provided simultaneously in writing to the Complainant and Respondent and will include (a) identification of the disclosed prohibited conduct; (b) 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 meetings held; (c) findings of fact supporting the determination; (d) conclusions regarding the application of this Policy to the facts; (e) a statement of, and rationale for, the result as to each potential violation of University Policy, including a determination regarding responsibility, any disciplinary action to be issued to the Respondent, and whether remedies designed to restore or preserve equal access to the University's education program or activity will be provided to the Complainant; and (f) the procedures and permissible bases for the Complainant and Respondent to appeal.

## **XII. Disciplinary Actions**

If the Respondent is found to be responsible for a violation of the Policy, the Decision Panel shall determine disciplinary action to be imposed by the University, including whether the discipline will be recorded in the Respondent's employee file in Human Resources, in their Academic Affairs file (as applicable), or both. Disciplinary action can range from written warning up to termination of employment. Any disciplinary level may also include completion of assigned educational requirements and counseling. Supportive Measures, including no-contact directives, no trespass orders and changes to job schedules or conditions, may also be implemented upon a finding of responsibility.

In determining the appropriate disciplinary action, the Decision Panel shall consider the following factors: the nature and violence of the conduct at issue; the impact of the conduct on the Complainant; the impact or implications of the conduct on the community or the University; prior misconduct by the Respondent, including the Respondent's relevant prior discipline history, both at the University or elsewhere (if available), including criminal convictions; whether the Respondent has accepted responsibility for the conduct; maintenance of a safe and respectful environment conducive to living, learning, and working; protection of the University community; and, any other mitigating, aggravating, or compelling circumstances in order to reach a just and appropriate resolution in each case.

Disciplinary action may be imposed individually or in combination.

### ***Disciplinary Action for All Employees:***

Counseling: Discussion with the Employee of the prohibited conduct.

Verbal Warning: A verbal discussion with an Employee about an Employee's failure to comply with this Policy. Human Resources will document that the meeting occurred, the subject of the meeting and the outcome of the meeting and will submit the documentation to the Employee's file.

Written Warning: Documentation of a violation of this Policy. Documentation goes to the Employee's file in Human Resources.

Final Warning: Documentation clearly stating that any additional violations of University Policy will be likely to result in termination which is issued to the Employee and filed in the Employee's file in Human Resources.

Suspension: Removal of an Employee from their position for a period of time, either with or without pay. Suspensions must be documented to the Employee's file in Human Resources. Salaried Employees can only be suspended for a full day of work and can be suspended only in instances of severe or gross misconduct.

Termination of Employment: Removal of the Employee from their status as an active Employee of the University.

***Additional Disciplinary Action for Faculty:***

Lesser Sanctions: [Lesser sanctions](#) as defined in the Academic Handbook may be imposed. These sanctions may be temporary or permanent.

### **XIII. Appeals**

***Procedure:***

A party may appeal the determination of responsibility or sanction imposed, or the dismissal of a Formal Complaint or any allegations therein, by filing their full and complete written appeal with the Vice President for Finance and Administration (for staff or administration Respondents) or the Vice President of Academic Affairs (for faculty Respondents) within ten (10) business days of the date of the letter of notification of the decision being appealed, unless that time is extended in writing by the Vice President. Appeals may be based only on the following reasons:

1. New evidence that was not reasonably available at the time of the determination regarding responsibility or dismissal was made that could affect the outcome of the matter
2. Procedural irregularity that affected the outcome of the matter
3. Conflict of interest or bias of the Title IX Coordinator, investigator(s), or decision-maker(s) for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter
4. Appropriateness of disciplinary action

All materials supporting any appeal must be submitted at the time the appeal is filed. The Vice President will advise the non-appealing party in writing of the receipt of an appeal and will provide a copy of the appeal to the non-appealing party. The non-appealing party(ies) will have ten (10) business days from the date of their receipt of the appeal to respond in writing to the appeal. A copy of the response will be issued to the appealing party. No additional review or response to submissions related to the appeal may be made by either party after this point, unless requested by the Vice President. After receipt of the non-

appealing party's response, the Vice President will determine the disposition of the appeal. For decisions involving termination as a sanction, the Vice President will confer with the President of the University as part of their determination process.

***Disposition of Appeals by the Vice President:***

The Vice President may:

1. Affirm the action taken.
2. Reverse the decision and refer the case back for reconsideration.
3. Reverse the decision, in whole or in part, and vacate or modify any disciplinary action.
4. Reverse or impose different disciplinary action.

The Vice President will advise both parties in writing of the decision on appeal and the rationale for the result within ten (10) business days of submission of the non-appealing party's response. Decisions by the Vice President are final.

The determinations regarding responsibility and disciplinary action become final on the date that the Vice President 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 the appeal would no longer be considered timely.

## **XIV. Communication of Outcomes**

Both the Complainant and the Respondent will be notified simultaneously in writing of the outcome of an investigation and determination of responsibility concerning sexual harassment, including sexual assault or interpersonal violence, and of any appeal decisions following such determination. The University is committed to fulfilling its obligations under the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act. Statistics citing the number of disclosed incidents of sexual misconduct and interpersonal violence and their disposition are included in the Annual Security and Fire Safety Report which can be found on the DePauw Police Website.

## **XV. Title IX Records**

***Record Retention***

An Employee's file related to the Employee Title IX Policy, including but not limited to any Supportive Measures, investigation, formal hearing, appeal, informal resolution, and remedies will be maintained for seven (7) years, after which records are archived and cannot be accessed for reporting.

***Release of Information and Notification:***

1. The Associate Vice President of Human Resources or designee is responsible for the release of any information relating to Employee Title IX cases.
2. Names of Employees being investigated for violations of the Employee Title IX Policy will not be released.
3. Employers and representatives of undergraduate and/or graduate/professional schools will be informed of all Employee Title IX Policy violations resulting in a disciplinary action of final warning or higher if information is requested and a release has been signed by the employee, according to the record retention policy above.

***Family Educational Rights and Privacy Act:***

Access to records and release of information and notification shall be construed and applied in a manner consistent with the requirements of employment laws and regulations as well as the Family Educational Rights and Privacy Act (FERPA), as amended from time to time, including parental notification and participation in Title IX or University Processes where the Complainant is a minor. The University will keep confidential the identity of any individual who has disclosed prohibited conduct, any Complainant, any Respondent, and any Witness, except as may be permitted by the FERPA statute, regulations or as required by law (including by subpoena, court order, or search warrant), or to carry out the conduct of any Title IX Process.

## **XVI. Training and Education**

The University is committed to the prevention of sexual misconduct and interpersonal violence through regular and ongoing education and awareness programs. All incoming students and new Employees (faculty and staff) receive primary prevention and awareness programming, and returning students and current Employees receive ongoing training and related programs. Individuals involved in the implementation of this Policy also receive regular, comprehensive mandated training on this Policy and Related Processes, which incorporates all required training, including specific training as required by the Clery Act and Title IX.

## **XVII. Annual Review**

This Policy reflects the University's good faith efforts to implement the newly-promulgated legal requirements under the Title IX regulations issued in May 2020, to synthesize those regulations with other Federal law, including the Clery Act, and with state law applicable to students and Employees. The University reserves the right to modify this Policy and the accompanying procedures as necessary to comply with Federal or state law, and such modifications may be made before or during an ongoing resolution process.

Given the rapidly evolving nature of the legal requirements applicable to sexual misconduct, and the desire to provide accessible, effective, and legally compliant policies and procedures, the University will review this Policy on at least an annual basis. The review will capture evolving legal requirements, evaluate the supports and resources available to the parties, and assess the effectiveness of the resolution process (including as to the fairness of the process, the time needed to complete the process, and the sanctions and remedies imposed). The review will consider feedback from individuals affected by the Policy and will incorporate an aggregate view of reports, resolution, and climate.

## **XVII. Resources**

### ***Campus Resources:***

DePauw Police

765-658-5555

Title IX Coordinator

765-658-4155

### ***Community Resources:***

Family Support Services

765-653-4820

Greencastle Police

765-653-3155

Putnam County Hospital

765-653-5121

Putnam County Sheriff

765-653-3211

RAINN (National Resource)

1-800-656-HOPE (4673)

## **XVIII. External Reporting**

Concerns about the University's application of Title IX and the Clery Act may be addressed to the University's Title IX Office; the United States Department of Education, Clery Act Compliance Division (at [clery@ed.gov](mailto:clery@ed.gov)); the United States Department of Education, Office for Civil Rights, at ([OCR@ed.gov](mailto:OCR@ed.gov) or (800) 421-3481); and/or the Equal Employment Opportunity Commission (at [info@eeoc.gov](mailto:info@eeoc.gov) or (800) 669-4000).

*(Reviewed and endorsed by the President's Cabinet, August 2020)*