



APPENDIX H¹
PROCEDURES FOR OTHER SEXUAL MISCONDUCT
EFFECTIVE OCTOBER 1, 2022 – JULY 31, 2024

SECTION A	<u>Assessment & Notice</u>
SECTION B	<u>Assessment of Certain Allegations of Non-Title IX Sex-Based Harassment and/or Non-Title IX Sexual Harassment</u>
SECTION C	<u>Informal Resolution</u>
SECTION D	<u>Investigation</u> <ol style="list-style-type: none">1. Fact-Gathering Process2. Investigative Protocols3. Investigative Report
SECTION E	<u>Resolution Procedures for All Investigations of “Other Sexual Misconduct”</u>
SECTION F	<u>Additional Resolution Procedures for Investigations of “Other Sexual Misconduct” Involving <i>Student Respondents</i> (unless otherwise noted)</u> <ol style="list-style-type: none">1. Resolution Panel2. Determination of Responsibility3. Sanctioning (<i>applicable to all investigations</i>)4. Appeals5. Notice of Outcomes (<i>applicable to all investigations</i>)
SECTION G	<u>Exclusivity of Process</u>

A. Assessment and Notice

Per the Sexual Misconduct Policy, once OIE has determined that the allegations at issue do not involve Title IX Sexual Harassment, the determination as to whether to initiate an investigation will take into account whether the alleged conduct violates the prohibitions against Other Sexual Misconduct or retaliation, as well as any requests by the Complainant for the matter not to be investigated or for confidentiality, as discussed above in the Policy. In addition, for allegations of Non-Title IX Sex-Based Harassment and/or Non-Title IX Sexual Harassment, the process followed by OIE will take into account the severity, pervasiveness, and/or persistence of the alleged conduct, as further described below.

If the Title IX Coordinator decides not to conduct an investigation or to conduct a limited inquiry prior to the commencement of any proceedings, the Title IX Coordinator will memorialize that decision in writing and will notify the Complainant of that determination.

¹ The Procedures for Other Sexual Misconduct will be utilized for applicable matters reported to the Office of Institutional Equity (“OIE”) on or after August 14, 2020 where the allegations of Other Sexual Misconduct allegedly occurred on or after August 14, 2020. For any matters reported to OIE prior to August 14, 2020, or which concern allegations of Other Sexual Misconduct that allegedly occurred prior to August 14, 2020, OIE will apply the policy and procedures that were in effect until August 14, 2020.

If the Title IX Coordinator decides to open an investigation, the Title IX Coordinator or a designee will promptly notify the Complainant and Respondent simultaneously in writing of the alleged violation(s) that the University plans to investigate, including the date, time, and location of the alleged violation(s) and the range of potential sanctions associated with the alleged violation(s). The Title IX Coordinator or a designee reserves the right to amend or supplement that notice at any time and will provide the Complainant and Respondent with notice of any such changes in the scope of the investigation.

The Title IX Coordinator or a designee will also provide the Complainant and Respondent, respectively, with a written explanation of their rights, options, and responsibilities under the Sexual Misconduct Policy and these Procedures, including the availability of interim supportive measures and support services, information regarding other civil and criminal options, the party's right to the assistance of a supporter (including an attorney or advocate, as discussed below), and the legal service organizations and referral services available to the party.

Additionally, the Title IX Coordinator or a designee will ensure that both the Complainant and Respondent are updated appropriately and equivalently throughout the investigative process, including providing timely notices of scheduled meetings, hearings, and interviews in which they are required or permitted to attend. The Complainant and/or Respondent may, however, decline to participate in the investigation or resolution process. The University may continue the process without the Complainant's and/or Respondent's participation.

If the facts surrounding a report of Other Sexual Misconduct also involve other alleged violations of University policy, including, but not limited to, student codes of conduct, the Title IX Coordinator or a designee may also investigate such other alleged violations or refer them to the appropriate authority, such as Student Conduct or Human Resources.

B. Assessment of Certain Allegations of Non-Title IX Sex-Based Harassment and/or Non-Title IX Sexual Harassment

When OIE receives allegations of Non-Title IX Sex-Based Harassment and/or Non-Title IX Sexual Harassment, and the alleged conduct falls in the sub-category of conduct that "unreasonably creates a work or academic environment that a reasonable person would perceive to be abusive or hostile," OIE performs additional assessment to determine the appropriate process:

- If the conduct as alleged would be considered so severe, pervasive, or persistent that it unreasonably interfered with, limited, or deprived a member of the community of the ability to participate in or to receive benefits, services, or opportunities from the University's education or employment programs and/or activities, any resulting investigation will be conducted consistent with these Procedures for Other Sexual Misconduct.
- For all other allegations, OIE will determine whether the allegations should be addressed by OIE, another University office/entity (for example Student Conduct or Human Resources), or a joint collaboration between OIE and another office/entity. Such allegations generally will not result in an OIE investigation under these Procedures, but may lead to other disciplinary, restorative or educational measures.
- Informal resolution may be available in both of the above situations.

OIE will communicate with the parties and will document the results of its assessment and any actions or measures that are implemented.

C. Informal Resolution

If the Complainant and Respondent agree, certain cases may be resolved informally. Cases involving allegations of sexual assault or sexual coercion are not suitable for informal resolution. Informal resolution may also be unavailable if the Title IX Coordinator determines that it is inappropriate based on the facts and circumstances of the particular case. All informal resolutions will be conducted or overseen by the Title IX Coordinator or a trained designee, and under no circumstances will a Complainant be directed to resolve a matter directly with the Respondent.

Either the Complainant or the Respondent may withdraw their agreement to proceed informally at any time prior to a resolution agreement being reached and finalized. If both parties are satisfied with a proposed informal resolution and the Title IX Coordinator considers the resolution to satisfy the University's obligation to provide a safe and non-discriminatory environment, the resolution will be implemented and the informal resolution process will be concluded. If informal resolution efforts are unsuccessful, the resolution process will continue.

If a matter is resolved through informal resolution, the parties will receive a written notice of the outcome memorializing the terms of the informal resolution.

D. Investigation

1. Fact-Gathering Process

During the first phase of its investigation, the University will gather facts related to the allegations of sexual misconduct. The Title IX Coordinator will designate one or more trained internal or external investigators to interview the Complainant, Respondent, and witnesses. The Title IX Coordinator may serve as an investigator. Investigators will also gather pertinent documents and other evidence identified by either party or that comes to their attention.

Parties have the right to submit evidence, suggest witnesses and/or suggest specific questions to be posed to the other party during the investigation.

2. Investigative Protocols

The investigators will follow the protocols set forth below:

- **Preservation of Evidence:** The investigators will request that the Complainant, Respondent, witnesses, and other interested individuals preserve any relevant evidence, including documents, text messages, voice messages, e-mails, and postings on social media.
- **Romantic or Sexual History:** The investigators will not solicit or consider information concerning the romantic or sexual history of either party other than 1) information concerning the parties' shared romantic or sexual history that the investigators deem relevant, or 2) information concerning a party's prior sexual history with someone other than the other party if deemed relevant to prove the source of injury or prior sexual misconduct, to show that an individual has an ulterior motive, or to impeach an individual's credibility after this individual has put their own prior sexual conduct at issue. The existence of a prior consensual romantic or sexual relationship between the Complainant and Respondent is not proof of consent to alleged sexual activity.
- **Prior Conduct Violations:** The investigators will generally not consider evidence of any prior incident, but the investigators have discretion to consider evidence of any

prior incident(s) that involved conduct substantially similar to the allegation(s) being investigated or demonstrates a common pattern of behavior.

- **Mental Health Conditions:** The investigators will not solicit or consider information concerning a party's history of mental health counseling, treatment, or diagnosis, unless the party consents to the use of such information.
- **Law Enforcement Investigations:** If the University's investigation is delayed during the evidence-gathering stage of a concurrent law enforcement investigation, the University's investigation will resume promptly thereafter.

At any time prior to or during an investigation, the Respondent may accept responsibility for some or all of the alleged violations. If the Respondent accepts responsibility for all of the alleged violations, the matter will then proceed to the applicable sanctioning phase and any available appeal of the sanctioning decision. If the Respondent only accepts responsibility for some of the alleged violations, the investigation shall continue with respect to all remaining disputed allegations, if determined to be appropriate by the investigator and Title IX Coordinator. Where the Respondent has accepted responsibility for some alleged violations but other allegation(s) remain under investigation, the Title IX Coordinator will determine whether the sanctioning phase for the accepted allegations will proceed at the time of acceptance or await the resolution of entire investigation, including the disputed allegations.

3. Investigative Report

Upon completion of the fact-gathering process, the investigator will consider all relevant evidence and prepare a report. The report will include the investigator's findings of fact, an assessment of credibility of the information provided, and a recommended determination as to whether the Respondent is responsible for the alleged violation(s) by a preponderance of the evidence.

The Complainant and Respondent will be notified in writing of their right to review the investigative report and submit written comments to OIE within seven (7) calendar days of the date of notification. If either party chooses to submit written comments to OIE, these comments will be provided in full to the other party as well as the resolution panel or other applicable decision-making authority along with OIE's final investigative report.

When the investigative report is submitted to the parties, the names and identifying information of other students/individuals will be redacted to the extent required by FERPA and to protect other privileged and confidential information. Once the Title IX Coordinator or investigator determines that an investigation is complete, the Title IX Coordinator or investigator will transmit the investigative report and any party and OIE comments regarding the same, to the resolution panel or, in the case of faculty or staff Respondents, the appropriate entity or administrator for determination of findings pursuant to applicable procedures.

E. Resolution Procedures for All Investigations of Other Sexual Misconduct

Staff Respondents:

Resolution, sanctions and appeals of complaints of Other Sexual Misconduct in which the Respondent is a staff member will be governed by the procedures in the University's personnel policies, except as provided herein. The appropriate decision-maker/administrator/panel/board will use the [preponderance of the evidence](#) standard to determine Respondent's responsibility for alleged Policy violations.

Faculty, Residents and Post-doctoral Fellow Respondents:

Resolution, sanctions and appeals of complaints of Other Sexual Misconduct in which the Respondent is a

member of the faculty, post-doctoral fellow, or resident will be processed by the office of the dean of the appropriate division according to the disciplinary procedures established by that division, except as provided herein. The appropriate decision-maker administrator/panel/board will use the [preponderance of the evidence](#) standard to determine Respondent's responsibility for alleged Policy violations.

Notwithstanding the normal procedures in divisional or unit policies, the following provisions apply for: (1) complaints of Other Sexual Misconduct that include allegations of [sexual assault](#), [relationship violence](#), and [stalking](#) regardless of whether the Complainant or Respondent is a student, or faculty or staff member; and (2) for complaints of Non-Title IX sexual harassment in which the Complainant or Respondent is a student:

- **Equal Rights:** All procedural rights will be afforded equally to Respondents and Complainants.
- **Testimony:** If the applicable procedures allow one party to be present for the entirety of a hearing, both parties shall be provided this right equally. When requested, arrangements shall be made so that the Complainant and the Respondent are not present in the same room at the same time. Both parties will be permitted to offer testimony at a hearing or, if the procedures do not include a hearing, to the adjudicating official.
- **Review of Information:** The Complainant and Respondent will each have equal and timely access to any information that will be used during disciplinary meetings and hearings, consistent with FERPA and to protect other confidential and privileged information.
- **Questioning:** If the applicable procedures include a hearing, only the resolution panel may ask questions of the parties and any witnesses. Both parties may propose questions of the other party and witnesses by submitting questions to the panel in writing at any time during the proceeding. The resolution panel is encouraged to include all relevant questions, but may, in its discretion, ask, alter or omit any or all submitted questions.
- **Romantic/Sexual History:** In general, the resolution panel will not consider evidence concerning the romantic or sexual history of either party, except for evidence of 1) the parties' shared romantic or sexual history that the resolution panel deems relevant, or 2) information concerning a party's prior sexual history with someone other than the other party if deemed relevant to prove the source of injury or prior sexual misconduct, to show that an individual has an ulterior motive, or to impeach an individual's credibility after this individual has put his or her own prior sexual conduct at issue. If such evidence is offered by the Complainant or Respondent, the other may respond to it. The existence of a prior consensual romantic or sexual relationship between the Complainant and Respondent is not proof of alleged sexual misconduct.
- **Mental Health Conditions:** The resolution panel will not solicit, consider or permit introduction of information concerning a party's history of mental health counseling, treatment, or diagnosis, unless the party consents to the use of such information. The resolution panel will determine whether a party effectively consented to consideration of their own mental health conditions by placing any such conditions at issue of their own accord to support their allegations or defense.
- **Students on Panel:** If the applicable procedures normally include the participation of one or more students on a resolution panel, those students will be replaced by administrative staff or faculty.

F. Additional Resolution Procedures for Investigations of Other Sexual Misconduct Involving Student Respondents

The following procedures apply to the resolution of Other Sexual Misconduct investigations in which the Respondent is a student (*except* where broader application is explicitly noted).²

1. Resolution Panel

If a matter involving a student Respondent is not resolved by informal resolution or a Respondent's acceptance of responsibility,³ the Title IX Coordinator or a designee will convene a resolution panel at the conclusion of an investigation to determine whether the Respondent is or is not responsible for violation(s) of the Policy. If the facts surrounding a report of Other Sexual Misconduct also involve other alleged violation(s) of University policy, including but not limited to student codes of conduct, the resolution panel may also hear such other alleged violations.

Each resolution panel will have three members drawn from a trained pool of University faculty and administrators and retired judges or other qualified legal professional selected by the Title IX Coordinator or a designee. Each resolution panel will include two University personnel (faculty and/or administrators) and a retired judge or other qualified legal professional.

The Complainant and Respondent will be informed of the resolution panel's membership before the hearing and shall have the opportunity to object to the participation of any member based on a conflict of interest. All resolution panel members and employees involved in the resolution process shall have received, at a minimum, annual training on issues related to sexual misconduct and on how to conduct a compliant investigation and hearing process that protects the safety of victims and promotes accountability.

2. Determination of Responsibility

Upon review of the investigative report and any comments submitted by the parties and OIE, the resolution panel may (1) determine that the case can be decided without hearing from witnesses or receiving further evidence, (2) remand the case for further investigation or clarification of the investigative report, or (3) convene a hearing. If the resolution panel determines that a case can be decided without hearing from witnesses or receiving further evidence, both the Complainant and Respondent will nonetheless have the opportunity to make a statement to the resolution panel in person or in writing if they so choose.

In the event that the resolution panel decides to convene a hearing or that either party (or both) elect to make an in person statement to the resolution panel, this will be a closed proceeding, meaning that no one other than the resolution panel members, supporters, and necessary University personnel may be present. If a hearing is convened, the Complainant and Respondent, their respective supporter(s), and witnesses called to the hearing will be present in the hearing room only when making a statement or being questioned by the resolution panel. The Complainant and Respondent will be given the opportunity to view or hear the evidence stage of the hearing from separate rooms via closed-circuit television or similar video or audio transmission. The deliberations of the resolution panel will be closed and private.

In general, hearings will proceed as follows, although the resolution panel has discretion to alter the order or manner in which it hears or receives evidence:

² These procedures do not apply to cases where the Respondent is a post-doctoral fellow, resident, or Peabody Preparatory School student.

³ If a Respondent does accept responsibility, a resolution panel will be convened to determine appropriate sanction.

- Opening statement by the Complainant
- Opening statement by the Respondent
- Questioning of the Complainant by the panel
- Questioning of the Respondent by the panel
- Questioning of witnesses by the panel
- Questioning of the investigators by the panel
- Closing statement by the Complainant
- Closing statement by the Respondent

The resolution panel may set reasonable time limits for any part of the hearing. The resolution panel may also determine the relevance of, place restrictions on, or exclude any witnesses or information. Formal rules of evidence do not apply.

Additional hearing rules include:

- **Prior Conduct Violations:** The resolution panel will generally not consider evidence of any prior incident, but the resolution panel has discretion to consider evidence of any prior incident(s) that involved conduct substantially similar to the allegation(s) being investigated or demonstrates a common pattern of behavior.
- **Audio or Video Recording:** The University will make an audio and/or video recording of the hearing for the use of the resolution panel, for sanctioning, and for purposes of appeal. The resolution panelists, the Title IX Coordinator, and/or the Vice Provost for Student Affairs may request a transcript and recording of the hearing. The parties may not record any part of the investigation or hearing.

The resolution panel in student Respondent cases will use the [preponderance of the evidence](#) standard to determine Respondent’s responsibility for alleged Policy violations.

Determinations of responsibility by the resolution panel are made by majority vote; determinations as to the appropriate sanction are also made by majority vote, except where the sanction in question is expulsion or a revocation of a degree, for which unanimity is required.

If the resolution panel finds the Respondent not responsible, it will simultaneously send its determination, with the reasons for its decision, to the Complainant and Respondent, with a copy to the Title IX Coordinator. If the resolution panel finds the Respondent responsible, it will proceed to the sanctioning phase, described below.

Whatever the outcome of the resolution process, either party may request ongoing or additional accommodations, and the Title IX Coordinator will determine whether such accommodations are appropriate. Potential ongoing accommodations include, but are not limited to: (1) providing a security escort; (2) assistance with moving residences; (3) changing academic schedules; adjusting work schedules; (5) allowing withdrawal from or re-taking a class without penalty; (6) providing access to tutoring or other academic support, such as extra time to complete or re-take an examination; and (7) directing that the parties have no contact with one another.

3. Sanctioning

This section “Sanctioning” applies to all cases involving Other Sexual Misconduct, irrespective of whether the Complainant or Respondent is a student or faculty or staff member.

The resolution panel, in consultation with the Title IX Coordinator, is responsible for sanctioning student Respondents found responsible for violating the Policy. Student affairs personnel will coordinate with the resolution panel and the dean of the Respondent's school to ensure that the resolution panel has access to and assesses all relevant information.

The resolution panel in student Respondent cases (or appropriate administrator/panel/board in faculty/staff Respondent cases) may consider the following factors in the sanctioning process:

- The specific misconduct at issue;
- The circumstances accompanying any lack of [consent](#) (e.g., force, threat, coercion, intentional incapacitation, etc.);
- The Respondent's state of mind (bias-motivated, reckless, negligent, etc.);
- The Respondent's prior disciplinary history;
- The safety of the University community;
- Impact or mitigation statement by one or both parties;
- The Respondent's conduct during the investigation and resolution process; and
- Such other factors as the resolution panel deems appropriate.

In appropriate cases, e.g., where the administrator/panel/board finds that the Respondent poses a threat to the Complainant or to campus safety, the administrator/panel/board, in consultation with the Title IX Coordinator, may impose interim sanctions before issuing a decision.

The administrator/panel/board will impose sanctions that are fair and appropriate, consistent with the University's handling of similar cases, adequate to protect the safety of the campus community, and reflective of the seriousness of the misconduct at issue. The administrator/panel/board may impose any one or more of the following sanctions on a Respondent found responsible for Other Sexual Misconduct, or other such appropriate sanction as the circumstances may dictate:

- Reprimand/warning;
- Changing the Respondent's academic or employment schedule;
- Disciplinary probation;
- Revocation of honors or awards;
- Loss of privileges;
- Imposition of conditions of employment;
- Restricting access to University facilities or activities, including student activities and campus organizations;
- Mandatory training;
- Service hours;
- Alcohol and/or drug assessment or counseling;
- Issuing a "no contact" order to the Respondent or requiring that an existing order remain in place;⁴
- Moving the Respondent's on-campus residence;
- Dismissal, termination or restriction from University employment;
- Making a former University employee or student (including those expelled or terminated pursuant to these sanctions) ineligible for hire or rehire by the University;
- Removal from student housing;

⁴ All reported violations of "no contact" orders will be assessed to determine whether additional misconduct charges are warranted.

- Demotion or other removal from a management, supervisory or leadership role(s);
- A full or partial ban from campus (either limited time or indefinite);
- Transcript notations;
- Deferred suspension;
- Restriction from University sponsored or affiliated events;
- Pay reduction;
- Loss of raise;
- Loss of supervision or oversight duties;
- Referral for further sanctioning pursuant to applicable policies or procedures;
- Employment record notations, including an ineligibility for rehire notation;
- Suspension;
- Expulsion; and
- Revocation of degree.

The administrator/panel/board will simultaneously send its determination of responsibility and sanction(s), with the reasons therefor, to the Complainant and Respondent, with a copy to the Title IX Coordinator. The administrator's/panel's/board's notice to the Complainant and Respondent shall describe the University's appeal procedures, if any.

The administrator/panel/board may recommend, and the Title IX Coordinator may implement, additional measures that are designed to prevent the recurrence of sexual misconduct or respond to the effects of the sexual misconduct on the University community that include, but are not limited to: increased monitoring, supervision, or security at locations or activities where the sexual misconduct occurred; additional training and/or educational materials for students or groups; revision of the Policy; and campus climate surveys.

The administrator/panel/board may also recommend, and the Title IX Coordinator may implement, additional measures to remedy the effects of the sexual misconduct on the Complainant. These measures, which should be considered regardless of what interim measures were instituted, include but are not limited to: providing an escort for passage between classes and activities; ensuring the Complainant and Respondent do not share classes or extracurricular activities; moving the Respondent or Complainant (if the Complainant requests to be moved) to a different on-campus residence hall; providing victim focused services including medical, counseling and academic support services, such as tutoring; and arranging for the Complainant to have extra time to complete or re-take a class or withdraw from a class without an academic or financial penalty.

4. Appeals

Both parties have the right to appeal the resolution panel's finding of responsibility and/or imposition of sanction(s). A party has seven (7) calendar days from receipt of the resolution panel's determination to appeal. Any appeal must be filed in writing with the Vice Provost for Student Affairs or a designee, who will decide all appeals. An appeal will involve a review of the file, including the investigative report, recording or transcript of the hearing, and decision of the resolution panel; the appeal does not involve another hearing, or meetings with the Complainant or Respondent.

The sole grounds for appeal are:

- A procedural error that could have affected the determination or sanction(s);
- New information that was not available at the time of the investigation or hearing and that could reasonably have affected the determination or sanction(s); and
- Excessiveness or insufficiency of the sanction(s).

If the Vice Provost for Student Affairs or designee concludes that a change in the resolution panel's responsibility or sanctioning determination is warranted, they may (1) enter a revised determination; (2) remand the matter to the resolution panel to reconsider its determination or sanction; or (3) remand the matter for further investigation by the investigative team. The Vice Provost for Student Affairs or designee will simultaneously send the appeal determination, with the reasons therefor, to the Complainant and Respondent, with a copy to the Title IX Coordinator. No further appeals are permitted.

In faculty and staff Respondent cases that involve a student Complainant, the parties may appeal a determination or sanction. In faculty and staff Respondent cases that do not involve a student, if divisional or unit procedures allow an appeal with respect to procedural errors, findings or sanctions, such right to appeal shall be available equally to the Complainant and Respondent.

5. Notice of Outcomes

This section "Notice of Outcomes" applies to *all* Other Sexual Misconduct cases, irrespective of whether the Complainant or Respondent is a student or faculty or staff member.

In cases of Other Sexual Misconduct both the Complainant and the Respondent will be notified of the outcome of the complaint in writing simultaneously. In all such cases, this notice will include (a) whether it was found that the alleged misconduct occurred, (b) any sanctions imposed on the Respondent that directly relate to the Complainant, and (c) any steps taken to eliminate a hostile environment and prevent recurrence. The Complainant should also be notified of (d) any individual remedies offered or provided to the Complainant, and the Respondent should be notified of (e) any remaining sanctions imposed on the Respondent. Additionally, in cases alleging a sexual assault, relationship violence, or stalking, the Complainant and Respondent will be notified of all sanctions imposed against the Respondent, along with rationale for the result and sanctions.

In all cases, the notice will also include information on the procedures, if any, for the Complainant and Respondent to appeal the results of the disciplinary proceeding. Subsequent simultaneous written notice will be provided to the Complainant and Respondent if there is any change to the results that occurs prior to the time that such results become final, when such results become final, and the outcome of an appeal, if any.

G. Exclusivity of Procedures

These Procedures for Other Sexual Harassment are the exclusive procedures for investigation of Other Sexual Misconduct.