

# HEIDELBERG UNIVERSITY

## **SEX DISCRIMINATION & GENDER-BASED MISCONDUCT POLICY**

TITLE IX COORDINATOR & OFFICE OF HUMAN RESOURCES  
HEIDELBERG UNIVERSITY  
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## INTRODUCTION

Members of the Heidelberg University community, guests and visitors have the right to be free from all forms of sex/gender harassment, discrimination and misconduct, examples of which can include acts of sexual violence, sexual harassment, domestic violence, dating violence, and stalking. All members of the campus community are expected to conduct themselves in a manner that does not infringe upon the rights of others. When an allegation of misconduct is brought to an appropriate official's attention, protective and other remedial measures will be offered and may be used to reasonably ensure that such conduct ends, is not repeated, and the effects on the victim and community are remedied, including serious sanctions when a responding party is found to have violated this policy. This policy has been developed to reaffirm these principles and to provide recourse for those individuals whose rights have been violated.

Heidelberg University's Policy on Sex Discrimination and Gender-Based Misconduct ("Policy") is not meant to inhibit or prohibit educational content or discussions inside or outside of the classroom that include controversial or sensitive subject matters protected by academic freedom. Academic freedom extends to topics that are pedagogically appropriate and germane to the subject matter of courses or that touch on academic exploration of matters of public concern.

## NON-DISCRIMINATION STATEMENT

It is the policy of Heidelberg University not to engage in discrimination or harassment against any person because of race, color, national and ethnic origin, age, political affiliation, socioeconomic status, sex, veteran status, or disability in the administration of its admissions policies, educational policies and programs, financial aid programs, employment practices, and athletic and other school-administered programs and activities and to comply with all federal and state non-discrimination, equal opportunity, and affirmative action laws, orders, and regulations, including remaining complaint and consistent with the Civil Rights Act; the Americans with Disabilities Act; the Rehabilitation Act of 1973, and Title IX of the Education Amendments of 1972. This policy on non-discrimination applies to admissions, enrollment scholarships and financial aid, participation in University activities, employment and access to, participation in, and treatment in all University centers, programs and activities.

Heidelberg University's Title IX Coordinator is designated and authorized to oversee compliance with all aspects of the Sex Discrimination and Gender-Based Misconduct policy. Questions about this policy should be directed to the Title IX Coordinator.

### **Leslie Erwin**

Title: CHRO & Interim Title IX Coordinator  
Office of Human Resources

Location/Address: 210 University Hall C210  
(419) 448-2111

[Email: LErwin@heidelberg.edu](mailto:LErwin@heidelberg.edu)

Additionally, anonymous reports can be made using the online [Reporting Process](#). Note that an anonymous report may prompt a need for the institution to investigate. Individuals experiencing harassment or discrimination also always have the right to file a formal grievance with government authorities:

Office for Civil Rights (OCR)  
400 Maryland Avenue, SW  
Washington, DC 20202-1100

Customer Service Hotline #: (800) 421-3481 | Facsimile: (202) 453-6012 | TDD#: (877) 521-2172  
Email: [OCR@ed.gov](mailto:OCR@ed.gov) Web: <http://www.ed.gov/ocr>

## **Title IX of the Education Amendments of 1972**

The Policy addresses all forms of discrimination on the basis of sex, including sexual harassment. Heidelberg University does not discriminate on the basis of sex, gender, or gender identity in its educational, extracurricular, athletic, or other programs or in the context of admissions or employment in accordance with Title IX of the Education Amendments of 1972 and the regulations found in Part 106 of Title 34 of the Code of Federal Regulations (Title IX).

Title IX is a federal law that provides that, “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.”

Heidelberg University, as an educational community, will promptly and equitably respond to all reports of sex discrimination in order to eliminate the misconduct and/or harassment, prevent its recurrence, and address its effects on any individual or the community.

The Policy applies to all members of the University community including: students, employees, volunteers, independent contractors, visitors, and any individuals regularly or temporarily employed, studying, living, visiting, conducting business, or having any official capacity at the University.

## **Title IX Coordinator and Team**

The Title IX Coordinator is the employee at Heidelberg University, designated and authorized to coordinate the institution’s efforts to comply with Title IX. The Title IX Coordinator and the Title IX Deputy Coordinator oversees the implementation of grievance procedures, which includes notification, investigation and disposition of complaints of sex discrimination and sexual harassment. The Title IX Coordinator will coordinate the provision of educational materials and training for the campus community. Finally, the Title IX Coordinator, or designee, will ensure a fair and neutral process for all parties and monitor all other aspects of the University’s Title IX compliance.

Reports of sex discrimination or sexual harassment to the Heidelberg University Title IX Coordinator can be made in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person’s verbal or written report. A report may be submitted at any time (including during non-business hours) by using the telephone number or electronic mail address, or by mail to the office address, listed for the Title IX Coordinator.

The Title IX Coordinator and Title IX Deputy Coordinator can be contacted by telephone, email, or in person at:

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## **Section 1: Definitions**

**Actual Knowledge**<sup>1</sup>: Actual Knowledge is notice of sexual harassment or allegations of sexual harassment to one of the University's Title IX Coordinators, or any University official who has authority to institute corrective measures on behalf of the University.

**Formal Complaint**: a document filed by a reporting party, or signed by the Heidelberg University Title IX Coordinator, alleging sexual harassment against a responding party and requesting that the University investigate the allegation of sexual harassment. At the time of filing a formal complaint, a reporting party must be participating in or attempting to participate in the institution's education program or activity of the institution in which the formal complaint is filed. A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information required to be listed for the Title IX Coordinator or any additional method designated by the institution. Additionally, a "document filed by a reporting party" can be in the form of an electronic submission (such as by electronic mail or through an online portal provided for this purpose by the institution) that contains the reporting party's physical or digital signature, or otherwise indicates that the reporting party is the person filing the formal complaint.

**Reporting Party**: A reporting party is defined as an individual who is alleged to be the victim of conduct that could constitute sexual harassment. This definition is a direct substitute for the term "Complainant" as defined in 34 C.F.R. § 106.30(a). In situations, where the Title IX Coordinator initiates or signs a formal complaint, the Title IX Coordinator is not a reporting party.

**Responding Party**: A responding party is defined as an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment. This definition is a direct substitute for the term "Respondent" as defined in 34 C.F.R. § 106.30(a).

**Title IX Sexual Harassment**: The Policy prohibits "sexual harassment," which is defined as:

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

- (1) An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
- (2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity; or
- (3) "Sexual assault" – a forcible or non-forcible sex offense as classified under the Uniform Crime Reporting system of the FBI,<sup>2</sup> to include:
  - a. *Rape* – The carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity. Carnal knowledge is defined as the slightest penetration of the sexual organ of the female (vagina) by the sexual organ of the male (penis). Attempts or assaults to commit rape are considered rape under this Policy.
  - b. *Sodomy* – Oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
  - c. *Sexual Assault With An Object* – To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity. An object or instrument is anything used by the offender other than the offender's genitalia, e.g., a finger, bottle, handgun, stick.

<sup>1</sup> University officials who have the authority to institute corrective measures include: (list)

<sup>2</sup> The definitions used here are taken from the FBI UCR National Incident-Based Reporting System User Manual 2019.2, May 7, 2020.

- d. *Fondling* – The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
  - e. *Incest* – Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.<sup>3</sup>
  - f. *Statutory Rape* – Sexual intercourse with a person who is under the statutory age of consent. In Ohio, no person may have sex with a child under the age of thirteen,<sup>4</sup> nor may a person over the age of eighteen have sex with a child under the age of sixteen.<sup>5</sup>
- (4) “Dating violence” means 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.
- (5) “Domestic violence,” which is defined to include felony or misdemeanor crimes of violence committed:
- a. by a current or former spouse or intimate partner of the victim,
  - b. by a person with whom the victim shares a child in common,
  - c. by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner,
  - d. by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction, or
  - e. 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.
- (6) “Stalking”<sup>6</sup> means 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.

Non-Title IX Sex-Based Conduct: The Policy also prohibits Non-Title IX “sex-based conduct,” which is defined as:

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

- (1) Sexual Exploitation - Sexual exploitation is an act or acts committed through non-consensual abuse or exploitation of another person’s sexuality for the purpose of sexual gratification, financial gain, personal benefit or advantage, or any other non-legitimate purpose. The act or acts of sexual exploitation are prohibited even though the behavior does not constitute one of the other sexual misconduct offenses.

Examples of sexual exploitation include:

<sup>3</sup> Ohio Revised Code Section 2907.03(A)(5) prohibits sex between a parent/guardian and child, even if the child is not a minor.

<sup>4</sup> Ohio Revised Code Section 2907.02(A)(1)(b).

<sup>5</sup> Ohio Revised Code Section 2907.04(A).

<sup>6</sup> Stalking would only be sexual harassment if it occurs “on the basis of sex.”

- observing another individual's nudity or sexual activity or allowing another to observe consensual sexual activity without the knowledge and consent of all parties involved;
  - non-consensual streaming of images, photography, video, or audio recording of sexual activity or nudity, or distribution of such without the knowledge and consent of all parties involved;
  - prostituting another individual;
  - exposing one's genitals in non-consensual circumstances;
  - knowingly exposing another individual to a sexually transmitted disease or virus without that individual's knowledge; and
  - inducing incapacitation for the purpose of making another person vulnerable to non-consensual sexual activity
- (2) Physical Assault - Physical assault is a purposeful action meant to hurt another person. Examples include, but are not limited to, kicking, punching, hitting with or throwing an object, or biting, when these acts occur in the context of intimate-partner violence or when the behavior is perpetrated on the basis of sex, gender, or sexual orientation.
- (3) Bullying and Intimidation - Bullying includes any intentional electronic, written, verbal, or physical act or a series of acts directed at another person or persons on the basis of sex, gender, or sexual orientation, that is severe, persistent, or pervasive and that has the intended effect of doing any of the following:
- substantially interfering with a person's education or work;
  - creating a threatening environment; or
  - substantially disrupting the orderly operation of the University.
- Intimidation is any verbal, written, or electronic threats of violence or other threatening behavior directed toward another person or group on the basis of sex, gender, or sexual orientation that reasonably leads the person(s) in the group to fear for her/his physical well-being.

Supportive Measures: Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the reporting party or the responding party before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the University's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the University's educational environment, or deter sexual harassment. Supportive measures may include:

- Counseling;
- Extensions of deadlines or other course-related adjustments;
- Modifications of work or class schedules;
- Campus escort services;
- Mutual restrictions on contact between the parties;
- Changes in work or housing locations;
- Increased security and monitoring of certain areas of campus; and
- Other similar measures.

Consent: An informed, freely given agreement, communicated by clearly understandable words or actions, to participate in each form of sexual activity. General guidance for consent:

- Consent cannot be inferred from silence, passivity, or lack of active resistance.
- A current or previous dating or sexual relationship is not sufficient to constitute consent, and consent to one form of sexual activity does not imply consent to other forms of sexual activity.
- When consent is requested verbally, absence of any explicit verbal response constitutes lack of consent. A verbal "no" constitutes lack of consent, even if it sounds insincere or indecisive.
- By definition, there is not consent when there is a threat of force or violence or any other form of coercion or intimidation, physical or psychological.
- Either person may withdraw consent at any time. Withdrawal of consent should be outwardly demonstrated by words or actions that clearly indicate a desire to end sexual activity. Once withdrawal of consent has been expressed, sexual activity must cease.

- A person who is the object of sexual aggression is not required to physically or otherwise resist the aggressor; the lack of informed, freely given consent to sexual contact constitutes sexual misconduct.
- Intoxication is not an excuse for failure to obtain consent.
- A person incapacitated by alcohol or drug consumption, or who is unconscious or asleep or otherwise physically or mentally impaired, is incapable of giving consent.
- A person who is below the legal age of consent is incapable of giving consent.

Advisor: The term “Advisor” means any person who is invited by the reporting party or responding party, or who is assigned by the University, to attend any meetings, investigative sessions, hearings, or conferences. For the purposes of hearings, the Advisor must conduct a cross-examination on all issues of credibility.

Education Program or Activity: Means locations, events, or circumstances over which the University exercises substantial control over both the responding party and the context in which the sexual harassment occurs and also includes any building owned or controlled by a student organization that is officially recognized by Heidelberg University.



## **Section 2: Grievance Procedure**

Heidelberg University strongly supports and encourages prompt reporting of sex discrimination. Reporting provides resources to victims and contributes to keeping the campus safe. All Heidelberg community members (students, faculty, and staff) should help ensure that violations of the Policy are promptly reported. Most Heidelberg employees are mandatory reporters as described in the *Importance of Reporting* section below. Normally, this means reporting any witnessed violations, or violations learned about through the disclosure of the reporting party. Reporting is not the same as filing a formal complaint (although for some purposes a formal complaint may also serve as a report).

If a person believes they or someone they directly know has been the victim of sex discrimination, it should promptly be reported to the University's Title IX Coordinator. This could be done in person, by mail, by telephone, or by electronic mail using the contact information listed above for the Title IX Coordinator. Such a report can be made at any time (including during non-business hours) by using the telephone number, email address, or by sending mail to the office address listed in this policy. Additionally, if a person believes they or someone they directly know has been the victim of sex discrimination a report may be made to the Heidelberg University Office of Campus Safety & Security at (419) 448-2211 or through any member of the Residence Life staff.

A person filing a complaint will be provided with information regarding the Heidelberg University Sex Discrimination policy and procedures as well as confidential resources and information for reporting criminal offenses to local law enforcement.

Instances of sex discrimination may violate both the University's sex discrimination policy and the law. As a result, the University encourages victims to pursue their complaints through both the University's process for sex discrimination and through the criminal justice system. The Tiffin Police Department, which can be reached at (419) 448-2323, can explain the procedures for pursuing a criminal investigation of sex discrimination. The Tiffin Police Department will investigate every incident reported to police to determine if a crime has been committed.

**Administrative Complaints:** The University has the authority to institute an administrative complaint against any student, faculty, administrator, or staff if a violation occurs of the Policy.

**Investigation:** A complete and thorough investigation into a complaint shall be conducted by a member of the Title IX team or its designee. The preliminary investigation shall be concluded as quickly as possible within the timeline set by this policy. The investigation will be conducted in a manner that is thorough, reliable, and impartial and may include interviews of the parties involved, including witnesses, and the gathering of other relevant information and documentation. A copy of the investigative report will be made available to both the reporting and responding parties for the purposes of review all evidence obtained that will be used in reaching a determination of responsibility.

**Privacy:** To the greatest extent possible, the University will treat all reported violations of this policy as private and confidential. If a reporting party requests confidentiality or asks that the incident not be pursued, the University will take all reasonable steps to investigate and respond to the incident consistent with the request for confidentiality or the request not to pursue an investigation. If the reporting party continues to ask that his or her name or other identifiable information not be revealed, the University will evaluate that request in the context of its responsibility to provide a safe and nondiscriminatory environment for all members of the community. Thus, the University may weigh the request for confidentiality against factors including but not limited to the following: the seriousness of the alleged harassment; the reporting party's age; whether there have been other harassment complaints about the same individual; and the alleged harasser's rights to receive information about the allegations if the information is maintained by the school as an "education record" under the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g; 34 C.F.R. Part 99.15

Grounds for Dismissal of Formal Complaint: If upon review of the formal complaint the University determines any of the following, the University will dismiss the complaint from investigation under this Policy if the alleged conduct:

- Would not constitute Sexual Harassment;
- Did not occur in the University's education program or activity, or;
- Did not occur against a person in the United States.

The University may also dismiss a formal complaint or allegations therein if:

- A reporting party notifies the Title IX Coordinator in writing that the reporting party would like to withdraw the formal complaint or any allegations therein;
- The responding party is no longer enrolled or employed by the University, or;
- Specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

Such a dismissal does not preclude the University from proceeding under another University conduct process.

The University will send written notice of the dismissal and the reasons for dismissal simultaneously to all parties.

Equitable Treatment: Reporting parties and responding parties are eligible for Supportive Measures as defined within this Policy. The University will not impose disciplinary sanctions against a responding party unless a determination of responsibility for sexual harassment has been made against the responding party.

The University will provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.

The University will conduct an objective evaluation of all relevant evidence – including both inculpatory and exculpatory evidence. The University will not require, allow, rely upon, evaluate, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected by a legally recognized privilege (e.g., attorney client), unless the person holding such privilege has waived the privilege.

The parties will have an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which the University does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source. The University will not consider or provide for inspection and review evidence which the University knows was illegally or unlawfully created or obtained. The University may impose on the parties and party Advisors restrictions or require a non-disclosure agreement not to disseminate any of the evidence subject to inspection and review.

Bias and Conflicts of Interest: Any individual designated by the University as a Title IX Coordinator, investigator, Conduct Board, or any person designated by a University to facilitate an informal resolution process, must not have a conflict of interest or bias for or against reporting parties or responding parties generally or an individual reporting party or responding party. The following will not be considered evidence of bias:

- The Title IX Coordinator's initiation of a formal complaint, or;
- An individual's decision that allegations warrant an investigation.

The University will apply an objective (whether a reasonable person would believe bias exists), common sense approach to evaluating whether a particular person serving in a Title IX role is biased, and will exercise caution not to apply generalizations that might unreasonably conclude that bias exists. An individual's current job title, professional qualifications, past experience, identity, or sex will not alone indicate bias.

Use of trauma-informed practices will not be considered evidence of bias when such practices do not:

- Rely on sex stereotypes;
- Apply generalizations to allegations in specific cases;
- Cause loss of impartiality, and;
- Prejudge of the facts at issue.

**Presumption of Not Responsible:** There is a presumption that a responding party is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.

**Timeframe:** The University will attempt to complete most investigations within [60] days. The timeframe for formal investigations will begin upon filing of a complaint and will conclude upon submittal for adjudication. Investigations may be delayed and timeframes for investigations may be extended for good cause and with written notice provided by the University to reporting parties and responding parties including the reason for the delay or extension. Good cause may include considerations such as the absence of a party, a party's Advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities. Delays caused solely by administrative needs are not considered good cause. The University will attempt to accommodate the schedules of parties and witnesses however, grievance resolution must be completed in a reasonably prompt timeframe, and must proceed to conclusion even in the absence of a party or witness.

**Emergency Removal:** If, after receipt of a complaint and an individualized safety and risk assessment, the University determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal of a responding party, the University may remove the responding party on an emergency basis. A removed responding party will receive notice and an opportunity to challenge the decision immediately following the removal. Threats must pose more than a generalized, hypothetical, or speculative risk to health and safety for emergency removal to be appropriate. Non-student employees may be placed on administrative leave during the grievance process.

**Notice:** The University will provide to all known parties, written notice of:

- The University's grievance process;
- Allegations of sexual harassment, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview;
- The University's position that the responding party is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process;
- The parties right to have an Advisor of their choice, who may be an attorney;
- The parties right to inspect and review evidence;
- The University's prohibition on knowingly making false statements or knowingly submitting false information during the grievance process;
- The date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate, and;
- Additional allegations not included in the original notice.

**Consolidation of Formal Complaints:** The University may consolidate formal complaints as to allegations of sexual harassment against more than one responding party, or by more than one reporting party against one or more responding parties, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances. The same facts and circumstances mean that the multiple reporting parties' allegations are so intertwined that their allegations directly relate to all parties.

**Advisors:** Parties will have equal opportunities to have others present during the grievance proceeding, including the opportunity to be accompanied by the Advisor of their choice, who may be, but is not required to be, an attorney. The University will not limit the choice or presence of an Advisor for a reporting party or responding party in any meeting or grievance proceeding. Advisors are required to abide by University restrictions regarding the extent to which they may participate in proceedings, and any restrictions will apply equally to both parties. If a party's Advisor refuses to comply with restrictions set by the University, the University may require the party to use a different Advisor.

**Treatment Records:** The University will not access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the University obtains that party's voluntary, written consent.

**Party Discussion of Allegations:** The University will not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence. A party's communication with a witness or potential witness is considered part of a party's right to meaningfully participate in furthering the party's interests in the case, and not an "interference" with the investigation. However, where a party's conduct toward a witness might constitute "tampering" (for instance, by attempting to alter or prevent a witness's testimony), such conduct also is prohibited as retaliation.

### **Section 3: Support Measures**

Upon receipt of a report, the University will provide support and reasonable protective measures to prevent further acts of misconduct, and to provide a safe educational and work environment. The University will determine the necessity and scope of any support measures. Even when a reporting party and/or responding party does not specifically request that protective action be taken, the University may choose to impose support measures at its discretion to ensure the safety of any individual, the broader University community, or the integrity of the review process.

The Title IX Coordinator or designee will promptly contact the reporting party to discuss the availability of supportive measures, consider the reporting party's wishes with respect to supportive measures, inform the reporting party of the availability of supportive measures with or without the filing of a formal complaint, explain to the reporting party the process for filing a formal complaint, and will coordinate such requests on the behalf of the person. The University will maintain contact with the parties to ensure that all safety and emotional and physical well-being concerns are being addressed.

All individuals are encouraged to report concerns about failure of another individual to abide by any restrictions imposed by a support measure. The University will take immediate and responsive action to enforce measures previously ordered or implemented by the University.

The University may impose any remedy that can be tailored to the involved parties to achieve the goals of this policy, even if not specifically listed here. The range of support measures may include, but are not limited to:

- No Contact Order: A reporting party or responding party may request, or the University may impose, communication and contact restrictions to prevent further potentially harmful interaction. These communications and contact restrictions generally preclude in person, telephone, electronic or third-party communications. In some cases, an individual may also wish to consider a Protection Order from the local courts. This is a civil proceeding independent of the University. If a court order is **issued, the University will, to the best of institution's ability**, assist the protected person in benefiting from the restrictions imposed by the court and facilitate on campus compliance with the order. **The University may also limit an individual or organization's access to certain University facilities or activities** as part of the no contact order.
- Academic, Employment, or Residence Modifications: A reporting party or responding party may request an academic or employment modification or a change in residence after a report of sex discrimination. An individual who requests assistance in changing their academic, employment or living situation after an incident of sex discrimination will receive appropriate and reasonably available modifications. These may include:
  - Academic modifications; including a change in class schedule, taking an incomplete, dropping a course without penalty, attending a class via electronic or other alternative means, providing an academic tutor, or extending deadlines for assignments;
  - Change of residential living assignment;
  - Change in work assignment or schedule;
  - Providing an escort to ensure safe movement around campus.
- Emotional Support: The University will provide access to counseling services through Stoner Health and Counseling Center or will assist in providing a referral to off campus agencies.
- Interim Separation: Where the report of sex discrimination poses an ongoing risk of harm to the safety or well-being of an individual or members of the campus community, the University may place an individual or organization on interim suspension or impose leave for an employee. Pending resolution of the complaint, the individual or organization may be denied access to campus. When interim suspension or leave is imposed, the University will make reasonable efforts to complete the investigation and resolution within an expedited time frame.

#### **Section 4: Informal Resolution**

With the agreement of both parties, a formal complaint under the sex discrimination policy may be resolved using an informal resolution process (mediation) overseen by one or more members of the Title IX team or its designee if (i) the University determines, in its discretion, that such a process would be appropriate; and (ii) all parties voluntarily agree and provide written consent to participate. An informal resolution process is available at any time prior to reaching a determination regarding responsibility in the grievance process. Informal resolution is not available in cases of sexual harassment of a student by a University employee.

Before initiating informal resolution, the University will provide written notice to the parties disclosing the allegations, the requirements of the informal resolution process, and any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared

The parties to any such informal process will not be required to deal directly with one another. Instead, after a preliminary review of the reported incident the Title IX Coordinator or other official selected by the Title IX team will commence coordinated discussions with both the reporting party and the responding party in order to seek a mutually agreed upon resolution. At any time, if either party is dissatisfied with the proceedings of the informal resolution process, that party may request the informal resolution process be terminated, in which case the formal resolution procedure (described below) would commence. In addition, any party can pursue formal resolution if dissatisfied with a proposed informal resolution. The parties may not request formal resolution after the parties fully complete the informal resolution process. Finally, as described above, the University may elect to pursue a formal resolution procedure even if the reporting party does not wish a formal resolution.

During informal resolution, the reporting party and the responding party have the right to be assisted by an Advisor of their choice. The reporting party and/or the responding party is responsible for presenting his or her own information and, therefore, Advisors are not permitted to cross-examine or question any party or to participate directly in the process.

#### **Section 5: Formal Resolution**

For allegations of sexual discrimination that cannot be resolved informally, a Title IX Conduct Board Conference shall be conducted.

For the purpose of a formal resolution the following definitions and standards will be used:

The term "Title IX Conduct Board" means any person or persons trained to determine formal sex discrimination violations. The Title IX Conduct Board members will be selected from a broad representation of the campus community, including faculty and staff appointed by the Title IX Coordinator. One member of the Title IX Conduct Board will serve as Chairperson. The Title IX Conduct Board is the Conduct Board for purposes of determining responsibility and making recommendations for sanctioning. Title IX Conduct Board members cannot be the Title IX Coordinator or the investigator. The Title IX Conduct Board is under an obligation to objectively evaluate all relevant evidence both inculpatory and exculpatory, and must therefore independently reach a determination regarding responsibility without giving deference to the investigative report. The Title IX Conduct Board has the right and responsibility to ask questions and elicit information from parties and witnesses on the Board's own initiative to aid the Board in obtaining relevant evidence both inculpatory and exculpatory, and the parties also have equal rights to present evidence in front of the Title IX Conduct Board so the Board has the benefit of perceiving each party's unique perspectives about the evidence. The Title IX Coordinator may also appoint a hearing officer to oversee and/or conduct the hearing.

The term "Appellate Board" means any person or persons trained to determine formal sex discrimination violations. The Appellate Board members will be selected from a broad representation of the campus community, including Faculty and Staff appointed by the Title IX team. Appellate Board members may also serve on a Title IX Conduct Board; however, no member of a Title IX Conduct Board may also serve on the Appellate Board for the same case.

The term “Conduct Administrator” means any person who is trained by the Title IX Team to oversee the formal resolution process and to select members of a Conduct Board. A member of the Title IX Team can serve as Conduct Administrator.

**Investigative Report:** The University will prepare an investigative report that fairly summarizes relevant evidence. Prior to completion of the investigative report, the University will send to each party and the party's Advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties will have 10 days to submit a written response, which the investigator will consider prior to completion of the investigative report. All evidence subject to the parties' inspection and review will be available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.

At least 10 days prior to a hearing or other time of determination regarding responsibility, the University will send to each party and the party's Advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response. The report will not include a summary of evidence not considered to be relevant. If a party disagrees with an investigator's determination about relevance, the party may argue relevance in their written response and/or to the Conduct Board at the hearing.

The investigative report may include recommended findings and conclusions; however, the Conduct Board will objectively evaluate relevant evidence and will not defer to recommendations made by the investigator.

The investigative report may include a credibility analysis, but such analysis cannot result in a determination regarding responsibility.

If the report involves multiple reporting parties, multiple responding parties, or both, the University may issue a single investigative report.

The report will include an assessment as to whether the conduct, if proven, would constitute Title IX Sexual Harassment as defined within this Policy, including whether the University has jurisdiction under this Policy. If not, the Title IX Coordinator or their designee will dismiss the formal complaint, notify the parties of the finding, and refer the matter to the appropriate University conduct process. The notification will include notice of the right of either party to appeal the dismissal of the formal complaint through the process set forth in this Policy.

**Standard of Evidence:** The standard of evidence for review of formal complaints under this Policy against students and employees, including faculty, is preponderance of the evidence. Preponderance of the evidence is a determination based on facts that are more likely true than not. In the preponderance of the evidence standard, where the evidence in a case is “equal” or “level” or “in equipoise,” the preponderance of the evidence standard results in a finding that the responding party is not responsible.

The standard of evidence reflects the “degree of confidence” that a Conduct Board has in correctness of the factual conclusions reached.

The University will apply the same standard of evidence for formal complaints against students as for formal complaints against employees, including faculty, and apply the same standard of evidence to all formal complaints of sexual harassment.

**Burden of Proof:** The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on the University and not on the parties.

### The Conduct Board Hearing

Prior to a Title IX Conduct Board hearing the responding party shall be presented with all charges in written form. A time shall be set for a Conduct Board Conference, not less than ten (10) nor more than fifteen (15) business days after the responding party has been notified. Maximum time limits for scheduling of Conduct Board Conferences may be extended at the discretion of the Conduct Administrator.

The following general guidelines will be used for Title IX Conduct Board Conferences:

1. Conferences are of an educational nature and are not subject to the rules of criminal proceedings.
2. The responding party and reporting party will receive at least 10-days' notice of the hearing date and will receive an informational packet including, but not limited to: a final investigative report, conference rules and procedures, and the list of Title IX Conduct Board members.
3. Conferences normally shall be conducted in private.
4. Conferences shall be live hearings. Separate rooms, with technology enabling the Conduct Boards and the parties to simultaneously see and hear all proceedings may be arranged at the request of either party.
5. The reporting party, responding party, and their Advisors, shall be allowed to attend the entire portion of the Conduct Board Conference at which information is received.
6. The reporting party and responding party will receive the name(s) of the Conduct Board member(s) prior to the conference. The reporting party and responding party may challenge any Conduct Board member prior to the conference if they believe they have a conflict of interest. The Conduct Administrator will review the concern and will have sole discretion to make a change in Conduct Board Members.
7. In Conduct Board Conferences involving more than one responding party, the Conduct Administrator, in his or her discretion, may permit the Conduct Board Conferences concerning each person to be conducted either separately or jointly.
8. The reporting party and the responding party have the right to be assisted by an Advisor they select. In the event a party does not select an Advisor, the University will provide, without fee or charge to that party, an Advisor who will conduct cross-examination on behalf of that party. Parties will not be permitted to conduct cross examination on their own. The University may require parties to acknowledge whether they intend to have an Advisor present during the hearing.
9. The reporting party, the responding party, and the Conduct Board may arrange for witnesses to present pertinent information to the Conduct Board. The University will try to arrange the attendance of witnesses, if reasonably possible, and who are identified by the reporting party and/or responding party at least two business days prior to the Conduct Board Conference. Witnesses will provide information to and answer questions from the Conduct Board and answer questions during cross-examination by either party's Advisor.
10. The Conduct Board Chair will make all determinations of relevance and procedure for the conference.
11. After the portion of the Conduct Board Conference concludes in which all pertinent information has been received, the Conduct Board shall determine by majority vote whether the responding party has violated the sex discrimination policy.
12. The Conduct Board's determination shall be made on the basis of whether it is more likely than not (a preponderance of evidence) that the responding party violated the sex discrimination policy.
13. There shall be a single verbatim record, such as a tape recording of all Conduct Board Conferences before a Conduct Board. The record shall be the property of the University but, upon request, will be made available to the parties for inspection or review.

After the hearing, the Conduct Board will issue a written notice of Conference outcome (determination of responsibility). The notice will include:

- Identification of the allegations potentially constituting sexual harassment
- A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- Findings of fact supporting the determination;
- Conclusions regarding the application of the Policy to the facts;



- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, recommendations for disciplinary sanctions the University may impose on the responding party, and whether remedies will be provided by the University to the reporting party, and;
- The University's procedures and permissible bases for the reporting party and responding party to appeal.

The determination will lay out the evidentiary basis for conclusions reached in the case. The nature of remedies, if any, will not be included within the determination. The determination will be provided to the parties simultaneously. The determination of responsibility becomes final either on the date that the Title IX Coordinator provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

At the live hearing, the Conduct Board will permit each party's Advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Cross-examination at the live hearing will be conducted directly, orally, and in real time by the party's Advisor of choice and never by a party personally. All questioning will be relevant, respectful, and non-abusive. No party or witness will be "yelled" at or asked questions in an abusive or intimidating manner.

The Conduct Board may determine a question is irrelevant, however, parties are not permitted to waive a question.

A party or witness may decide not to attend a hearing or to respond to cross-examination by an Advisor or questions from the Conduct Board. A party or witness's absence or refusal to submit questioning at the hearing may impact the Conduct Panel's assessment regarding credibility or weight of a party's or witness's information and statements. The Conduct Board will not draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.

Video evidence showing the conduct alleged within a complaint may be considered, even if the party does not submit to cross-examination.

Relevance: During the hearing, only relevant cross-examination and other questions may be asked of a party or witness.

The following may be considered irrelevant:

- Repetition of the same question;
- Evidence that is duplicative of other evidence;
- Information protected by a legally recognized privilege;
- Questions and evidence about the reporting party's sexual predisposition or prior sexual behavior, unless:
  - Such questions and evidence about the reporting party's prior sexual behavior are offered to prove that someone other than the responding party committed the conduct alleged by the reporting party, or;
  - The questions and evidence concern specific incidents of the reporting party's prior sexual behavior with respect to the responding party and are offered to prove consent;

- Any party's medical, psychological, and similar records, unless the party has given voluntary, written consent, and;
- Party or witness statements that have not been subjected to cross examination at a live hearing.

The University will not exclude relevant evidence because such relevant evidence may be unduly prejudicial, concern prior bad acts, or constitute character evidence, however, the Conduct Board Chair may objectively evaluate such evidence by analyzing whether that evidence warrants a high or low level of weight or credibility.

Before a reporting party, responding party, or witness answers a cross-examination or other question, the Conduct Board Chair will first determine whether the question is relevant and explain any decision to exclude a question as not relevant. The University will not require parties to submit cross-examination questions before they are asked.

The Conduct Board Chair is not required to give a lengthy or complicated explanation of a relevancy determination during the hearing. The Chair may send to the parties after the hearing any revisions to the Chair's explanation that was provided during the hearing.

**Weighing Credibility:** The Conduct Board will evaluate all admissible, relevant evidence for weight or credibility. The degree to which any inaccuracy, inconsistency, or implausibility in a narrative provided by a party or witness should affect a determination regarding responsibility is a matter to be decided by the Conduct Board, after having the opportunity to ask questions of parties and witnesses, and to observe how parties and witnesses answer the questions posed by the other party. Corroborating evidence is not required.

Credibility determinations are not based solely on observing demeanor, but also are based on other factors (e.g., specific details, inherent plausibility, internal consistency, corroborative evidence). Cross-examination brings those important factors to a Conduct Board's attention.

A party's answers to cross-examination questions can and should be evaluated by a Conduct Board in context, including taking into account that a party may experience stress while trying to answer questions. Parties will not be unfairly judged due to inability to recount each specific detail of an incident in sequence, whether such inability is due to trauma, the effects of drugs or alcohol, or simple fallibility of human memory.

Sanctions and Remedies: Sanctioning can vary according to the relationship (student, faculty, or staff) the responding party has with the University.

If the reporting party is a student, the Conduct Board will make sanctioning recommendations based on sanctions described in the Student Code of Conduct. The recommendation will be sent to the Dean of Student Affairs for final approval.

If the reporting party is a faculty member, the Conduct Board will make sanctioning recommendations based on sanctions described in the Faculty Manual. The recommendation will be sent to the Provost for final approval.

If the reporting party is a staff member, the Conduct Board will make sanctioning recommendations based on sanctions described in the Employee Handbook. The recommendation will be sent to the Office of Human Resources for final approval.

Sanctions may include anything from a warning, up to and including disciplinary expulsion or termination. The University will also provide remedies to reporting parties found to have been subjected to conduct which violates the Policy. Remedies could include counseling, academic accommodations, academic support, and employment accommodations.

Appeals: A decision reached by the Title IX Conduct Board may be appealed by the reporting party or responding party to the Title IX Coordinator within five (5) **business** days of receiving the written determination. Such appeals shall be in writing and shall be delivered to the Title IX Coordinator.

The University will notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties. Both parties will have a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome. The decision-maker for the appeal will issue a written decision describing the result of the appeal and the rationale for the result and provide the written decision simultaneously to both parties.

Except as required to explain the basis of new information, an appeal shall be limited to a review of the verbatim record of the Title IX Conduct Board Conference and supporting documents for one or more of the following purposes:

1. A procedural irregularity that affected the outcome of the matter<sup>7</sup>.
2. To determine whether the Conduct Board Conference was conducted fairly in light of the charges and information presented, and in conformity with prescribed procedures giving the reporting party a reasonable opportunity to prepare and to present information that the Sex Discrimination policy was violated, and giving the responding party a reasonable opportunity to prepare and to present a response to those allegations. Deviations from designated procedures will not be a basis for sustaining an appeal unless significant prejudice results.
3. To determine whether the sanction(s) imposed were appropriate for the violation of the Sex Discrimination policy which the responding party was found to have committed.
4. To consider new information, sufficient to alter a decision, or other relevant facts not brought out in the original Conference, because such information and/or facts were not known to the person appealing at the time of the original Conduct Board Conference. Failure to appear at a hearing and prepare and to present information, when appropriate notice was provided, will not be an acceptable reason for appeal.
5. The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against reporting parties or responding parties generally or the individual reporting party or responding party that affected the outcome of the matter.

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<sup>7</sup> Procedural irregularity includes the University's failure to objectively evaluate all relevant evidence, including inculpatory and exculpatory evidence. It also includes erroneous relevance determinations.

All grounds for appeal will be available to all parties.

The decision-maker for the appeal will not be the same person as the decision-maker that reached the determination regarding responsibility or dismissal, the investigator, or the Title IX Coordinator.

If an appeal is upheld by a majority decision of the Appellate Board, the matter shall be returned to the original Conduct Board for re-opening of the Conduct Board Conference to allow reconsideration of the original determination and/or sanction(s). If an appeal is not upheld by a majority decision, the matter shall be considered final and binding upon all involved.

### **Section 6: Amnesty for Those Who Report Sex Discrimination**

The University encourages reporting and seeks to remove any barriers to reporting by making the procedures for reporting transparent and straightforward. The University recognizes that an individual who has been drinking alcohol or using drugs at the time of an act of sex discrimination may be hesitant to make a report because of potential consequences for his/her/their own conduct. An individual who reports sex discrimination, either as a reporting party or a third-party witness, will not be subject to disciplinary action by the University for his/her/their own personal consumption of alcohol or drugs at or near the time of the incident, provided that any such violations did not and do not place the health or safety of any other person at risk. The University may, however, initiate an educational discussion or pursue other educational remedies regarding alcohol or other drugs.

### **Section 7: Anti-Retaliation**

Neither the University nor any other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by this Policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under the regulations

Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by title IX or the regulations, constitutes retaliation. Complaints alleging retaliation may be filed according to the grievance procedures for sex discrimination adopted by the University.

Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under the regulations does not constitute retaliation, as described above, provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

The exercise of rights protected under the First Amendment does not constitute retaliation prohibited under this provision.

Individuals who are alleged to engage in retaliatory tactics may face disciplinary action independent of the sanction or interim measures imposed in response to the underlying allegations of sex discrimination. Any acts of retaliation should be reported promptly to the Title IX Coordinator.

### **Section 8: Bystander Intervention**

The University expects all community members to take reasonable and prudent actions to prevent or stop an act of sex discrimination. Appropriate action may include direct intervention, calling law enforcement, or seeking assistance from a person in authority. The University will support its members who choose to intervene in this fashion.

### **Section 9: Education and Programs**

The University provides education to members of the community. All full-time students and employees complete an online training module which addresses the issues surrounding sex discrimination and behaviors that may be associated with violations of University policy such as alcohol and drug use. Incoming students are required to prove they have completed the online training module prior to arrival on campus. Employees must complete the module within thirty (30) days of their initial employment start date. Additional programming is offered to both new and upper-class students, faculty and staff, including passive and active programs. Students are encouraged to attend education session through athletic participation, Greek Life and other organization memberships.

Conduct Board members, the Title IX team, and investigators receive yearly training focused on adjudicating cases of sex discrimination. First responders, such as the Department of Safety and Security Staff and the Campus Life Staff receive regular, ongoing training focused on working with victims of sex discrimination.

NCAA Regulation for Mandatory Self-Reporting by Student Athletes: All incoming, current, and transfer college athletes must disclose annually to the Title IX Coordinator and Director of Athletics whether their conduct has resulted in an investigation, discipline through a Title IX proceeding or criminal conviction for sexual, interpersonal, or other acts of violence. A failure by the student-athlete to accurately and fully disclose investigatory activity, a disciplinary action, or a criminal conviction may result in penalties, including a loss of athletics eligibility as determined by Heidelberg University.

### **Section 10: Victim Support Information**

Heidelberg University is committed to providing support for students who have been victims of sex discrimination. Below is a brief description of resources available. For more information or to request an accommodation which may not be listed, victims should contact the Title IX Coordinator.

1. Assistance finding confidential counseling and support either through the Stoner Health Center or through referrals to an outside agency.
2. Assistance finding confidential medical services either through the Stoner Health Center or through referrals to an outside agency such as the Mercy Hospital System.
3. Academic modifications which may include a change in class schedule, taking an incomplete, dropping a course without penalty, attending a class via electronic or other alternative means, or extending deadlines for assignments.
4. Housing modifications which may include changes in residential status, changes in room assignment or temporary accommodations in a residential safe room.
5. Employment modifications such as change in work assignment or schedule.
6. Preventing contact with the perpetrator through escort services from the Office of Safety and Security, no contact orders or interim separation of the perpetrator.
7. Hiding personal information such as directory information through the Registrar office.
8. Additionally, a victim may seek support for one of the outside agencies listed below:

Tiffin City Prosecutor's Victim Assistance Program - (419) 448-5413

Seneca County Prosecutor's Victim Assistance Program – (419) 448-5070

Firelands Counseling and Recovery Services - (419) 448-9440

Seneca County Job and Family Services - (419) 447-5011

Mercy Tiffin Hospital - (419) 447-3130

Seneca Community Chaplain Corps – (419) 618-0165

First Call for Help - (419) 448-4357

### **Section 11: Reporting Importance**

Title IX focuses on the adverse consequences faced by victims of sex and gender discrimination, including sexual harassment and sexual misconduct. It creates obligations for the University to investigate and to provide a "prompt and effective remedy." If the victim is a student, Title IX means among other things that the University must provide a safe environment that does not interfere with the victim's right to pursue an education. The University incurs this obligation when a victim has given notice to a faculty or staff member that the victim believes has some ability to address the complaint or advance the report to the appropriate resources as an exercise of reasonable care and/or the faculty or staff member knows, or should have known about the assault or harassment.

It is the University's policy that most employees are mandatory reporters under this policy. Accordingly, unless otherwise specified, employees who become aware, directly or indirectly, of possible violations of this policy are obligated to promptly contact the Title IX Coordinator. Exclusions to the University's mandatory reporting requirement include the Stoner Health and Counseling Center licensed counseling staff and any Stoner Health Center employee when scheduling counseling appointments, the campus Chaplain, and trained peer advocates.

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