



## Title IX Sexual Harassment Policy

The University of Portland (the "University") prohibits all forms of sexual and gender-based harassment. The University provides more details about specific examples of behavior that is considered sexual and gender-based harassment on its Title IX Website, <https://www.up.edu/titleix>.

This Policy addresses sexual harassment that falls within the definition of Title IX of the Education Amendments of 1972. If at any point a report of sexual harassment does not meet the jurisdictional requirements of Title IX, as further described below, the University may address the conduct pursuant to the University's Student Code of Conduct, Faculty Handbook, Human Resources policies, and/or other relevant departmental or University policies.

### Title IX Jurisdiction

The University is committed to fostering a fair and equitable environment for individuals to study, learn, and work and a prompt and equitable process for Investigation and resolution of complaints covered by Title IX. This Policy applies to students, faculty, staff who are (1) employed by, attending, or affiliated with the University; (2) participating in, or attempting to participate in, any University education program or activity in the United States; or (3) visiting the University's campus(es) or any property owned or leased by the University, or any building in the United States owned or controlled by an officially recognized student organization of the University. This Policy also covers acts of Prohibited Conduct occurring in the United States and committed by third parties, including visitors, guests, vendors, and contractors who are affiliated with the University, or accessing, or attempting to access, a University program or activity; complaints against such third-parties may be handled in accordance with existing contracts and agreements, and third parties may not be eligible for the procedural protections provided within this Policy.

The procedures in this policy are in accordance with the Department of Education's Title IX Regulations, published May 19, 2020. They apply only to complaints of sexual harassment, sexual assault, dating violence, domestic violence and stalking on the basis of sex as defined by this Policy.

The University will have the discretion to refer complaints of misconduct not covered by this Policy to any other appropriate office for handling or resolve other complaints of misconduct under any other applicable University policy or code. Complaints of misconduct involving

students determined to fall under the Sex and Gender-Based Harassment, Misconduct, and Violence policy will be resolved using the Conduct Process for Incidents of Sex and Gender-Based Harassment, Misconduct, and Violence outlined in Life on the Bluff. The Title IX Coordinator will facilitate the process to resolve complaints of Non-Title IX Sexual or Gender-Based Misconduct.

Complaints of misconduct involving employees that fall outside of the jurisdiction of this policy will be referred to the appropriate office or department for resolution.

## **General Definitions**

1. Complainant – The Complainant is an individual who is alleged to have experienced conduct that could constitute sexual harassment.
2. Respondent – The Respondent is an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.
3. Education program or activity – “Education program or activity” includes locations, events, or circumstances over which the University exercises substantial control over both the Respondent and the context in which the sexual harassment occurs, and also includes any buildings owned or controlled by the University or by a student organization that is officially recognized by the University.
4. Actual Knowledge – Actual knowledge means notice of sexual harassment or allegations of sexual harassment to the University’s Title IX Coordinator or any official of the University who has the authority to institute corrective measures on behalf of the University.
5. Supportive Measures – Supportive measures are non-disciplinary, non-punitive, individualized services. Supportive measures may be offered as appropriate and as reasonably available, and without fee or charge to the Complainant, Respondent, or other impacted individuals, before and after the filing of a formal complaint or where no formal complaint has been filed. Supportive measures are to restore or preserve equal access to the University’s educational program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the University as a whole, or to deter sexual harassment. Supportive measures provided to the Complainant and Respondent will be confidential to the extent that maintaining confidentiality would not impair the ability of the University to provide the supportive measures. The Title IX Coordinator or designee shall be responsible for the determination of any supportive measures, including but not limited to:
  - Temporary restrictions from contacting specific individuals including mutual no contact orders.
  - Safety planning.

- Changes to residence hall living arrangements.
  - Changes to class schedules, work assignments, or work schedules.
  - Residence hall restriction, and/or restrictions from other specific University locations.
  - Academic accommodations.
  - Connection to mental, emotional, and/or physical wellness resources.
6. Informal Resolution – In some cases, Informal Resolution may be offered as an opportunity to resolve a formal complaint prior to completion of the grievance process. Informal Resolution will only occur if both parties give voluntary, informed, written consent. At any time prior to agreeing to a resolution, any party has the right to withdraw from informal resolution and resume the grievance process with respect to the formal complaint. The University does not require, as a condition of enrollment or continued enrollment, or employment or continued employment, or enjoyment or any other right, waive the right to an Investigation and adjudication of formal complaints. Under no circumstances will informal resolution be offered or facilitated to resolve allegations that an employee sexually harassed a student.
7. Emergency Removal – A student Respondent may be removed from the institution, educational program, and/ or activity on an emergency basis if the Respondent is determined to be an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment. This is undertaken through an individualized assessment of the safety and risk analysis. Employees may be placed on administrative leave during the pendency of a grievance process without an emergency removal assessment.
8. Formal Complaint – A formal complaint is the document signed and filed by the Complainant or signed by the Title IX Coordinator alleging sexual harassment against a Respondent and requesting that the University investigate the allegation of sexual harassment pursuant to the Title IX grievance procedures. Not all reports of sexual harassment will constitute a formal complaint. A formal complaint may be filed at any time with the Title IX Coordinator in person, by mail, or by electronic mail, or in any other manner designated by the University. In cases where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a Complainant or otherwise a party during the grievance process and must comply with the requirement for all Title IX personnel to be free from conflicts and bias.
9. Advisor – The Advisor is a person chosen by a Complainant or Respondent to accompany that party to meetings or proceedings, to receive and review evidence and reports that the party receives, and to conduct cross-examination of the opposing party and witnesses at a
10. Live Hearing. The Advisor may be, but is not required to be, an attorney. Advisors must follow the University's rules of decorum or be removed and replaced by an Advisor

selected by the University. If a party does not have an Advisor at the Live Hearing, the University will provide an Advisor during the Live Hearing.

11. Decision-maker(s) –The Decision-maker(s) is responsible for conducting a Live Hearing and making a determination regarding responsibility. The Decision-maker(s) may be an individual or a hearing panel, which consists of a presiding officer, the "lead hearing officer", who will make evidentiary rulings and enforce the rules of decorum, and two hearings officers. The Decision-maker(s) is responsible for objectively evaluating all relevant evidence both inculpatory and exculpatory and preparing the final "determination of responsibility" report. The Decision-maker(s), along with each party's Advisor, has the right and responsibility to ask questions and elicit information from parties and witnesses to aid in obtaining relevant evidence. A person who serves as a Decision-maker in a particular matter cannot be the Investigator, or the Title IX Coordinator, or the person who determines the outcome of an appeal in that matter.
12. Sanctions - Sanctions are disciplinary actions taken against a Respondent if the Respondent is determined to be responsible for the alleged sexual harassment. The range of potential sanctions includes, but is not limited to, permanent implementation of mutual no contact orders; the expulsion of a student or termination of employment for a faculty or staff member; and permanent bans from campus or other aspects of an education program or activity.
13. Remedies – Remedies are designed to restore or preserve equal access to the University's education program or activity. The range of potential remedies includes education and training requirements for Respondents, the campus community, or specific groups, to permanent implementation of changes to class or work schedules or living arrangements. Remedies will be provided to a Complainant if the Respondent is determined to be responsible for the alleged sexual harassment.
14. Business Days – Business days are the days between and including Monday to Friday and do not include University holidays, closures, and weekends.
15. Calendar Days – Calendar days include weekends and holidays.

#### **Scope- Definition of Title IX Sexual Harassment**

Prohibited conduct will be defined as:

1. Conduct on the basis of sex that satisfies one or more of the following:
  - a. A University employee conditioning education or employment benefits on participation in unwelcome sexual conduct (i.e. quid pro quo); or
  - b. Unwelcome conduct that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's education program or activity; or

- c. "Sexual assault," "dating violence," "domestic violence," or "stalking" as those terms are defined below.
2. Sexual Assault
- a. Sexual Offenses, Forcible: Any sexual act directed against another person/Complainant without the consent of the Complainant, including instances in which the Complainant is incapable of giving consent:
    - i. Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the Complainant.
    - ii. Oral or anal sexual intercourse with another person, forcibly, or against that person's will (non-consensual), or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
    - iii. The use of an object or instrument to penetrate, however slightly, the genital or anal opening of the body of another person, forcibly, or against that person's will (non-consensually) or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
    - iv. The touching of the private body parts of another person (buttocks, groin, breasts), for the purpose of sexual gratification, forcibly, or against that person's will (non-consensually), or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
  - b. Sex Offenses, Non-forcible, Includes Any of the Following:
    - i. Incest: Non-forcible sexual intercourse between persons who are related to each other, within the degrees wherein marriage is prohibited by Oregon Law.
    - ii. Statutory Rape: Non-forcible sexual intercourse, with a person who is under the statutory age of consent.
3. Dating Violence: Violence committed by a person, who is in or has been in a social relationship of a romantic or intimate nature with the Complainant. The existence of such a relationship will be determined based on a consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.
4. Domestic Violence: Violence, on the basis of sex, committed by a current or former spouse or intimate partner of the Complainant, by a person with whom the Complainant shares a child in common, or by a person who is cohabitating with, or has cohabitated with the Complainant as a spouse or intimate partner, or by a person

similarly situated to a spouse of the Complainant under the domestic or family violence laws of Oregon, or by any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence law of Oregon.

5. Sex-Based Stalking: Engaging in a course of conduct on the basis of sex directed at a specific person, that would cause a reasonable person to fear for the person's safety, or the safety of others, or suffer substantial emotional distress. This policy covers instances of stalking based on sex, including stalking that occurs online or through messaging platforms, commonly known as cyber-stalking, when it occurs in the school's education program or activity.

### **University Procedures for Responding to Reports of Title IX Sexual Harassment**

All reports and allegations of sexual misconduct will be directed to the Title IX Coordinator.

Unless designated as an On-Campus Confidential Employee for the purpose of receiving confidential information from students, any employee with knowledge about sexual harassment as defined in this policy has the duty to report it immediately. The University will make supportive measures available to Complainant irrespective of whether a Complainant chooses to report to local law enforcement or Campus Safety or pursues a formal complaint through the Title IX Grievance Process.

Any person may report sexual harassment, whether the person reporting is the person alleged to have experienced the conduct that could constitute sex discrimination or sexual harassment. Reports may be made using the online reporting form, in person, by mail, by telephone, or by electronic mail, using the contact information listed below for the Title IX Coordinator.

When the University has actual knowledge of sexual harassment, the allegations of sexual harassment will be forwarded to the Title IX Coordinator if the Title IX Coordinator is not already on notice of the allegations. The Title IX Coordinator will first determine if the misconduct meets the jurisdictional requirements of Title IX:

1. The conduct falls within the definition of sexual harassment for purposes of Title IX;
2. The conduct occurred against a person in the United States;
3. The conduct occurred when the Complainant was participating or attempting to participate in the education program or activity of the University.

If the conduct meets all the Title IX jurisdictional requirements, the matter will proceed according to the Title IX grievance process, which is further described below. The Title IX Coordinator will take into account the Complainant's wishes in how the University will respond to allegations of sexual harassment but is not limited to the Complainant's wishes.

Circumstances in which the Title IX Coordinator may sign a formal complaint include allegations of violence, threats, use of weapons, and serial predation, or similar factors.

An employee-Respondent may be placed on administrative leave prior to the conclusion of a grievance process, including before a formal complaint is filed. The University may also pursue emergency removal of a student- Respondent.

If the conduct does not meet all Title IX jurisdictional requirements, the Title IX Coordinator will follow up according to the process within the University's Student Code of Conduct, Faculty Handbook, or Human Resources policies.

### **Outreach and Intake Interview**

Upon receipt of information or a report alleging a potential violation of this Policy, the Title IX Coordinator or designee will reach out to the individual who experienced the misconduct to schedule an Intake or Informational Interview and provide a copy of this policy and the following information:

- Availability of supportive measures with or without filing a Formal Complaint;
- How to file a Formal Complaint;
- Right to notify law enforcement and the right not to notify law enforcement, their right to decline to do so, and, when applicable, information about seeking a personal protection order from the local courts;
- Importance of preserving evidence;
- Resources for counseling, health care, mental health, victim advocacy, legal assistance, visa and immigration assistance, student financial aid and other available services; and,
- Right to an advisor of their choice.

That individual may choose to receive Supportive Measures only and not proceed with the filing of a Formal Complaint. They may also request an Alternative Resolution or an Investigation and Hearing. For any resolution other than supportive measures, a Formal Complaint is required.

The Title IX Coordinator or designee will discuss the individual's rights and options, and will also assess for, and provide, appropriate supportive measures, which are available with, or without, the filing of a Formal Complaint. If a Formal Complaint has not already been filed, the Title IX Coordinator will explain to the individual the process for filing a Formal Complaint.

For those who wish to proceed with any resolution process, the Title IX Coordinator will assess the facts as presented to determine whether the information provided suggests a potential violation of this Policy. If the report does not meet the required definitions of this Policy, then the Title IX Coordinator will not initiate the Formal Process.

## **Emergency Removal Provisions/Interim Safety Measures**

If at any time the University determines that the conduct, as alleged, poses a risk of immediate physical harm arising from the sexual harassment, to one or more members of the University community or to the University's educational environment, the University may instruct that a Respondent be removed or placed on leave, on an interim basis, from specific programs or activities.

Any such risk assessment will be made on a case-by-case basis, based on an individualized safety and risk analysis including consideration of applicable disability procedures, less restrictive alternatives and supportive measures, and will be determined by the Title IX Coordinator in consultation with appropriate University officials. The decision to do so will be provided to the Respondent in writing.

## **Opportunity to Respond**

Students should contact the Vice President of Student Affairs/Dean of Students within 3 business days of the interim suspension, who will explain the University's process for challenging the emergency removal.

**Employee Administrative Leave:** The University will have the authority to place any employee Respondent on an administrative leave of absence pending the outcome of an Investigation and hearing.

Employees may contact the Vice President for Human Resources if they wish to discuss the emergency removal.

The decision to place any Respondent on an interim suspension or administrative leave will not be considered as evidence that any determination has been made regarding potential responsibility for violating this Policy.

## **Amnesty**

To foster the safety and security of the entire community, the University encourages community members to report all incidents of sexual or gender-based harassment, misconduct, and violence. Students, for instance, are sometimes afraid to report such incidents for fear of being held accountable for other, lesser policy violations such as intervisitation, alcohol, drug, trespassing, or sexual intimacy.

In order to encourage students to obtain resources and report incidents, the University will not pursue the conduct process against a student who reports an incident of sexual and gender-

based harassment, misconduct, and violence for lesser policy violations that occur in connection with the reported incident. Students who are interviewed as witnesses in such cases will not be subject to the student conduct process for lesser policy violations that occur in connection with the reported incident. The exception are incidents in which the health and safety of others are put at risk.

### **Timely Warning**

If a report of sexual misconduct presents a serious and continuing threat to the community, the University may issue a campus-wide timely warning to protect the health and safety of community members. The timely warning will not include any identifying information about the person who experienced the unwanted behavior as defined by the Policy.

### **Timeline for Reporting**

The University does not limit the timeframe for reporting an incident regardless of when the incident occurred. However, individuals are encouraged to report as soon as practical, as memories may fade, and evidence may be lost over time.

### **Retaliation Prohibited**

Retaliation is prohibited by University policy. The University will not tolerate any materially adverse action against a person who reports, complains about, or who otherwise participates in good faith in any manner related to this policy. Retaliation includes but is not limited to, confirmed or implied behaviors or actions (including electronic or on-line activity) which intimidate, threaten, or harass, or result in other adverse actions threatened or taken. Retaliation does not include petty slights or trivial annoyances.

An individual reporting sexual misconduct is entitled to protection from any form of retaliation following a report that is made in good faith, even if the report is later not substantiated based on the available evidence. Retaliation does not include good faith actions pursued in response to a report of prohibited conduct. Any person who believes they have experienced retaliation under this policy should contact the Title IX Coordinator who forward any complaint of retaliation to the appropriate office for handling. Retaliation may subject the person who retaliates to disciplinary action up to and including expulsion or termination.

It is critical that a person responding to a claim of harassment or discrimination (the Respondent), and those who may be supportive of the Respondent, recognize that many behaviors may be perceived as retaliatory. When in doubt about whether a certain action, communication, or behavior might be viewed as retaliatory, please consult with the Title IX Coordinator.

### **No Conflict of Interest or Bias**

Any individual carrying out this Policy will be free from any actual conflict of interest or demonstrated bias that would impact the handling of this matter. Should the Title IX Coordinator have a conflict of interest, the Title IX Coordinator is to immediately notify the Associate Vice President for Student Development or the Vice President for Human Resources who will designate the role of Acting Title IX Coordinator for purposes of carrying out the handling and finalization of the matter at issue.

Should any investigator, Hearing Administrator or Appeals Officer have a conflict of interest, the individual is to notify the Title IX Coordinator upon discovery of the conflict.

### **Provision of False Information**

It is a violation of University policies for anyone to intentionally provide false information to the University. Any employee or student who is found to have done so as part of this process may be subject to appropriate disciplinary or corrective action.

### **Title IX Training**

Title IX Training will be required of all persons designated as a Title IX Coordinator, Investigator, lead hearings officer or hearings officer, or any person designated by a recipient to facilitate an informal resolution process or to decide an appeal.

Title IX Training includes training on the definition of sexual harassment for purposes of Title IX; the scope of the University's education program or activity; how to conduct an Investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable; and how to serve impartially, including by avoiding pre-judgment of the facts at issue, conflicts of interest, and bias. The University will ensure that decision-makers receive training on any technology to be used at a Live Hearing and on issues of relevance of questions and evidence, including when questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, except as described further in the Live Hearing section of this policy. Investigators will also receive training on issues of relevance in order to create an Investigative Report that fairly summarizes relevant evidence. Any person serving in these roles must not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent.

### **Title IX Grievance Process**

Once the University has received a formal complaint, the Title IX Coordinator or designee will provide written notice of the formal complaint to the parties. The written notice will include the following:

- Notice of the Investigation and the University's grievance process, including any informal process.

- The identities of the parties involved in the incident, if known.
- The conduct allegedly constituting sexual harassment under Title IX.
- The date and location of the alleged incident, if known.
- A statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.
- Notice to the parties that each may have an Advisor of their choice, who may be, but is not required to be, an attorney and who may inspect and review evidence and reports.
- A description of the range of possible disciplinary actions or sanctions based on the outcome of a live hearing and the use of the “preponderance of the evidence” standard.
- A description of any available informal resolution process.
- Inform the parties of any provision in the University’s policies that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.
- The notice will be updated if allegations are added after the initial notice.

The Title IX Coordinator, or designee, will contact the Complainant and the Respondent individually to discuss the availability of supportive measures and consider the Complainant’s and Respondent’s wishes with respect to supportive measures.

### **Title IX Resolution Methods**

After a Formal Complaint is filed, the University will issue a Notice to the Complainant and the Respondent which will include information on the below methods of resolution. The University may then determine one of these three methods to resolve a potential violation of this policy:

1. Informal resolution;
2. Investigation and live hearing; or
3. Dismissal.

### **Title IX Informal Resolution Process**

The Title IX Coordinator may offer to the parties the option of Informal Resolution at any time during the Resolution Process. Either party may also request, in writing, to proceed with an Informal Resolution. Participation in the Informal Resolution process is voluntary for both Complainant and Respondent. Both parties and the Title IX Coordinator must agree to the use of Informal Resolution to resolve the complaint. If an Informal Resolution option is preferred, the Title IX Coordinator will assess whether the complaint is suitable for Informal Resolution and will then take steps to determine if the other party is also willing to engage in Informal Resolution. Both parties must agree, in writing, to an Informal Resolution.

The Title IX Coordinator may determine that Informal Resolution is not appropriate, for example, where other formal action may be reasonably necessary to prevent continuing or future Prohibited Conduct, where there is a threat to the safety of the Complainant or campus community, or where multiple reports have occurred against the same Respondent.

Note: Allegations that an employee has engaged in Prohibited Conduct toward a student will not be handled through the Informal Resolution process, and instead be resolved only through the Investigation and Hearing process.

When either party requests an Informal Resolution, the Title IX Coordinator will provide the Complainant and Respondent written notice that includes:

- The specific allegation and the specific conduct that is alleged to have occurred;
- The requirements of the Informal Resolution process including the circumstances under which it precludes the parties from resuming a Formal Complaint arising from the same allegations;
- The right of either party to end the Informal Resolution process at any time and instead choose to pursue a formal Investigation process;
- Any consequences resulting from participating in the Informal Resolution process, including the records that will be maintained or could be shared;
- A statement indicating that the decision to accept a complaint does not presume that the conduct at issue has occurred, and that the Respondent is presumed not responsible, unless and until, at the conclusion of the formal Investigation and adjudication processes, there is a determination of responsibility;
- An explanation that each party may be accompanied by an Advisor and a support person) of their choice, who may be a parent, friend, or attorney;
- The date and time of the initial meeting with the Title IX Coordinator;
- Information regarding Supportive Measures, which are available equally to the Respondent and to the Complainant.

If either party does not voluntarily agree in writing to pursue an Informal Resolution, or if the Complainant, Respondent, or Title IX Coordinator, at any time, determines that Informal Resolution is no longer appropriate, the Title IX Coordinator will promptly inform the Complainant and Respondent in writing that the complaint will proceed through the Investigation and Hearing Process.

Once the final terms of an Informal Resolution have been agreed upon by both parties, in writing, the matter will be considered closed, and no further action will be taken. Voluntary agreements under the Informal Resolution process are not subject to appeal.

The Informal Resolution process is generally expected to be completed within thirty (30) days and may be extended for good cause by the Title IX Coordinator. Both parties will be notified, in writing, of any extension and the reason for the extension.

Records of any Informal Resolution will be maintained and may be shared with other offices as appropriate.

### **Title IX Investigation Process**

The Title IX Coordinator will assign an Investigator to the case. The Investigator will collect evidence, interview involved parties, request statements, inquire about additional witnesses, and document their findings, and submit an Investigative Report to the Title IX Coordinator. Prior to finalizing the Investigative Report, the Investigator will send to each party and the party's Advisor, if any, all evidence obtained that is directly related to the complaint to review, 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. Each party will be given a minimum of 10 business days to submit a meaningful written response, which the Investigator will consider prior to finalizing the Investigative Report.

After the 10-business day review period, the Investigator will finalize the Investigative Report summarizing relevant evidence. At least 10 business days prior to a hearing, the Investigator will send to each party and the party's Advisor, if any, the Investigative Report for their review and written response. Additionally, each party will be provided at least 10 business days to submit meaningful written response to the Investigative Report prior to the Live Hearing. If either party disagrees with the Investigator's determination about relevance, the party can raise that issue in the party's written response to the Investigator's Report and/or to the Decision-maker(s) at the Live Hearing.

The Title IX Coordinator will review the Investigative Report and determine whether to dismiss the formal complaint for Title IX purposes using the criteria outlined in the Dismissing the Formal Complaint section above. If the formal complaint is not dismissed, the Title IX Coordinator will transmit the Investigative Report, including the parties' responses to the report, to the Decision-maker(s).

If an incident results in a Respondent being simultaneously charged with Title IX sexual harassment and other University policy violations that do not constitute sexual harassment, the University may choose to address all allegations according to the procedures outlined in this Policy or to address separate misconduct under a different policy.

### **Title IX Live Hearing**

Live Hearings are generally conducted virtually with all parties in separate physical locations but present in the video conference. All parties will be able to simultaneously hear and see the other party or witness answering questions or making statements. In limited circumstances, the University will convene an in person hearing if there is cause to do so. The University will maintain an audio/visual recording, or transcript, of any Live Hearing and make it available to the parties for inspection and review.

At the Live Hearing, the Decision-maker(s) 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. Only relevant cross-examination and other questions may be asked of a party or witness. Before a Complainant, Respondent, or witness answers a cross-examination question or any other question from an Advisor, the Decision-maker or lead hearing officer, will determine whether the question is relevant and explain any decision to exclude a question as not relevant.

Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concerns specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

If a party does not have an Advisor present at the Live Hearing, the University will provide, free of charge to that party, an Advisor of the University's choice, who may be, but not required to be, an attorney, to conduct cross- examinations on behalf of that party.

If a party or witness does not submit to cross-examination at the Live Hearing, the Decision-maker(s) may nevertheless rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the Decision- maker(s) cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the Live Hearing or refusal to answer cross-examination or other questions.

### **Title IX Written Determination**

In determining responsibility, the Decision-maker(s) will use the "preponderance of the evidence" standard for formal complaints involving students and employees. A preponderance of the evidence means that it is more likely than not that the alleged policy violation occurred.

The written determination will be provided to the parties simultaneously. The written determination will include:

- Identification of the allegations potentially constituting sexual harassment under Title IX

- 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 University's policies or code of conduct to the facts.
- A statement of, and rationale for, the result as to each allegation including:
- The determination regarding responsibility.
- Any disciplinary sanctions the University will impose on the Respondent.
- Whether remedies designed to restore or preserve equal access to the University's education program or activity will be provided by the University to the Complainant. Upon a finding of responsibility, remedies provided need not avoid burdening the Respondent.

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

### **Dismissing a Formal Title IX Complaint**

The Title IX Coordinator must dismiss a formal complaint if:

- The conduct alleged in the formal complaint would not constitute sexual harassment as defined by Title IX even if proved, or
- The conduct did not occur in the University's education program or activity, or
- The conduct did not occur against a person in the United States, or
- At the time of filing a formal complaint, a Complainant is not participating or attempting to participate in the education program or activity of the University.

The Title IX Coordinator has the authority to dismiss a formal complaint if:

- The Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations therein; or
- The Respondent 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.

Notification of dismissal will be sent to the Complainant and Respondent, along with the reason for dismissal. Following dismissal under the Title IX policy, the Title IX Coordinator may also consider pursuing the complaint as violation of another policy located within the Employee Handbook or Student Code of Conduct.

Acceptable bases for appeal of the dismissal of a formal complaint and the process for filing an appeal are described in the Appeals section below. A party may also appeal the University's failure to dismiss a formal complaint at various points in the Process, as described in the Appeals section below. Parties will have five (5) business days to appeal the University's decision to dismiss or not to dismiss the formal complaint.

## **Title IX Appeals**

Either the Complainant or Respondent can make a written appeal:

1. If they are not satisfied with the determination regarding responsibility, or from the University's dismissal of a formal complaint or dismissal of any allegation in a formal complaint, or
2. from the University's failure to dismiss a formal complaint or any allegation in a formal complaint
  - a. when the formal complaint is filed,
  - b. after the conclusion of the Investigation, or
  - c. after the Live Hearing.

The University allows both parties to appeal on the following grounds:

- Procedural irregularity that affected the outcome of the matter;
- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal or decision not to dismiss was made and that could affect the outcome of the matter; and
- The Title IX Coordinator, Investigator (s), or decision-maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter.

The Title IX Coordinator will notify the other party in writing when an appeal is filed.

Appeals must be submitted within five (5) business days of the notification to a party of dismissal or failure to dismiss a formal complaint or the receipt of determination regarding responsibility from decision-maker(s). Either party may send written appeals to the Title IX Office to be distributed to the person(s) who will decide the appeal. Any person designated by the University to decide the appeal will not be the Title IX Coordinator, Investigator, Decision-maker, or any person who facilitated an informal resolution process in the matter.

Upon accepting the appeal, the decision-maker will review the Investigation documentation and may let the original outcome stand or, if new information is discovered that is significant enough to alter the original decision, reopen the Investigation. The decision-maker will issue a written decision describing the results of the appeal and the rationale for the results. This

written decision will be simultaneously sent to both parties. Each party may appeal the written determination only once, except for in extraordinary circumstances as described below.

The University will reopen the appeal period only if:

- The Respondent is still a student or employee at the University, or the appeal could cause a substantial change to Respondent's transcript, or other student or employee records that may be required to be disclosed outside the University;
- Either party discovers new evidence that:
  - Was not reasonably available at any time prior to the expiration of the appeal period, and,
  - Could affect the outcome of the matter; and
  - The party files an appeal within five (5) business days of the discovery of the evidence.

Sanctions and remedies, if any, will be applied and will remain in effect throughout the second appeal and any additional process.

### **Recordkeeping**

The University will maintain for a period of seven years:

- Each sexual harassment Investigation including any determination regarding responsibility.
- Any audio or audiovisual recording or transcript of the Live Hearing.
- Any disciplinary actions/sanctions imposed on the Respondent.
- Any remedies provided to the Complainant designed to restore or preserve equal access to the University's education program or activity.
- Any appeal and the result therefrom.
- Any informal resolution and the result therefrom.
- All materials used to train the Title IX Coordinator, Investigators, decision-makers, any person who facilitates an informal resolution process.
- Records of any action, including any supportive measures, taken in response to a report or formal complaint of sexual harassment.

### **Retaliation**

The University of Portland strongly encourages students to report all incidents of sexual or gender-based harassment, misconduct, or violence. The University prohibits intimidation, retaliation, threats, harassment, or other types of conduct that attempts to prevent the reporting of such an incident or participation in an Investigation, conduct process, or other University process related to such an incident. Any individual who feels subjected to this type of conduct should immediately report their concerns to the Title IX Office, Student Conduct, or call Campus Safety.

Furthermore, this policy and Title IX prohibit retaliation against a Complainant or witnesses for filing or participating in the Investigation of a sexual harassment complaint.

No person at the University may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in a Title IX Investigation, proceeding, or hearing.

Charges against an individual for a policy or code of conduct violation that does not involve sexual harassment, but arise out of the same facts or circumstances as a report of 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, constitutes retaliation.

In addition to the prohibitions against retaliation outlined in this process, the University prohibits participants and others from engaging in disrespectful communication, slander, libel, or dishonesty related to any person's reporting of sexual harassment or participation in the Title IX Grievance Process. Those prohibitions are further described in the University's Student Code of Conduct, Faculty Handbook, Human Resources policies, and/or other relevant departmental or University policies. The University will investigate any reports of retaliation and take appropriate disciplinary action. State and federal law also provide protections for whistleblowers who bring allegations of non-compliance with the Clery Act and/or Title IX to the attention of appropriate campus administrators. Any concerns regarding retaliation should be brought to the immediate attention of the campus Title IX Coordinator.

### **Compliance with Federal and State Law**

The University intends to comply with all applicable requirements under federal and Oregon law. If there are any inconsistencies between the University's policies/procedures and such requirements, the University will follow federal and Oregon requirements.

### **Additional Resources**

Additional resources regarding amnesty, confidential resources, and non-confidential resources may be found on the Title IX Website, [www.up.edu/titleix](http://www.up.edu/titleix).

### **Effective Date**

This Policy is effective as of August 14, 2020 and will be applied to conduct that occurs on or after August 14, 2020.

\* This policy is effective as of August 14, 2020.

\*\* This policy was approved by the PLC as of August 14, 2020.

\*\*\* This policy was amended and approved by the PLC on January 7, 2022.

\*\*\*\* This policy was amended and clarified by the President's Leadership Cabinet (PLC) on November 16, 2023.