

## Title IX Policy

Title IX of the 1972 Education Amendments requires colleges and universities receiving federal funding to ensure that all students have equal access to education, specifically prohibiting discrimination on the basis of sex. Title IX (20 U.S.C. § 1681(a)) reads “ 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.”

Herzing University maintains a zero-tolerance policy for harassment or discrimination of any kind.

## Title IX Coordinator

The Director of Safety and Equal Opportunity serves as the Title IX Coordinator and ADA Coordinator and oversees implementation of the University’s policies on equal opportunity, harassment and nondiscrimination. The Title IX Coordinator acts with independence and authority free of conflicts of interest. To raise any concern involving a conflict of interest by the Title IX Coordinator, contact the Associate Vice President of Student Services, BriAnne Danielson at [brdanielson@herzing.edu](mailto:brdanielson@herzing.edu). To raise concerns regarding a potential conflict of interest with any other administrator involved in a resolution process, please contact the Title IX Coordinator.

Inquiries about and reports regarding this policy and procedure may be made internally to:

Emilie Thompson  
Director of Safety and Equal Opportunity  
Title IX Coordinator/ADA Coordinator  
W140 N8917 Lilly Rd.  
Menomonee Falls, WI 53051  
(414) 271-5622  
[emthompson@herzing.edu](mailto:emthompson@herzing.edu)

The Title IX coordinator is responsible for receiving and processing, in a timely manner:

- Inquiries or complaints from students, faculty, or staff regarding rights and responsibilities concerning harassing behavior or other discriminatory behavior in violation of Title IX
- Inquiries or complaints from third parties who report suspicion of harassing behavior or other discriminatory behavior in violation of Title IX

Inquiries may be made externally to:

### Office for Civil Rights (OCR)

U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, DC 20202-1100  
Customer Service Hotline #: (800) 421-3481  
Fax: (202) 453-6012  
TDD#: (877) 521-2172  
Email: [OCR@ed.gov](mailto:OCR@ed.gov)  
Web: <http://www.ed.gov/ocr>

## Equal Employment Opportunity Commission (EEOC)

Contact: <http://www.eeoc.gov/contact/>

Students may also report a Title IX violation on the EthicsPoint site at: <http://tinyurl.com/ethicsstudent-herzing>.

If a Title IX investigation were determined not to be appropriate, inquiries or complaints would be referred to Human Resources or the Office of the Provost as applicable.

## Pregnant and Parenting Student Policy

Herzing University is committed to creating and maintaining a community where all individuals enjoy freedom from discrimination, including discrimination on the basis of sex, as mandated by Title IX of the Education Amendments of 1972 (Title IX). Sex discrimination, which can include discrimination based on pregnancy, marital status, or parental status, is prohibited and illegal in admissions, educational programs and activities, hiring, leave policies, employment policies, and health insurance coverage. Herzing University hereby establishes a policy and associated procedures for ensuring the protection and equal treatment of pregnant individuals, persons with pregnancy-related conditions, and new parents.

Under the Department of Education's (ED) Title IX regulations, an institution that receives federal funding "shall not discriminate against any student, or exclude any student from its education program or activity, including any class or extracurricular activity, on the basis of such student's pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom." According to ED, appropriate treatment of a pregnant student includes granting the student leave "for so long a period of time as deemed medically necessary by the student's physician," and then effectively reinstating the student to the same status as was held when the leave began.

This generally means that pregnant students should be treated by Herzing University the same way as someone who has a temporary disability and will be given an opportunity to make up missed work wherever possible. Extended deadlines, make-up assignments (e.g. papers, quizzes, tests, and presentations), tutoring, independent study, online course completion options, and incomplete grades that can be completed at a later date should all be employed in addition to any other ergonomic and assistive supports typically provided by Disability Services. To the extent possible, Herzing University will take reasonable steps to ensure that pregnant students who take a leave of absence or medical leave return to the same position of academic progress that they were in when they took leave, including access to the same course catalog that was in place when the leave began. The Title IX Coordinator has the authority to determine that such accommodations are necessary and appropriate, and to inform faculty members of the need to adjust academic parameters accordingly.

As with disability accommodations, information about pregnant students' requests for reasonable accommodations will be shared with faculty and staff only to the extent necessary to provide the accommodation. Faculty and staff will regard all information associated with such requests as private and will not disclose the information unless necessary. Administrative responsibility for these accommodations lies with the Title IX Coordinator, who will maintain all appropriate documentation related to accommodations and requests.

In situations such as clinical rotations, labs, and group work, the University will work with the student to devise an alternative path to completion, where possible. In progressive curricular and/or cohort-

model programs, medical necessary leaves are sufficient cause to permit the student to shift course order, substitute available similar courses, or join a subsequent cohort when returning from leave.

Students are encouraged to work with faculty members and Herzing University's support services to devise a plan for how to best address the conditions as pregnancy progresses, anticipate the need for leaves, minimize the academic impact of their absence, and get back on track as efficiently and comfortably as possible. The Title IX Coordinator may assist with plan development and implementation as needed.

## **Scope**

This policy applies to all aspects of Herzing University's program, including, but not limited to, admissions, educational programs and activities, extracurricular activities, hiring, leave policies, employment policies, and health insurance coverage.

## **Definitions**

**Caretaking:** caring for and providing for the needs of a child

**Medical Necessity:** a determination made by a health care provider (of the student's choice) that a certain course of action is in the patient's best health interests.

**Parenting:** the raising of a child by the child's parents in the reasonably immediate post-partum period.

**Pregnancy and Pregnancy-Related Conditions:** include, but are not limited to, pregnancy, childbirth, false pregnancy, termination of pregnancy, conditions arising in connections with pregnancy, and recovery from any of these conditions.

**Pregnancy Discrimination:** includes treating an individual affected by pregnancy of a pregnancy-related condition less favorably than similar individuals not so affected and includes a failure to provide legally mandated leave or accommodations.

**Pregnant Student/Birth-Parent:** refers to the student who is or was pregnant. This policy and its pregnancy-related protections apply to all pregnant persons, regardless of gender identity or expression.

**Reasonable Accommodations (for the purposes of this policy only):** changes in the academic environment or typical operations that enables pregnant students or students with pregnancy-related conditions to continue to pursue their studies and enjoy the equal benefits of Herzing University.

## **Reasonable Accommodation of Students Affected by Pregnancy, Childbirth, or Related Conditions**

- Herzing University and its faculty, staff, and other employees will not require students to limit their studies as the result of pregnancy or pregnancy-related conditions.
- The benefits and services provided to students affected by pregnancy will be no less than those provided to students with temporary medical conditions.
- Students with pregnancy-related disabilities, like any student with a short-term or temporary disability, are entitled to reasonable accommodations so that they will not be disadvantaged in their courses of study and may seek assistance from the Title IX office.
- No artificial deadlines or time limitations will be imposed on requests for accommodations, but Herzing University is limited in its ability to enact or implement accommodations retroactively.
- Reasonable accommodations may include, but are not limited to:

- Providing accommodations requested by a pregnant student to protect the health and safety of the student and/or the pregnancy (such as allowing the student to maintain a safe distance from hazardous substances);
- Making modifications to the physical environment (such as accessible seating);
- Providing mobility support;
- Extending deadlines and/or allowing the student to make up tests or assignments missed for pregnancy-related absences;
- Offering remote learning options, where available;
- Excusing medically-necessary absences (granted irrespective of classroom attendance policies set by individual faculty members, departments or divisions);
- Granting leave per Herzing University's medical leave policy or implementing incomplete grades for classes that will be resumed at a future date; or
- Allowing breastfeeding students reasonable time and space to pump breast milk in a location that is private, clean, and reasonably accessible. Bathroom stalls do not satisfy this requirement.
- Nothing in this policy requires modification to the essential elements of any academic program. Pregnant students cannot be channeled into an alternative program or school against their wishes.

### ***Modified Academic Responsibilities Policy for Parenting Students***

- a. Students with child caretaking/parenting responsibilities who wish to remain engaged in their coursework while adjusting their academic responsibilities because of the birth or adoption of a child or placement of a foster child may request an academic modification period during the first three (3) months from the time the child entered the home. Extensions may be granted when additional time is required by medical necessity or extraordinary caretaking/parenting responsibilities.
- b. During the modification period, the student's academic requirements will be adjusted, and deadlines postponed as appropriate, in collaboration among the Title IX office, the student's student services specialist, and the appropriate academic department.
- c. Student seeking a period of modified academic responsibilities may consult with their academic advisor or with the Title IX office to determine appropriate academic accommodations requests. The Title IX office will communicate all requests under this policy to students' student services specialists and coordinate accommodation-related efforts with the specialists. Students are encouraged to work with their student services specialist and faculty members to reschedule course assignments, lab hours, examinations, or other requirements and/or to reduce their overall course load as appropriate, once authorization is received from the Title IX office. If for any reason, caretaking/parenting students are not able to work with their student services specialist or faculty members to obtain appropriate and necessary modifications, students should alert the Title IX Coordinator as soon as possible, and the Coordinator will help facilitate any accommodations or modifications.
- d. Students can request modified academic responsibilities under this policy regardless of whether they elect to take a leave of absence.
- e. While receiving academic modifications, students will remain registered and retain benefits accordingly.

### ***Approved Break***

- a. As long as students can maintain appropriate academic progress, faculty, staff, or other Herzing University employees will not require them to take an approved or withdraw from or

limit their studies as the result of pregnancy, childbirth, or related conditions, but nothing in this policy requires modification of the essential elements of any academic program.

- b. Enrolled students may elect to take an approved break for up to one full semester because of pregnancy and/or the birth, adoption, or placement of a child.
- c. Students taking an approved break under this policy will provide notice of the intent to take a break 30 calendar days prior to the initiation of the break, or as soon as practicable.
- d. To the extent possible, Herzing University will take reasonable steps to ensure that upon return from break, students will be reinstated to their program in the same status as when the leave began, with no tuition penalty.
- e. Continuation of students' scholarship or similar university-sponsored funding during the approved break will depend on the students' registration status and the policies of that funding program regarding registration status. Students will not be negatively impacted by or forfeit their future eligibility for scholarships or similar university-sponsored funding by exercising their rights under this policy.
- f. The Title IX office can and will advocate for students with respect to financial aid agencies and external scholarship providers in the event that an approved break places eligibility into question.

### ***Student-Employee Leave***

- a. All student-employees will be entitled to the protections of the Family and Medical Leave Act.
- b. Pregnancy and related conditions will be treated as any other temporary disability for job purposes, including leave and any benefits, where applicable.
- c. Pregnancy and related conditions will be regarded as a justification for a leave of absence without pay for a reasonable period of time, at the conclusion of which employees will be reinstated to the status they held when the leave began or to a comparable position, without decrease in rate of compensation or loss of promotional opportunities, or any other right or privilege of employment.

### ***Retaliation and Harassment***

- a. Harassment of any member of the Herzing University based on sex, gender identity, gender expression, pregnancy, or parental status is prohibited.
- b. Faculty, staff, and other Herzing University employees are prohibited from interfering with students' right to take leave, seek reasonable accommodation, or otherwise exercise their rights under this policy.
- c. Faculty, staff, and other Herzing University employees are prohibited from retaliating against students for exercising the rights articulated by this policy, including imposing or threatening to impose negative educational outcomes because students request leave or accommodation, file a complaint, or otherwise exercise their rights under this policy.

### ***Dissemination of the Policy and Training***

A copy of this policy will be made available to faculty, staff, and employees in annually required training and posted on the Herzing University website. Herzing University will alert all new students about this policy and the location of this policy as part of orientation. The Title IX Coordinator will make educational materials available to all members of the Herzing University community to promote compliance with this policy and familiarity with its procedures.

## Transgender/Gender Identity Resources

Herzing University affirms its commitment to ensuring that all students, faculty, and staff, including those individuals identifying under the transgender umbrella, can enjoy full and equal access to the University and to build a safe and inclusive environment for everyone.

### **Bathrooms**

Where available, Herzing University has designated single-occupancy restroom facilities as All Gender restrooms. Any individual may use such a restroom or the restroom in which they feel most comfortable.

### **Name Changes**

To have their name and gender and/or sex changed in the Herzing University database, a student must contact the registrar or financial aid department and submit proof of a legal name change. Currently, it is not possible to have a non-legal name appear on financial aid and some other official documents, though faculty and staff will use a preferred name upon request.

## Sexual Misconduct Policy

Herzing University prohibits all forms of sexual misconduct, including, but not limited to, sexual assault, sexual harassment, domestic violence, dating violence, and stalking.

No employee or student will be subject to any form of retaliation, intimidation, or discipline for pursuing a sexual misconduct complaint.

State law defines various violent and/or non-consensual sexual acts as crimes. While some of these acts may have parallels in criminal law, Herzing University has defined categories of sex/gender discrimination as sexual misconduct, as stated below, for which action under this policy may be imposed. Generally speaking, the University considers Non-Consensual Sexual Intercourse violations to be the most serious of these offenses, and therefore typically imposes the most severe sanctions, including suspension or expulsion for students and termination for employees. However, the University reserves the right to impose any level of sanction, ranging from a reprimand up to and including suspension or expulsion/termination, for any act of sexual misconduct or other sex/gender-based offenses, including intimate partner (dating and/or domestic) violence, non-consensual sexual contact and/or stalking based on the facts and circumstances of the particular allegation. Acts of sexual misconduct may be committed by any person upon any other person, regardless of the sex, sexual orientation and/or gender identity of those involved.

### **Definitions**

**Reporting Party:** is an individual who reports a concern regarding possible sexual misconduct, harassment, or discrimination to the University and an individual who reportedly experienced sexual misconduct, harassment, or discrimination.

**Responding Party:** is a University student, employee, or participant in a University program who reportedly engaged in sexual misconduct. This term also includes individuals whose identities are unknown if there is reason to believe that they may be a University student, employee, or participant in a University program or if the Reporting party or Reporter is a student.

**Consent:** is a positive, unambiguous agreement, expressed in mutually understandable words or actions, to engage in specific sexual activity throughout the duration of a sexual encounter. Silence or lack of resistance does not constitute consent. Either party at any point can withdraw consent. Consent must be voluntarily given and may not be valid if a person is subject to real or perceived coercion, force, or threats. Consent to engage in one sexual activity does not indicate consent to another sexual activity, and past agreement to engage in a particular sexual activity cannot be presumed to constitute consent to engage in future sexual activity. Similarly, consent to sexual activity with one partner does not constitute consent to engage in sexual activity with any other partner. A person who is known, or reasonably known to be incapacitated or anyone under the age designated by each state (see Age of Consent) cannot give valid consent.

**Incapacitation:** is defined as a state where someone lacks the physical and/or mental ability to make informed, rational judgments and to act on those judgments (e.g. to understand the “who, what, when, where, why, or how” of their sexual interaction). Causes may include, but are not limited to, an intellectual or other disability, being in an unconscious state, having consumed alcohol or taken drugs, or being in an altered psychological state. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has violated this policy.

It is not an excuse that the responding party was intoxicated and, therefore, did not realize the incapacity of the reporting party.

**Age of Consent:** Age of consent in the State of Wisconsin is 18. Federal age of consent is 18. Sexual contact by an adult with a person younger than the age of consent may be a crime and a potential violation of this policy even if the minor wanted to engage in the act.

NOTE: Silence or the absence of resistance alone is not consent. There is no requirement on a party to resist the sexual advance or request, but resistance is a clear demonstration of non-consent. The presence of consent is not demonstrated by the absence of resistance. Sexual activity that is forced is by definition non-consensual, but non-consensual activity is not by definition forced.

Examples of lack of consent can be found in [Appendix B](#).

**Force:** is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that overcome resistance or produce consent. (e.g. “Have sex with me or I’ll hit you.” “Okay, don’t hit me; I’ll do what you want.”).

**Coercion:** is unreasonable pressure for sexual activity. Coercive behavior differs from seductive behavior based on the type of pressure someone uses to get consent from another. When someone makes clear to you that they do not want sex, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

**Intimate Partner Violence (including Dating Violence and Domestic Violence):** describes actual or threatened physical or sexual violence by a current or former intimate partner. It may also include emotional and psychological abuse, usually by words or actions that seek to establish power and control and cause fear of physical or sexual violence. Intimate partner violence may also include stalking behaviors.

Examples of Intimate Partner Violence are found in [Appendix B](#).

### **Sexual Assault**

#### Non-Consensual Sexual Intercourse

Defined as:

- Any sexual intercourse
- however slight
- with any object
- by a person upon another person
- that is without consent and/or by force

Sexual intercourse includes:

- Vaginal or anal penetration by a penis, tongue, finger or object, or oral copulation (mouth to genital contact) no matter how slight the penetration or contact.

#### Non-Consensual Sexual Contact

Defined as:

- Any intentional sexual touching
- however slight
- by a person upon another person
- that is without consent and/or by force

Sexual touching includes:

- Intentional contact with the breasts, groin, or genitals, or mouth or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts; or
- Any other bodily contact made in a sexual manner.

**Sexual Exploitation:** refers to a situation in which a person takes non-consensual or abusive sexual advantage of another, and that behavior does not otherwise fall within the definitions of Sexual Harassment, Non-Consensual Sexual Intercourse, or Non-Consensual Sexual Contact.

Examples of Sexual Exploitation are found in [Appendix B](#).

**Sexual Harassment:** See separate policy above.

**Stalking:** is obsessive or repeated unwanted attention directed to either an individual or a group that is likely to cause a reasonable person alarm, fear, or significant emotional distress. Some examples of behavior that could be considered stalking are: following, unwanted phone calls, text messages, emails, letters or voicemails, leaving unwanted gifts or flowers, lying in wait. Stalking usually is a



pattern of behavior over an extended period of time, however, depending on the severity of the circumstances, even two instances of such behavior could be sufficient to constitute stalking.

Examples of Stalking are found in [Appendix B](#).

**Retaliation:** as it relates to this sexual misconduct policy, is taking adverse action against an individual or individuals for reporting an incident of sexual misconduct, for supporting a party bringing an allegation forward, or for participating in a sexual misconduct investigation or proceeding. Retaliation is a serious violation of University policy and will be treated as another possible instance of harassment or discrimination.

Examples of Retaliation are found in [Appendix B](#).

Acts of alleged retaliation should be reported immediately to the Title IX Coordinator and will be promptly investigated. Herzing University is prepared to take appropriate steps to protect individuals who fear that they may be subject to retaliation.

**Intimidation:** is an attempt to compel someone to or deter someone from action by real or perceived threats or acts that cause an unreasonable fear of harm.

## State of Wisconsin Definitions

See [Appendix A](#) at the end of this document.

## Prevention and Education

### *Risk Reduction Tips*

Risk reduction tips can often take a victim-blaming tone, even unintentionally. Only those who commit sexual violence are responsible for those actions. We offer the tips below with no intention to victim-blame, with recognition that these suggestions may nevertheless help you to reduce your risk of experiencing a non-consensual sexual act or other assault.

- **If you have limits, make them known as early as possible.**
- **Tell a sexual aggressor “NO” clearly and firmly.**
- **Try to remove yourself from the physical presence of a sexual aggressor.** If there is someone nearby, ask for help.
- **Take affirmative responsibility for your alcohol intake or drug use.** Acknowledge that alcohol and drugs lower your sexual inhibitions and may make you vulnerable to someone who views a drunk or high person as a sexual opportunity.
- **Give thought to sharing intimate content with others (pictures, images, videos, etc.)** If you do choose to share, clarify your expectations as to how or if those images may be used, shared, or disseminated.
- **Be aware of your surroundings and trust your instincts.** If you feel unsafe on site, seek assistance from an administrator immediately.
- **Avoid isolated areas,** especially in the dark.

- **Walk with purpose.** Even if you do not know where you are going, act as though you do.
- **Make sure your cell phone is with you** and charged and that you have money for cab fare or public transportation, if needed. *Please note that even if a cell phone is not activated with a plan or prepaid minutes, it is able to make emergency calls to 911.*
- **Park your car in a well-lit area** if you are on site in the evenings.

If you find yourself in the position of being the initiator of sexual behavior, you owe sexual respect to your potential partner. The following suggestions may help you to reduce your risk for being accused of sexual misconduct:

- **Clearly communicate your intentions to your potential sexual partner.** Give them a chance to clearly relate their intentions to you.
- **Understand and respect personal boundaries.**
- **Never make assumptions about consent.** Do not assume someone's sexual availability, whether they are attracted to you, how far you can go, or whether they are physically and/or mentally able to consent. Your partner's consent should be affirmative and continuous. **If there are any questions or ambiguity, you do not have consent.**
- **Mixed messages from your partner are a clear indication that you should stop, diffuse sexual tension, and communicate better.** You may be misreading them. They may not have figured out how far they want to go with you yet. You must respect the timeline for sexual behaviors with which they are comfortable.
- **Do not take advantage of someone's drunkenness or altered state, even if they willingly consumed alcohol or other substances.**
- **Realize that your potential partner could feel intimidated or coerced by you.** You may have a power advantage simply because of your gender or physical presence. Take care not to abuse that power.
- **Do not share intimate pictures, images, videos, or other content that are shared with you.**
- **Understand that consent to some form of sexual behavior does not automatically imply consent to any other forms of sexual behavior.**
- **Silence, passivity, or non-responsiveness cannot be interpreted as an indication of consent.** Read your partner carefully. Pay attention to verbal and non-verbal communication and body language.

### ***Safe and Positive Options for Bystander Intervention***

Whenever you attempt to intervene in a situation that you think could constitute or lead to intimate partner violence, sexual assault, or stalking, always make sure that you keep yourself safe. If things get out of hand or too serious, you should contact law enforcement immediately.

#### General Tips for Intervention

- Approach the situation in a friendly way, do not be antagonistic
- Avoid using violence

- Be honest and direct when possible
- Get others to join you in intervening if possible

### Intervention Strategies

- Interruption – step in and directly ask an individual to stop what they are doing or saying and tell them why you feel it is wrong
- Separation – separate the two parties directly, let them know why you are separating them, and make sure everyone gets home safely if alcohol is involved.
- Distraction – create a disturbance or a reason for one of the involved parties to engage in conversation or leave the situation
- Education – challenge attitudes and opinions you hear from others that promote negative ideas about women or support sexual violence; stand up for others

### ***Training Programs for Students and Employees***

Herzing University partners with EVERFI to provide annual training to all university students and employees on Sexual Assault Prevention, Title IX, and the University's policies and procedures for responding to complaints of sexual misconduct, discrimination, and harassment. Topics covered in these trainings include the prevention of sexual assault, domestic violence, dating violence, and stalking.

#### **Students**

##### **Sexual Assault Prevention for Adult Learners**

<https://resources.everfi.com/courses/sexual-assault-prevention-adult-learners/>

#### **Employees**

##### **Building Supportive Communities: Clery Act & Title IX**

<https://resources.everfi.com/courses/building-supportive-communities/>

### **Immediately Following an Incident**

If any individual (student or employee) is a victim of sexual misconduct (including sexual assault, domestic violence, dating violence, or stalking), their first priority should be to get to safety. They should next seek any necessary medical treatment. If you have been a victim of sexual assault, do not wash or change clothes, as valuable evidence could be lost.

## **Reporting Policy and Procedures for Harassment and Discrimination Complaints**

Reports of discrimination, harassment and/or retaliation may be made using any of the following options. There is no time limitation on the filing of allegations. However, if the responding party is no longer subject to the University's jurisdiction, the ability to investigate, respond and provide remedies may be more limited:

- 1) Report directly to the Title IX Coordinator:

Emilie Thompson  
Director of Safety and Equal Opportunity  
Title IX Coordinator/ADA Coordinator  
W140 N8917 Lilly Road  
Menomonee Falls, WI 53051  
(414) 271-5622  
[emthompson@herzing.edu](mailto:emthompson@herzing.edu)

- 2) Report online, using the reporting form posted at: <http://tinyurl.com/ethicsstudent-herzing>

All reports are acted upon promptly while every effort is made by the University to preserve the privacy of reports. Such reports may also be anonymous. Anonymous reports will be investigated to determine if remedies can be provided. Additionally, all employees of the University apart from dedicated counseling staff are designated as responsible employees and will share a report with the Title IX Coordinator promptly. Confidentiality and mandated reporting are addressed more specifically below. Reports of misconduct or discrimination committed by the Title IX Coordinator should be reported to the Associate Vice President of Student Services.

### **Sexual Misconduct Reports**

Any student or employee who reports to the University that they have been a victim of sexual assault, intimate partner violence, or stalking, regardless of where the incident took place, shall be provided with a copy of the Annual Security Report and documentation detailing the following:

- The individual's option to notify proper law enforcement authorities.
- The option to be assisted by location authorities in notifying law enforcement authorities if they so choose.
- Their option to decline to notify such authorities.
- The individual's options for (and any available assistance in) changing academic, living, transportation, and/or working situations if so requested and reasonably available, regardless of their choice whether or not to report the crime to the authorities.
- Where applicable, their rights, and the University's responsibilities regarding orders of protection, no contact orders, restraining orders, or similar lawful orders issued by a criminal, civil or tribal court.
- The student's option to request that the University issue a No Contact Order.
- The link to the United States Department of Justice's Violence Against Women Office website, <http://www.justice.gov/ovw>, which contains information regarding victim's rights and available assistance.
- A list of other local resources available.

Herzing University maintains no housing for either employees or students. Consequently, any change in living arrangements that would be desired by a reporting party must be the responsibility of that individual. However, the University will assist students who are seeking alternate housing by providing recommendations or a source of appropriate housing recommendations.

The reporting party will have an opportunity to request assistance in changing their academic situation. Possible alternatives include:

- Changing Instructors
- Changing Course Schedule
- Temporary Withdrawal

The University will take additional prompt remedial and/or disciplinary action with respect to any member of the community, guest or visitor upon a finding that they have engaged in harassing or discriminatory behavior or retaliation.

The University will maintain as confidential any accommodations or protective measures, provided confidentiality does not impair the University's ability to provide the accommodations or protective measures.

### **False Reports**

Herzing University will not tolerate intentional false reporting of incidents. It is considered a violation of the Student Code of Conduct to make an intentionally false report of any policy violation, and it may also violate state criminal statutes and civil defamation laws.

### **Confidentiality and Reporting of Offenses under This Policy**

All University employees (faculty, staff, and administrators) are expected to report actual or suspected discrimination or harassment to appropriate officials immediately, though there are some limited exceptions. In order to make informed choices, it is important to be aware of confidentiality and mandatory reporting requirements when consulting University resources. The following describes the reporting options at Herzing University:

#### ***Confidential Reporting***

If a reporting party would like the details of an incident to be kept confidential, the reporting party may speak with the following non-employees:

- Licensed professional counselors
- Local rape crisis counselors
- Domestic violence resources
- Local or state assistance agencies
- Clergy/Chaplains

All the above-listed individuals will maintain confidentiality except in extreme cases of immediacy of threat or danger or abuse of a minor. ULifeline and/or the Employee Assistance Program are available to help free of charge and can be seen on an emergency basis during normal business hours.

#### ***Formal Reporting Options***

All University employees have a duty to report. Reporting parties may want to consider carefully whether they share personally identifiable details with employees, as those details must be shared with the Title IX Coordinator. Employees must promptly share all details of the reports they receive.

Generally, climate surveys, classroom writing assignments or discussions, human subjects research, or events such as Take Back the Night marches or speak-outs do not provide notice that must be reported to the Coordinator by employees, unless the reporting party clearly indicates that they wish a report to be made. Remedial actions may result from such disclosures without formal University action.

If a reporting party does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a formal resolution to be pursued, the reporting party may make such a request to the Title IX Coordinator, who will evaluate that request in light of the duty to ensure the safety of the University and comply with federal law. Note that the University's ability to remedy and respond to a reported incident may be limited if the reporting party does not want the institution to proceed with an investigation and/or the Equity Resolution Process.

In cases indicating pattern, predation, threat, weapons and/or violence, the University will likely be unable to honor a request for confidentiality. In cases where the reporting party requests confidentiality and the circumstances allow the University to honor that request, the University will offer interim supports and remedies to the reporting party and the community but will not otherwise pursue formal action. A reporting party has the right, and can expect, to have allegations taken seriously by Herzing University when formally reported, and to have those incidents investigated and properly resolved through these procedures.

Formal reporting still affords privacy to the reporter, and only a small group of officials who need to know will be told, including but not limited to: Human Resources, Student Services, and the University Provost. Information will be shared as necessary with investigators, witnesses and the responding party. The circle of people with this knowledge will be kept as tight as possible to preserve a reporting party's rights and privacy. Additionally, victims and/or third parties may make anonymous reports using the online reporting form posted at <http://tinyurl.com/ethicsstudent-herzing>

Note that these anonymous reports may prompt a need for the institution to investigate.

Failure of any employee to report an incident or incidents of sex/gender harassment or discrimination of which they become aware is a violation of University/College policy and can be subject to disciplinary action for failure to comply.

### **Amnesty for Violations of Drug and Alcohol Policy**

Any witness or victim of an incident of sexual assault who reports the incident in good faith will not be sanctioned by the institution for admitting in the report to a violation of Herzing University's policy regarding the personal use of drugs or alcohol.

### **Emergency Contact Notification**

Herzing University reserves the right to notify parents/guardians of dependent students regarding any health or safety risk, change in student status or conduct situation, particularly drug or alcohol violations. Where a student is non-dependent, the University will contact parents/guardians, or a designated emergency contact to inform them of situations in which there is a significant and articulable health and/or safety risk. The University also reserves the right to designate which university officials have a need to know about individual conduct reports pursuant to the Family Educational Rights and Privacy Act.

## **Title IX Process for Allegations of Harassment or Sexual Misconduct**

Herzing University will act in some way on any formal or informal allegation or notice of violation of the policy on Equal Opportunity, Harassment and Nondiscrimination, that is received by the Title IX Coordinator or a member of the administration, faculty, or other employee.

The procedures described below apply only to allegations of Quid Pro Quo sexual harassment, sexual harassment that is so severe or pervasive that it creates a Hostile Environment, or specific allegations of Sexual Misconduct (sexual assault, domestic violence, dating violence, and/or stalking) . All other allegations of discrimination, harassment, or misconduct unrelated to Title IX will be addressed through the other procedures outlined in this document.

### **Overview**

Upon notice to the Title IX Coordinator, the Title IX Coordinator will implement any interim supportive measures deemed reasonable and necessary to the reporting party and responding party. The Title IX Coordinator will advise the reporting party of their options for resolution.

If so, the University will initiate a confidential investigation that is thorough, reliable, impartial, prompt and fair. The investigation and the subsequent resolution process determine whether the Title IX policy has been violated. If so, the University will promptly implement effective remedies designed to end the discrimination, prevent its recurrence and address its effects.

### **Title IX Investigative Process**

Allegations under the Title IX Policy are investigated by a trained Title IX investigator. Investigators are announced in an annual distribution of this policy to the University community, prospective students, their parents and prospective employees. The list of Investigators and a description of the Title IX Hearing Board can be found in [Appendix D](#). Title IX Investigators are trained in all aspects of the resolution process, and can serve in any of the following roles, at the direction of the Title IX Coordinator:

- To provide sensitive intake for and initial advice pertaining to allegations
- To investigate allegations
- To act as process advisors to those involved in the Title IX process

Title IX Investigators and members of the Title IX Hearing Board receive annual training organized by the Title IX Coordinator, including a review of University policies and procedures as well as applicable federal and state laws and regulations so that they can appropriately address allegations, provide accurate information to members of the community, protect safety and promote accountability. Training includes but is not limited to: how to appropriately remedy, investigate, render findings and determine appropriate sanctions in reference to allegations of sexual harassment and sexual misconduct; the University's Title IX policies and procedures; confidentiality and privacy; and applicable laws, regulations and federal regulatory guidance. All investigators and Title IX Hearing Board members are required to attend this annual training to be eligible to serve.

The Title IX Investigator pool includes:

- Chair: The Title IX Coordinator
- At least one representative from Human Resources

Appointments to the pool of investigators should be made with attention to representation of groups protected by the harassment and non-discrimination policy. Individuals who are interested in serving as an investigator are encouraged to contact the Title IX Coordinator.

## **Reporting Title IX Violations**

Any member of the community, guest or visitor who believes that the Title IX Policy has been violated should contact the Title IX Coordinator.

It is also possible for employees to notify a supervisor, or for students to notify an administrative advisor or faculty member. These individuals must in turn notify the Title IX Coordinator. The reporting form at <http://tinyurl.com/ethicsstudent-herzing> may also serve to initiate the resolution process.

All employees receiving reports of a potential violation of the University's Title IX policy are expected to promptly contact the Title IX Coordinator, within 24 hours of becoming aware of a report or incident. All initial contacts will be treated with privacy: specific information on any allegations received by any party will be reported to the Title IX Coordinator, but, subject to the University's obligation to redress severe violations, every effort will be made to maintain the privacy of those initiating an allegation. In all cases, University will consider the wishes of the reporting party with respect to how the reported misconduct is pursued, but reserves the right, when necessary to protect the community, to investigate and pursue a resolution even when a reporting party chooses not to initiate or participate in the resolution process.

## **Attempted Violations**

In most circumstances, Herzing University will treat attempts to commit any of the violations listed in the Title IX Policy as if those attempts had been completed.

## **Preliminary Inquiry**

Following receipt of notice or a report of misconduct, the Title IX Coordinator engages in a preliminary inquiry to determine if there is reasonable cause to believe the Title IX policy has been violated. The preliminary inquiry is typically 1-3 days in duration. This inquiry may also serve to help the Title IX Coordinator to determine if the allegations evidence violence, threat, pattern, predation and/or weapon, if the reporting party has asked for no action to be taken. In any case where violence, threat, pattern, predation, and/or weapon is not evidenced, the Title IX Coordinator may respect a reporting party's request for no action and will investigate only so far as necessary to determine appropriate remedies. As necessary, the University reserves the right to initiate resolution proceedings without a formal report or participation by the reporting party in cases where there is a significant and articulable risk to the community.

In cases where the reporting party wishes to proceed, or the University determines it must proceed, and the preliminary inquiry shows that reasonable cause exists, the Title IX Coordinator will direct an investigation to commence and the allegation will be resolved through one of the processes discussed briefly here and in detail below:



- Alternative Resolution – mediation and/or restorative justice may take the place of formal resolution if deemed reasonable by the Title IX Coordinator and agreed to by all parties.
- Formal Resolution – a resolution of contested allegations with formal investigation and a hearing.

Once a formal investigation is commenced, the Title IX Coordinator will provide written notification of the investigation to the parties at an appropriate time during the investigation. Notification will be made in writing and may be delivered by one or more of the following methods: in person; mailed to the local or permanent address of the parties as indicated in official University records; or emailed to the parties' University-issued email account. Once mailed, emailed and/or received in-person, notice will be presumptively delivered. The reporting party is typically copied on such correspondence. The University aims to complete all investigations within a sixty (60) calendar daytime period, which can be extended as necessary for appropriate cause by the Title IX Coordinator with notice to the parties as appropriate.

If, during the preliminary inquiry or at any point during the formal investigation, the Title IX Coordinator determines that there is no reasonable cause to believe that the policy has been violated, the process will end unless the reporting party requests that the Title IX Coordinator make an extraordinary determination to re-open the investigation. This decision lies in the sole discretion of the Title IX Coordinator.

### **Interim Remedies/Actions**

The Associate Vice President of Student Services or the Vice President of Human Resources may provide interim remedies intended to address the needs of the reporting party, responding party, and the University community.

These remedies may include, but are not limited to:

- Referral to community counseling and health services
- Referral to the Employee Assistance Program
- Education to the community
- Altering work arrangements for employees or work study students
- Providing on-site escorts
- Implementing contact limitations between the parties
- Offering adjustments to academic deadlines, course schedules, work schedules, etc.

The institution will maintain as confidential any interim actions or protective measures, provided confidentiality does not impair the institution's ability to provide the interim actions or protective measures.

### **Alternative Resolution**

After an initial assessment of the alleged facts, the Title IX Coordinator may—if both parties agree—begin an Alternative Resolution process. Alternative Resolution is not available for incidents in which

an employee is accused of sexually harassing a student.

Alternative Resolution may include, among other responses:

- Referral for disciplinary action;
- An agreement between the parties;
- Referring the Respondent to targeted preventive educational and training programs; and
- Conducting a follow-up review to ensure that the resolution has been carried out effectively.

Except for the limitations stated above, the Title IX Coordinator has sole discretion to determine whether the complaint is appropriate for Alternative Resolution, to determine the type of resolution to pursue, and to stop the process at any time before its conclusion and move to a Formal Investigation. Participation in Alternative Resolution is voluntary, meaning both the Reporting and the Responding Parties must mutually agree, in writing, to participate. If Alternative Resolution is selected, the Title IX Coordinator will provide timely written notice to both parties that discloses the allegations and that:

- The Title IX Coordinator has begun the process;
- The process is voluntary and will end upon either party's request;
- Termination of Alternative Resolution may result in Formal Investigation;
- They may be accompanied by an advisor throughout the process; and
- The Title IX Coordinator will notify both parties of the process's outcome
- Conclusion of the Alternative Resolution process will preclude the parties from resuming a formal complaint arising from the same allegations unless the parties failed to satisfy the terms of the agreement; and
- Records of the process will be maintained and shared

The Title IX Coordinator will conduct the Alternative Resolution process unless good cause requires another individual. The Title IX Coordinator will endeavor to complete the Alternative Resolution process promptly, typically within 30 to 60 business days of notifying the parties in writing of starting the process. However, the Title IX Coordinator may extend the Alternative Resolution process past 60 days for good cause. The Title IX Coordinator will notify the parties in writing of the reason for any extension and the projected new timeline. The actual time required will depend on the specific circumstances, including the complexity of the allegations and the nature of the alleged conduct.

Once the parties have agreed to the terms of an Alternative Resolution, the University will not conduct a formal investigation unless the Title IX Coordinator determines that the Respondent failed to satisfy the terms of the Alternative Resolution.

The Title IX Coordinator will keep records of all reports and conduct addressed through Alternative Resolution.

## **Investigation**

Once the decision is made to commence a formal investigation, the Title IX Coordinator appoints an investigator to conduct the investigation, usually within two (2) days of determining that an investigation should proceed. Investigations are completed expeditiously, normally within fourteen (14) days, though some investigations take several weeks or even months, depending on the nature, extent and complexity of the allegations, availability of parties and witnesses, police

involvement, etc.

The University may undertake a short delay its investigation (several days to weeks, to allow evidence collection) when criminal charges based on the same behaviors that invoke this process are being investigated. The University will promptly resume its investigation and resolution processes once notified by law enforcement that the initial evidence collection process is complete. University action will not typically be altered or precluded on the grounds that civil or criminal charges involving the same incident have been filed or that charges have been dismissed or reduced.

All investigations will be thorough, reliable, impartial, prompt and fair. Investigations entail interviews with all relevant parties and witnesses, obtaining available evidence and identifying sources of expert information, as necessary.

The investigator(s) will typically take the following steps, if not already completed (not necessarily in order):

- In coordination with University partners, initiate or assist with any necessary remedial actions;
- Determine the identity and contact information of the reporting party;
- Identify all policies allegedly violated;
- Meet with the reporting party to finalize their statement;
- Prepare the notice of allegations based on the preliminary inquiry;
- Commence a thorough, reliable and impartial investigation by developing a strategic investigation plan, including a witness list, evidence list, intended timeframe, and order of interviews for all witnesses and the responding party, who may be given notice prior to or at the time of the interview;
- Prepare the notice of allegation based on the preliminary inquiry;
- Meet with the reporting party to finalize their statement, if necessary;
- Provide written notification to the parties prior to their interviews that they may have the assistance of an advisor of their choosing present for all meetings attended by the advisee;
- Provide the parties with a written description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable procedures and a statement of the potential sanctions/responsive actions that could result;
- Prior to the conclusion of the investigation, provide the reporting party and the responding party with a list of witnesses whose information will be used to render a finding;
- Allow each party the opportunity to suggest questions they wish the investigators to ask of the other party and witnesses.
- Provide the parties with all relevant evidence to be made available at the hearing and provide each with a full and fair opportunity to address that evidence prior to the hearing;
- Complete the investigation promptly, and without unreasonable deviation from the intended timeline;

- Provide regular updates to the reporting party and responding party throughout the investigation;
- Finalize and present the investigation report to both parties prior to the hearing.

At any point during the investigation, if it is determined there is no reasonable cause to believe that University policy has been violated; the Title IX Coordinator has authority to terminate the investigation and end resolution proceedings.

Witnesses (as distinguished from the parties) are expected to cooperate with and participate in the University's investigation and the Title IX process. Any witness who declines to participate in or cooperate with an investigation will not be permitted to offer evidence or testimony later in a hearing (if a hearing is held). Failure of a witness to cooperate with and/or participate in the investigation hearing constitutes a violation of policy and may be subject to discipline. Witnesses may provide written statements in lieu of interviews during the investigation and may be interviewed remotely by phone, Skype (or similar technology), if they cannot be interviewed in person or if the investigators determine that timeliness or efficiency dictate a need for remote interviewing. Parties who elect not to participate in the investigation or to withhold information from the investigation will not have the opportunity to offer evidence during the hearing and/or appeal stages of the process if it could have been offered during the investigation. Failure to offer evidence prior to an appeal does not constitute grounds for appeal based on new evidence.

No unauthorized audio or video recording of any kind is permitted during investigation meetings or other Title IX proceedings.

### **Advisors**

Each party is allowed to have an advisor of their choice present with them for all meetings and proceedings, from intake through to final determination. The parties may select whomever they wish to serve as their advisor as long as the advisor is eligible and available, and usually not otherwise involved in the resolution process, such as serving as a witness. The advisor may be a friend, mentor, family member, attorney or any other supporter a party chooses to advise them who is available and eligible. Witnesses cannot also serve as advisors. The parties may choose advisors from inside or outside the community. The parties may proceed without an advisor.

The parties may be accompanied by their advisor in all meetings and interviews at which the party is entitled to be present, including intake and interviews. Advisors should help their advisees prepare for each meeting, and are expected to advise ethically, with integrity and in good faith. The University cannot guarantee equal advisory rights, meaning that if one party selects an advisor who is an attorney, but the other party does not, or cannot afford an attorney, the University is not obligated to provide one.

Additionally, responding parties may wish to contact organizations such as:

- FACE (<http://www.facecampusequality.org>)
- SAVE (<http://www.saveservices.org>).

Reporting parties may wish to contact organizations such as:

- The Victim Rights Law Center (<http://www.victimrights.org>), or the

- The National Center for Victims of Crime (<http://www.victimsofcrime.org>), which maintains the Crime Victim's Bar Association.

All advisors are subject to the same rules, whether they are attorneys or not. Advisors may not address university officials in a meeting or interview unless invited to. The advisor may not make a presentation or represent the reporting party or the responding party during any meeting or proceeding except to facilitate the direct cross-examination of the opposing party or any witnesses and may not speak on behalf of the advisee to the investigator or hearing panelists. The parties are expected to respond to questions on their own behalf, without representation by their advisor. Advisors may confer quietly with their advisees or in writing as necessary, if they do not disrupt the process. For longer or more involved discussions, the parties and their advisors should ask for breaks or step out of meetings to allow for private conversation. Advisors will typically be given an opportunity to meet in advance of any interview or meeting with the administrative officials conducting that interview or meeting. This pre-meeting will allow advisors to clarify any questions they may have and allows the University an opportunity to clarify the role the advisor is expected to take.

Advisors are expected to refrain from interference with the investigation and resolution. Any advisor who steps out of their role will be warned once and only once. If the advisor continues to disrupt or otherwise fails to respect the limits of the advisor role, the advisor will be asked to leave the meeting. When an advisor is removed from a meeting, that meeting will typically continue without the advisor present. Subsequently, the Title IX Coordinator will determine whether the advisor may be reinstated or may be replaced by a different advisor.

The University expects that the parties will wish to share documentation related to the allegations with their advisors. The University provides a consent form that authorizes such sharing. The parties must complete this form before the University is able to share records with an advisor, though parties may share the information directly with their advisor if they wish. Advisors are expected to maintain the privacy of the records shared with them. These records may not be shared with third parties, disclosed publicly, or used for purposes not explicitly authorized by the University. The University may seek to restrict the role of any advisor who does not respect the sensitive nature of the process or who fails to abide by the University's privacy expectations.

The University expects an advisor to adjust their schedule to allow them to attend University meetings when scheduled. The University does not typically change scheduled meetings to accommodate an advisor's inability to attend. However, the University will make reasonable provisions to allow an advisor who cannot attend in person to attend a meeting by telephone, video and/or virtual meeting technologies as may be convenient and available.

A party may elect to change advisors during the process and is not locked into using the same advisor throughout.

The parties must advise the investigators of the identity of their advisor at least one (1) day before the date of their first meeting with investigators (or as soon as possible if a more expeditious meeting is necessary or desired). The parties must provide timely notice to investigators if they change advisors at any time.

## **Resolution**

The investigator has the authority to address all collateral misconduct, meaning that they investigate all allegations of discrimination, harassment and retaliation, but also may address any additional

alleged policy violations that have occurred in concert with the discrimination, harassment or retaliation, even though those collateral allegations may not specifically fall within the Title IX Policy. Accordingly, investigations will be conducted with as wide a scope as necessary and any other policy violations outside of Title IX will be forwarded to the appropriate process.

Any evidence that the investigator believes is relevant and credible may be considered, including history and pattern evidence. The investigator may exclude irrelevant or immaterial evidence and may choose to disregard evidence lacking in credibility or that is improperly prejudicial.

Unless the investigator determines it is appropriate, the investigation and the hearing will not consider: (1) incidents not directly related to the possible violation, unless they show a pattern, or (2) the sexual history of the reporting party (though there may be a limited exception made regarding the sexual history between the parties). While previous conduct violations by the responding party are not generally admissible as information about the present allegation, the investigators may consider information about previous good faith allegations and/or findings to consider as evidence of pattern and/or predatory conduct.

The investigator(s) will not meet with character witnesses but will accept up to two (2) letters supporting the character of each of the parties.

## **Judgment and Disciplinary Policy and Procedures**

### ***Title IX Hearing***

Typically, within five (5) days of the conclusion of an investigation, the investigator will forward an investigation report, which includes determinations on each policy violation, all recorded interviews, and all submitted evidence to the Title IX Hearing Board for final adjudication and possible sanction.

A hearing will usually be convened within ten (10) days of the completion of the investigation and will be conducted in a private session. The investigator will present the Title IX investigation report and testify to their impressions of the credibility of each party and any witnesses. Each party will have the opportunity to testify on their own behalf and the opportunity to cross-examine the other party via their advisor.

### ***Deliberation and Decisions***

Upon conclusion of the hearing, three (3) members of the Title IX Hearing Board will deliberate in closed session to determine whether the responding party is responsible or not responsible for the policy violation(s) in question. The board will base its determination(s) on a clear and convincing evidentiary standard (i.e., that it is highly and substantially more likely than not that the responding party committed each alleged violation). If a majority of the board finds a responding party or organization responsible, the board will recommend appropriate sanctions.

The Chair will prepare a written deliberation report and deliver it to the Title IX Coordinator, detailing the recommended finding, the information cited by the panel in support of its recommendation and any information the board excluded from its consideration and why. The report should conclude with any recommended sanctions. This report should not exceed two (2) pages in length and must be submitted to the Title IX Coordinator within two (2) days of the end of deliberations, unless the Title IX Coordinator grants an extension.

The Title IX Coordinator will finalize the recommendations and will inform the parties of the final determination – both the finding(s) and applicable sanction(s) within three (3) days of the Title IX Hearing, without significant time delay between notifications. Notification will be made in writing and may be delivered by one or more of the following methods: in person; mailed to the local or permanent address of the parties as indicated in official University records; or emailed to the parties' University -issued email account. Once mailed, emailed and/or received in-person, notice will be presumptively delivered. The notification of outcome will specify the finding on each alleged policy violation, any sanctions that may result which the University is permitted to share according to state or federal law, and the rationale supporting the essential findings to the extent the University is permitted to share under state or federal law. The notice will also include information on when the results are considered by the University to be final, any changes that occur prior to finalization and any appeals options that are available.

### **Possible Sanctions**

The Title IX Hearing Board will recommend sanctions or responsive actions to the Title IX Coordinator. Factors considered when determining a sanction/responsive action may include:

- The nature, severity of, and circumstances surrounding the violation
- An individual's disciplinary history
- Previous allegations or allegations involving similar conduct
- Any other information deemed relevant by the hearing board
- The need for sanctions/responsive actions to bring an end to the discrimination, harassment and/or retaliation
- The need for sanctions/responsive actions to prevent the future recurrence of discrimination, harassment and/or retaliation
- The need to remedy the effects of the discrimination, harassment and/or retaliation on the reporting party and the community

### **Student Sanctions**

The following are the usual sanctions that may be imposed upon students singly or in combination:

- **Probation:** A written reprimand for violation of the Code of Student Conduct, providing for more severe disciplinary sanctions if the student or organization is found in violation of any University policy, procedure or directive within a specified period of time. Terms of the probation will be specified and may include denial of specified social privileges, exclusion from co-curricular activities, non-contact orders and/or other measures deemed appropriate.
- **Suspension:** Termination of student status for a definite period of time not to exceed two years, and/or until specific criteria are met. Students who return from suspension are automatically placed on probation through the remainder of their tenure at University. This sanction may be noted as a Conduct Suspension on the student's official transcript, at the discretion of the Title IX Coordinator.
- **Dismissal:** Permanent termination of student status, revocation of rights to be on site for any reason or attend University-sponsored events. This sanction will be noted as a Conduct

Dismissal on the student's official transcript.

- **Withholding Diploma:** The University may withhold a student's diploma for a specified period of time and/or deny a student participation in commencement activities if the student has an allegation pending, or as a sanction if the student is found responsible for an alleged violation.
- **Revocation of Degree:** The University reserves the right to revoke a degree awarded from the University for fraud, misrepresentation or other violation of University policies, procedures or directives in obtaining the degree, or for other serious violations committed by a student prior to graduation.
- **Other Actions:** In addition to or in place of the above sanctions, the University may assign any other sanctions as deemed appropriate.

### **Employee Sanctions**

Responsive actions for an employee who has engaged in sexual harassment, and/or retaliation include

- Performance Improvement/Management Process
- Required Counseling
- Required Training or Education
- Probation
- Loss of Annual Pay Increase
- Loss of Oversight or Supervisory Responsibility
- Demotion
- Suspension with pay
- Suspension without pay
- Termination
- **Other Actions:** In addition to or in place of the above sanctions, the University may assign any other sanctions as deemed appropriate.

### **Withdrawal or Resignation While Charges Pending**

**Students:** The University does not permit a student to withdraw if that student has an allegation pending for violation of the Title IX. Should a student decide to leave and/or not participate, the process will nonetheless proceed in the student's absence to a reasonable resolution and that student will not be permitted to return to the University unless all sanctions have been satisfied. The student will not have access to an academic transcript until the allegations have been resolved.

**Employees:** Should an employee resign with unresolved allegations pending, the records of the Title IX Coordinator will reflect that status, and any University responses to future inquiries regarding employment references for that individual may indicate the former employee is ineligible for rehire.



## Appeals

All requests for appeal consideration must be submitted in writing to the Chair of the Title IX Hearing Board within three (3) days of the delivery of the written finding of the hearing panel. Any party may appeal the findings and/or sanctions only under the grounds described, below

Any party may appeal, but appeals are limited to the following grounds:

- A procedural error or omission occurred that significantly impacted the outcome of the hearing (e.g. substantiated bias, material deviation from established procedures, etc.).
- To consider new evidence, unknown or unavailable during the original hearing or investigation, that could substantially impact the original finding or sanction. A summary of this new evidence and its potential impact must be included.

The Title IX Hearing Board will review the appeal request(s). The original finding and sanction/responsive actions will stand if the appeal is not timely or is not based on the grounds listed above, and such a decision is final. The party requesting appeal must show that the grounds for an appeal request have been met, and the other party or parties may show the grounds have not been met, or that additional grounds are met. The original finding and sanction are presumed to have been decided reasonably and appropriately. When any party requests an appeal, the Chair will share the appeal request with the other party(ies), who may file a response within three (3) days and/or bring their own appeal on separate grounds within the original timeframe. If new grounds are raised, the original appealing party will be permitted to submit a written response to these new grounds within three (3) days. Any response or appeal request will be shared with each party.

Where the Title IX Hearing Board finds that at least one of the grounds is met by at least one party, additional principles governing the hearing of appeals will include the following:

- Decisions by the Title IX Hearing Board are to be deferential to the original decision, making changes to the finding only where there is clear error and to the sanction/responsive action only if there is a compelling justification to do so.
- Appeals are not intended to be full re-investigations (de novo) of the allegation. In most cases, appeals are confined to a review of the written documentation or record of the original investigation, and pertinent documentation regarding the grounds for appeal.
- Sanctions imposed as the result of the Resolution process are implemented immediately unless the Title IX Coordinator or designee stays their implementation in extraordinary circumstances, pending the outcome of the appeal.
  - For students: Graduation, internships/ externships, etc. do NOT in and of themselves constitute exigent circumstances, and students may not be able to participate in those activities during their appeal.
- The Title IX Coordinator will confer with the Title IX Hearing Board, incorporate the results of any remanded grounds, and render a written decision on the appeal to all parties within three (3) days from review of the appeal or remand.
- All parties should be informed of whether the grounds for an appeal are accepted and the results of the appeal decision or remand.

- Once an appeal is decided, the outcome is final: further appeals are not permitted, even if a decision or sanction is changed on remand (except in the case of a new hearing). Where appeals result in no change to the finding or sanction, that decision is final. Where an appeal results in a new finding or sanction, that finding, or sanction can be appealed one final time on the grounds listed above, and in accordance with these procedures.
- All parties will be informed in writing within three (3) days of the outcome of the Title IX Hearing Board, without significant time delay between notifications, and in accordance with the standards for notice of outcome as defined above.
- In cases where the appeal results in reinstatement to the University or resumption of privileges, all reasonable attempts will be made to restore the responding party to their prior status, recognizing that some opportunities lost may be irreparable in the short term.

### **Long-Term Remedies/Actions**

Following the conclusion of the Title IX Process and in addition to any sanctions implemented, the Title IX Coordinator may utilize long-term remedies or actions stop the harassment or discrimination, remedy its effects and prevent their reoccurrence. These remedies/actions may include, but are not limited to:

- Referral to community counseling and health services
- Referral to the Employee Assistance Program
- Education to the community
- Permanently altering work arrangements for employees
- Providing on site escorts
- Climate surveys
- Policy modification
- Implementing long-term contact limitations between the parties
- Offering adjustments to academic deadlines, course schedules, etc.

At the discretion of the Title IX Coordinator, long-term remedies may also be provided even when the responding party is found not responsible.

The institution will maintain as confidential any long-term remedies/actions or protective measures, provided confidentiality does not impair the institution's ability to provide the actions or protective measures.

### **Failure to Complete Sanctions/Comply with Interim and Long-term Remedies/Responsive Actions**

All responding parties are expected to comply with conduct sanctions, responsive actions and corrective actions within the timeframe specified by the Title IX Coordinator. Failure to abide by these conduct sanctions, responsive actions and corrective actions by the date specified, whether by

refusal, neglect or any other reason, may result in additional sanctions/responsive/corrective actions and/or suspension, expulsion and/or termination from the University and may be noted on a student's official transcript. A suspension will only be lifted when compliance is achieved to the satisfaction of the Title IX Coordinator.

## **Records**

In implementing this policy, records of all allegations, investigations, resolutions, and hearings will be kept by the Title IX Coordinator indefinitely.

## **Process for Allegations of Minor Sexual Harassment or Misconduct**

Allegations of minor sexual harassment or misconduct (e.g. harassment that is not severe or pervasive enough to create a hostile environment or misconduct that falls outside the categories of sexual assault, intimate partner violence or stalking) are investigated and adjudicated under a process that is substantially similar to the process for Title IX.

## **Overview**

Upon notice to the Director of Safety and Equal Opportunity, that individual will implement any interim supportive measures deemed reasonable and necessary to the reporting party and responding party. The Director of Safety and Equal Opportunity will advise the reporting party of their options for resolution.

If so, the University will initiate a confidential investigation that is thorough, reliable, impartial, prompt and fair. The investigation and the subsequent resolution process determine whether the University's policies have been violated. If so, the University promptly implement effective remedies designed to end the discrimination, prevent its recurrence and address its effects.

## **Investigative Process**

Allegations under the sexual harassment and sexual misconduct policies are investigated by a trained investigator. Investigators are announced in an annual distribution of this policy to the University community, prospective students, their parents and prospective employees. The list of Investigators and a description of the applicable Review Board can be found in [Appendix D](#). Investigators are trained in all aspects of the resolution process, and can serve in any of the following roles, at the direction of the Director of Safety and Equal Opportunity:

- To provide sensitive intake for and initial advice pertaining to allegations
- To investigate allegations
- To act as process advisors to those involved in the investigative process

Investigators and members of the Sexual Misconduct Review Board receive annual training organized by the Director of Safety and Equal Opportunity, including a review of University policies and procedures as well as applicable federal and state laws and regulations so that they can appropriately address allegations, provide accurate information to members of the community, protect safety and promote accountability. Training includes but is not limited to: how to appropriately remedy, investigate, render findings and determine appropriate sanctions in reference to allegations of sexual harassment and sexual misconduct; the University's policies and procedures regarding sexual

harassment and sexual misconduct; confidentiality and privacy; and applicable laws, regulations and federal regulatory guidance. All investigators and Review Board members are required to attend this annual training to be eligible to serve.

The investigator pool includes:

- Chair: The Title IX Coordinator
- At least one representative from Human Resources

Appointments to the pool of investigators should be made with attention to representation of groups protected by the harassment and non-discrimination policy. Individuals who are interested in serving as an investigator are encouraged to contact the Title IX Coordinator.

### **Reporting Policy Violations**

Any member of the community, guest or visitor who believes that the University's sexual harassment or sexual misconduct policies have been violated should contact the Title IX Coordinator.

It is also possible for employees to notify a supervisor, or for students to notify an administrative advisor or faculty member. These individuals must in turn notify the Title IX Coordinator. The reporting form at <http://tinyurl.com/ethicsstudent-herzing> may also serve to initiate the resolution process.

All employees receiving reports of a potential violation of the University's sexual harassment or sexual misconduct policies are expected to promptly contact the Title IX Coordinator, within 24 hours of becoming aware of a report or incident. All initial contacts will be treated with privacy: specific information on any allegations received by any party will be reported to the Title IX Coordinator, but, subject to the University's obligation to redress severe violations, every effort will be made to maintain the privacy of those initiating an allegation. In all cases, University will consider the wishes of the reporting party with respect to how the reported misconduct is pursued, but reserves the right, when necessary to protect the community, to investigate and pursue a resolution even when a reporting party chooses not to initiate or participate in the resolution process.

### **Attempted Violations**

In most circumstances, Herzing University will treat attempts to commit any of the violations as if those attempts had been completed.

### **Preliminary Inquiry**

Following receipt of notice or a report of misconduct, the Title IX Coordinator engages in a preliminary inquiry to determine if there is reasonable cause to believe the Title IX policy has been violated or if the conduct reported represents a more minor violation of the University's policies on sexual harassment and sexual misconduct. The preliminary inquiry is typically 1-3 days in duration.

In cases where the reporting party wishes to proceed, the Title IX Coordinator will direct an investigation to commence and the allegation will be resolved through one of the processes discussed briefly here and in detail below:

- Alternative Resolution – mediation and/or restorative justice may take the place of formal resolution if deemed reasonable by the Title IX Coordinator and agreed to by all parties.
- Formal Resolution – a resolution of contested allegations with formal investigation and adjudication by the applicable Review Board.

Once a formal investigation is commenced, the Director of Safety and Equal Opportunity will provide written notification of the investigation to the parties at an appropriate time during the investigation. Notification will be made in writing and may be delivered by one or more of the following methods: in person; mailed to the local or permanent address of the parties as indicated in official University records; or emailed to the parties' University-issued email account. Once mailed, emailed and/or received in-person, notice will be presumptively delivered. The reporting party is typically copied on such correspondence. The University aims to complete all investigations within a sixty (60) calendar daytime period, which can be extended as necessary for appropriate cause by the Director of Safety and Equal Opportunity with notice to the parties as appropriate.

If, during the preliminary inquiry or at any point during the formal investigation, the investigator determines that there is no reasonable cause to believe that the policy has been violated, the process will end unless the reporting party requests that the Director of Safety and Equal Opportunity make an extraordinary determination to re-open the investigation. This decision lies in the sole discretion of the Director of Safety and Equal Opportunity.

### **Interim Remedies/Actions**

The Student Services or Human Resources departments may provide interim remedies intended to address the needs of the reporting party, responding party, and the University community.

These remedies may include, but are not limited to:

- Referral to community counseling and health services
- Referral to the Employee Assistance Program
- Education to the community
- Altering work arrangements for employees or work study students
- Providing on-site escorts
- Implementing contact limitations between the parties
- Offering adjustments to academic deadlines, course schedules, work schedules, etc.

The institution will maintain as confidential any interim actions or protective measures, provided confidentiality does not impair the institution's ability to provide the interim actions or protective measures.

### **Alternative Resolution**

After an initial assessment of the alleged facts, the Director of Safety and Equal Opportunity may—if both parties agree—begin an Alternative Resolution process. Alternative Resolution is not available for incidents in which an employee is accused of sexually harassing a student.

Alternative Resolution may include, among other responses:

- Referral for disciplinary action;
- An agreement between the parties;
- Referring the Respondent to targeted preventive educational and training programs; and
- Conducting a follow-up review to ensure that the resolution has been carried out effectively.

Except for the limitations stated above, the Director of Safety and Equal Opportunity has sole discretion to determine whether the complaint is appropriate for Alternative Resolution, to determine the type of resolution to pursue, and to stop the process at any time before its conclusion and move to a Formal Investigation. Participation in Alternative Resolution is voluntary, meaning both the Reporting and the Responding Parties must mutually agree, in writing, to participate. If Alternative Resolution is selected, the Director of Safety and Equal Opportunity will provide timely written notice to both parties that that discloses the allegations and that:

- The Director of Safety and Equal Opportunity has begun the process;
- The process is voluntary and will end upon either party's request;
- Termination of Alternative Resolution may result in Formal Investigation;
- They may be accompanied by an advisor throughout the process; and
- The Director of Safety and Equal Opportunity will notify both parties of the process's outcome
- Conclusion of the Alternative Resolution process will preclude the parties from resuming a formal complaint arising from the same allegations unless the parties failed to satisfy the terms of the agreement; and
- Records of the process will be maintained and shared

The Director of Safety and Equal Opportunity will conduct the Alternative Resolution process unless good cause requires another individual. The Director of Safety and Equal Opportunity will endeavor to complete the Alternative Resolution process promptly, typically within 30 to 60 business days of notifying the parties in writing of starting the process. However, the Director of Safety and Equal Opportunity may extend the Alternative Resolution process past 60 days for good cause. The Director of Safety and Equal Opportunity will notify the parties in writing of the reason for any extension and the projected new timeline. The actual time required will depend on the specific circumstances, including the complexity of the allegations and the nature of the alleged conduct.

Once the parties have agreed to the terms of an Alternative Resolution, the University will not conduct a formal investigation unless the Director of Safety and Equal Opportunity determines that the Respondent failed to satisfy the terms of the Alternative Resolution.

The Director of Safety and Equal Opportunity will keep records of all reports and conduct addressed through Alternative Resolution.

## **Investigation**

Once the decision is made to commence a formal investigation, the Director of Safety and Equal Opportunity appoints an investigator to conduct the investigation, usually within two (2) days of determining that an investigation should proceed. Investigations are completed expeditiously, normally within fourteen (14) days, though some investigations take several weeks or even months,

depending on the nature, extent and complexity of the allegations, availability of parties and witnesses, police involvement, etc.

All investigations will be thorough, reliable, impartial, prompt and fair. Investigations entail interviews with all relevant parties and witnesses, obtaining available evidence and identifying sources of expert information, as necessary.

The investigator(s) will typically take the following steps, if not already completed (not necessarily in order):

- In coordination with University partners, initiate or assist with any necessary remedial actions;
- Determine the identity and contact information of the reporting party;
- Identify all policies allegedly violated;
- Meet with the reporting party to finalize their statement;
- Prepare the notice of allegations based on the preliminary inquiry;
- Commence a thorough, reliable and impartial investigation by developing a strategic investigation plan, including a witness list, evidence list, intended timeframe, and order of interviews for all witnesses and the responding party, who may be given notice prior to or at the time of the interview;
- Prepare the notice of allegation based on the preliminary inquiry;
- Meet with the reporting party to finalize their statement, if necessary;
- Provide written notification to the parties prior to their interviews that they may have the assistance of an advisor of their choosing present for all meetings attended by the advisee;
- Provide the parties with a written description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable procedures and a statement of the potential sanctions/responsive actions that could result;
- Prior to the conclusion of the investigation, provide the reporting party and the responding party with a list of witnesses whose information will be used to render a finding;
- Allow each party the opportunity to suggest questions they wish the investigators to ask of the other party and witnesses.
- Provide the parties with all relevant evidence to be made available at the hearing and provide each with a full and fair opportunity to address that evidence prior to review by the Review Board;
- Complete the investigation promptly, and without unreasonable deviation from the intended timeline;
- Provide regular updates to the reporting party and responding party throughout the investigation;
- Finalize and present the investigation report to both parties prior to review by the Review Board.

At any point during the investigation, if it is determined there is no reasonable cause to believe that University policy has been violated; the Director of Safety and Equal Opportunity has authority to terminate the investigation and end resolution proceedings.

Witnesses (as distinguished from the parties) are expected to cooperate with and participate in the University's investigation. Any witness who declines to participate in or cooperate with an investigation will not be permitted to offer evidence or testimony at a later date. Witnesses may provide written statements in lieu of interviews during the investigation and may be interviewed remotely by phone, Skype (or similar technology), if they cannot be interviewed in person or if the investigators determine that timeliness or efficiency dictate a need for remote interviewing. Parties who elect not to participate in the investigation or to withhold information from the investigation will not have the opportunity to offer evidence during the review or appeal stages of the process if it could have been offered during the investigation. Failure to offer evidence prior to an appeal does not constitute grounds for appeal based on new evidence.

No unauthorized audio or video recording of any kind is permitted during investigation meetings or other proceedings.

## **Advisors**

Each party is allowed to have an advisor of their choice present with them for all meetings and proceedings, from intake through to final determination. The parties may select whomever they wish to serve as their advisor as long as the advisor is eligible and available, and usually not otherwise involved in the resolution process, such as serving as a witness. The advisor may be a friend, mentor, family member, attorney or any other supporter a party chooses to advise them who is available and eligible. Witnesses cannot also serve as advisors. The parties may choose advisors from inside or outside the community. The parties may proceed without an advisor.

The parties may be accompanied by their advisor in all meetings and interviews at which the party is entitled to be present, including intake and interviews. Advisors should help their advisees prepare for each meeting, and are expected to advise ethically, with integrity and in good faith. The University cannot guarantee equal advisory rights, meaning that if one party selects an advisor who is an attorney, but the other party does not, or cannot afford an attorney, the University is not obligated to provide one.

All advisors are subject to the same rules, whether they are attorneys or not. Advisors may not address university officials in a meeting or interview unless invited to. The advisor may not make a presentation or represent the reporting party or the responding party during any meeting or proceeding and may not speak on behalf of the advisee to the investigator. The parties are expected to respond to questions on their own behalf, without representation by their advisor. Advisors may confer quietly with their advisees or in writing as necessary, as long as they do not disrupt the process. For longer or more involved discussions, the parties and their advisors should ask for breaks or step out of meetings to allow for private conversation. Advisors will typically be given an opportunity to meet in advance of any interview or meeting with the administrative officials conducting that interview or meeting. This pre-meeting will allow advisors to clarify any questions they may have and allows the University an opportunity to clarify the role the advisor is expected to take.

Advisors are expected to refrain from interference with the investigation and resolution. Any advisor who steps out of their role will be warned once and only once. If the advisor continues to disrupt or otherwise fails to respect the limits of the advisor role, the advisor will be asked to leave the meeting. When an advisor is removed from a meeting, that meeting will typically continue without the advisor.



present. Subsequently, the Director of Safety and Equal Opportunity will determine whether the advisor may be reinstated or may be replaced by a different advisor.

The University expects that the parties will wish to share documentation related to the allegations with their advisors. The University provides a consent form that authorizes such sharing. The parties must complete this form before the University is able to share records with an advisor, though parties may share the information directly with their advisor if they wish. Advisors are expected to maintain the privacy of the records shared with them. These records may not be shared with third parties, disclosed publicly, or used for purposes not explicitly authorized by the University. The University may seek to restrict the role of any advisor who does not respect the sensitive nature of the process or who fails to abide by the University's privacy expectations.

The University expects an advisor to adjust their schedule to allow them to attend University meetings when scheduled. The University does not typically change scheduled meetings to accommodate an advisor's inability to attend. However, the University will make reasonable provisions to allow an advisor who cannot attend in person to attend a meeting by telephone, video and/or virtual meeting technologies as may be convenient and available.

A party may elect to change advisors during the process and is not locked into using the same advisor throughout.

The parties must advise the investigators of the identity of their advisor at least one (1) day before the date of their first meeting with investigators (or as soon as possible if a more expeditious meeting is necessary or desired). The parties must provide timely notice to investigators if they change advisors at any time.

## **Resolution**

The investigator has the authority to address all collateral misconduct, meaning that they investigate all allegations of discrimination, harassment and retaliation, but also may address any additional alleged policy violations that have occurred in concert with the discrimination, harassment or retaliation, even though those collateral allegations may not specifically fall within the sexual harassment or sexual misconduct policies. Accordingly, investigations will be conducted with as wide a scope as necessary and any other policy violations outside of those policies will be forwarded to the appropriate process.

Any evidence that the investigator believes is relevant and credible may be considered, including history and pattern evidence. The investigator may exclude irrelevant or immaterial evidence and may choose to disregard evidence lacking in credibility or that is improperly prejudicial.

Unless the investigator determines it is appropriate, the investigation and the hearing will not consider: (1) incidents not directly related to the possible violation, unless they show a pattern, or (2) the sexual history of the reporting party (though there may be a limited exception made in regard to the sexual history between the parties). While previous conduct violations by the responding party are not generally admissible as information about the present allegation, the investigators may consider information about previous good faith allegations and/or findings to consider as evidence of pattern and/or predatory conduct.

The investigator(s) will not meet with character witnesses but will accept up to two (2) letters supporting the character of each of the parties.

## **Judgment and Disciplinary Policy and Procedures**

### ***Review Board***

Typically, within five (5) days of the conclusion of an investigation, the investigator will forward an investigation report, all recorded interviews, and all submitted evidence to the Review Board for final adjudication and possible sanction.

A review will usually be convened within ten (10) days of the completion of the investigation and will be conducted in a private session. The investigator will present the investigation report and relay their impressions of the credibility of each party and any witnesses.

### ***Deliberation and Decisions***

Upon conclusion of the review, three (3) members of the Review Board will deliberate in closed session to determine whether the responding party is responsible or not responsible for the policy violation(s) in question. The board will base its determination(s) on a preponderance of the evidence standard (i.e., that it is more likely than not that the responding party committed each alleged violation). If a majority of the board finds a responding party or organization responsible, the board will recommend appropriate sanctions.

The Chair will prepare a written decision and deliver it to the Director of Safety and Equal Opportunity, detailing the recommended finding, the information cited by the panel in support of its recommendation and any information the board excluded from its consideration and why. The decision should conclude with any recommended sanctions. This decision should not exceed two (2) pages in length and must be submitted to the Title IX Coordinator within two (2) days of the end of deliberations, unless the Director of Safety and Equal Opportunity grants an extension.

The Director of Safety and Equal Opportunity will finalize the recommendations and will inform the parties of the final determination – both the finding(s) and applicable sanction(s) within three (3) days of the Review, without significant time delay between notifications. Notification will be made in writing and may be delivered by one or more of the following methods: in person; mailed to the local or permanent address of the parties as indicated in official University records; or emailed to the parties' University -issued email account. Once mailed, emailed and/or received in-person, notice will be presumptively delivered. The notification of outcome will specify the finding on each alleged policy violation, any sanctions that may result which the University is permitted to share according to state or federal law, and the rationale supporting the essential findings to the extent the University is permitted to share under state or federal law. The notice will also include information on when the results are considered by the University to be final, any changes that occur prior to finalization and any appeals options that are available.

### **Possible Sanctions**

The Review Board will recommend sanctions or responsive actions to the Title IX Coordinator. Factors considered when determining a sanction/responsive action may include:

- The nature, severity of, and circumstances surrounding the violation
- An individual's disciplinary history
- Previous allegations or allegations involving similar conduct

- Any other information deemed relevant by the hearing board
- The need for sanctions/responsive actions to bring an end to the discrimination, harassment and/or retaliation
- The need for sanctions/responsive actions to prevent the future recurrence of discrimination, harassment and/or retaliation
- The need to remedy the effects of the discrimination, harassment and/or retaliation on the reporting party and the community

### ***Student Sanctions***

The following are the usual sanctions that may be imposed upon students singly or in combination:

- **Probation:** A written reprimand for violation of the Code of Student Conduct, providing for more severe disciplinary sanctions in the event that the student or organization is found in violation of any University policy, procedure or directive within a specified period of time. Terms of the probation will be specified and may include denial of specified social privileges, exclusion from co-curricular activities, non-contact orders and/or other measures deemed appropriate.
- **Suspension:** Termination of student status for a definite period of time not to exceed two years, and/or until specific criteria are met. Students who return from suspension are automatically placed on probation through the remainder of their tenure at University.
- **Dismissal:** Permanent termination of student status, revocation of rights to be on site for any reason or attend University-sponsored events. This sanction will be noted as a Conduct Dismissal on the student's official transcript.
- **Withholding Diploma:** The University may withhold a student's diploma for a specified period of time and/or deny a student participation in commencement activities if the student has an allegation pending, or as a sanction if the student is found responsible for an alleged violation.
- **Revocation of Degree:** The University reserves the right to revoke a degree awarded from the University for fraud, misrepresentation or other violation of University policies, procedures or directives in obtaining the degree, or for other serious violations committed by a student prior to graduation.
- **Other Actions:** In addition to or in place of the above sanctions, the University may assign any other sanctions as deemed appropriate.

### ***Employee Sanctions***

Responsive actions for an employee who has engaged in sexual harassment, and/or retaliation include

- Performance Improvement/Management Process
- Required Counseling
- Required Training or Education

- Probation
- Loss of Annual Pay Increase
- Loss of Oversight or Supervisory Responsibility
- Demotion
- Suspension with pay
- Suspension without pay
- Termination
- **Other Actions:** In addition to or in place of the above sanctions, the University may assign any other sanctions as deemed appropriate.

### **Withdrawal or Resignation While Charges Pending**

**Students:** Should a student decide to leave and/or not participate, the process will nonetheless proceed in the student's absence to a reasonable resolution and that student will not be permitted to return to the University unless all sanctions have been satisfied. The student will not have access to an academic transcript until the allegations have been resolved.

**Employees:** Should an employee resign with unresolved allegations pending, the records of the Human Resources Department will reflect that status, and any University responses to future inquiries regarding employment references for that individual may indicate the former employee is ineligible for rehire.

### **Appeals**

All requests for appeal consideration must be submitted in writing to the Chair of the Review Board within three (3) days of the delivery of the written finding of the hearing panel. Any party may appeal the findings and/or sanctions only under the grounds described, below

Any party may appeal, but appeals are limited to the following grounds:

- A procedural error or omission occurred that significantly impacted the outcome of the hearing (e.g. substantiated bias, material deviation from established procedures, etc.).
- To consider new evidence, unknown or unavailable during the original hearing or investigation, that could substantially impact the original finding or sanction. A summary of this new evidence and its potential impact must be included.

The Review Board will review the appeal request(s). The original finding and sanction/responsive actions will stand if the appeal is not timely or is not based on the grounds listed above, and such a decision is final. The party requesting appeal must show that the grounds for an appeal request have been met, and the other party or parties may show the grounds have not been met, or that additional grounds are met. The original finding and sanction are presumed to have been decided reasonably and appropriately. When any party requests an appeal, the Chair will share the appeal request with the other party(ies), who may file a response within three (3) days and/or bring their own appeal on separate grounds within the original timeframe. If new grounds are

raised, the original appealing party will be permitted to submit a written response to these new grounds within three (3) days. Any response or appeal request will be shared with each party.

Where the Review Board finds that at least one of the grounds is met by at least one party, additional principles governing the hearing of appeals will include the following:

- Decisions by the Review Board are to be deferential to the original decision, making changes to the finding only where there is clear error and to the sanction/responsive action only if there is a compelling justification to do so.
- Appeals are not intended to be full re-investigations (de novo) of the allegation. In most cases, appeals are confined to a review of the written documentation or record of the original investigation, and pertinent documentation regarding the grounds for appeal.
- Sanctions imposed as the result of the Resolution process are implemented immediately, pending the outcome of the appeal.
- The Director of Safety and Equal Opportunity will confer with the Review Board, incorporate the results of any remanded grounds, and render a written decision on the appeal to all parties within three (3) days from review of the appeal or remand.
- All parties should be informed of whether the grounds for an appeal are accepted and the results of the appeal decision or remand.
- Once an appeal is decided, the outcome is final: further appeals are not permitted, even if a decision or sanction is changed on remand (except in the case of a new hearing). Where appeals result in no change to the finding or sanction, that decision is final. Where an appeal results in a new finding or sanction, that finding, or sanction can be appealed one final time on the grounds listed above, and in accordance with these procedures.
- All parties will be informed in writing within three (3) days of the outcome of the Review Board, without significant time delay between notifications, and in accordance with the standards for notice of outcome as defined above.
- In cases where the appeal results in reinstatement to the University or resumption of privileges, all reasonable attempts will be made to restore the responding party to their prior status, recognizing that some opportunities lost may be irreparable in the short term.

### **Long-Term Remedies/Actions**

Following the conclusion of the process and in addition to any sanctions implemented, the Director of Safety and Equal Opportunity may utilize long-term remedies or actions stop the harassment or discrimination, remedy its effects and prevent their reoccurrence. These remedies/actions may include, but are not limited to:

- Referral to community counseling and health services
- Referral to the Employee Assistance Program
- Education to the community
- Permanently altering work arrangements for employees

- Providing on site escorts
- Climate surveys
- Policy modification
- Implementing long-term contact limitations between the parties
- Offering adjustments to academic deadlines, course schedules, etc.

At the discretion of the Director of Safety and Equal Opportunity, long-term remedies may also be provided even when the responding party is found not responsible.

The institution will maintain as confidential any long-term remedies/actions or protective measures, provided confidentiality does not impair the institution's ability to provide the actions or protective measures.

### **Failure to Complete Sanctions/Comply with Interim and Long-term Remedies/Responsive Actions**

All responding parties are expected to comply with conduct sanctions, responsive actions and corrective actions within the timeframe specified by the Director of Safety and Equal Opportunity. Failure to abide by these conduct sanctions, responsive actions and corrective actions by the date specified, whether by refusal, neglect or any other reason, may result in additional sanctions/responsive/corrective actions and/or suspension, expulsion and/or termination from the University and may be noted on a student's official transcript. A suspension will only be lifted when compliance is achieved to the satisfaction of the Director of Safety and Equal Opportunity.

### **Records**

In implementing this policy, records of all allegations, investigations, resolutions, and hearings will be kept by the Director of Safety and Equal Opportunity indefinitely.

### **Process for Allegations of Discrimination**

Allegations of discrimination that is not sexual in nature on the basis of a protected status are investigated and adjudicated under a process that is substantially similar to the process for minor allegations of sexual harassment or misconduct.

### **Overview**

Upon notice to the Director of Safety and Equal Opportunity, that individual will implement any interim supportive measures deemed reasonable and necessary to the reporting party and responding party. The Director of Safety and Equal Opportunity will advise the reporting party of their options for resolution.

If so, the University will initiate a confidential investigation that is thorough, reliable, impartial, prompt and fair. The investigation and the subsequent resolution process determine whether the University's policies have been violated. If so, the University promptly implement effective remedies designed to end the discrimination, prevent its recurrence and address its effects.

## Investigative Process

Allegations under the nondiscrimination policy are investigated by a trained investigator. Investigators are announced in an annual distribution of this policy to the University community, prospective students, their parents and prospective employees. The list of Investigators and a description of the applicable Review Board can be found in [Appendix D](#). Investigators are trained in all aspects of the resolution process, and can serve in any of the following roles, at the direction of the Director of Safety and Equal Opportunity:

- To provide sensitive intake for and initial advice pertaining to allegations
- To investigate allegations
- To act as process advisors to those involved in the investigative process

Investigators and members of the Discrimination Review Board receive annual training organized by the Director of Safety and Equal Opportunity, including a review of University policies and procedures as well as applicable federal and state laws and regulations so that they are able to appropriately address allegations, provide accurate information to members of the community, protect safety and promote accountability. Training includes but is not limited to: how to appropriately remedy, investigate, render findings and determine appropriate sanctions in reference to allegations of discrimination; the University's policies and procedures regarding nondiscrimination; confidentiality and privacy; and applicable laws, regulations and federal regulatory guidance. All investigators and Review Board members are required to attend this annual training to be eligible to serve.

The investigator pool includes:

- Chair: The Title IX Coordinator
- At least one representative from Human Resources

Appointments to the pool of investigators should be made with attention to representation of groups protected by the harassment and non-discrimination policies. Individuals who are interested in serving as an investigator are encouraged to contact the Title IX Coordinator.

## Reporting Policy Violations

Any member of the community, guest or visitor who believes that the University's nondiscrimination policies have been violated should contact the Director of Safety and Equal Opportunity.

The reporting form at <http://tinyurl.com/ethicsstudent-herzing> may also serve to initiate the resolution process.

All employees receiving reports of a potential violation of the University's nondiscrimination policies are expected to promptly contact the Director of Safety and Equal Opportunity, within 24 hours of becoming aware of a report or incident.

## Preliminary Inquiry

Following receipt of notice or a report of discrimination, the Director of Safety and Equal Opportunity engages in a preliminary inquiry to determine if there is reasonable cause to believe the nondiscrimination policy has been violated. The preliminary inquiry is typically 1-3 days in duration.

In cases where the reporting party wishes to proceed, the Title IX Coordinator will direct an investigation to commence and the allegation will be resolved through one of the processes discussed briefly here and in detail below:

- Alternative Resolution – mediation and/or restorative justice may take the place of formal resolution if deemed reasonable by the Title IX Coordinator and agreed to by all parties.
- Formal Resolution – a resolution of contested allegations with formal investigation and adjudication by the applicable Review Board.

Once a formal investigation is commenced, the Director of Safety and Equal Opportunity will provide written notification of the investigation to the parties at an appropriate time during the investigation. Notification will be made in writing and may be delivered by one or more of the following methods: in person; mailed to the local or permanent address of the parties as indicated in official University records; or emailed to the parties' University-issued email account. Once mailed, emailed and/or received in-person, notice will be presumptively delivered. The reporting party is typically copied on such correspondence. The University aims to complete all investigations within a sixty (60) calendar daytime period, which can be extended as necessary for appropriate cause by the Director of Safety and Equal Opportunity with notice to the parties as appropriate.

If, during the preliminary inquiry or at any point during the formal investigation, the investigator determines that there is no reasonable cause to believe that the nondiscrimination policy has been violated, the process will end unless the reporting party requests that the Director of Safety and Equal Opportunity make an extraordinary determination to re-open the investigation. This decision lies in the sole discretion of the Director of Safety and Equal Opportunity.

## Interim Remedies/Actions

The Student Services or Human Resources departments may provide interim remedies intended to address the needs of the reporting party, responding party, and the University community.

These remedies may include, but are not limited to:

- Referral to community counseling and health services
- Referral to the Employee Assistance Program
- Education to the community
- Altering work arrangements for employees or work study students
- Implementing contact limitations between the parties
- Offering adjustments to academic deadlines, course schedules, work schedules, etc.



The institution will maintain as confidential any interim actions or protective measures, provided confidentiality does not impair the institution's ability to provide the interim actions or protective measures.

### **Alternative Resolution**

After an initial assessment of the alleged facts, the Director of Safety and Equal Opportunity may—if both parties agree—begin an Alternative Resolution process. Alternative Resolution is not available for incidents in which an employee is accused of sexually harassing a student.

Alternative Resolution may include, among other responses:

- Referral for disciplinary action;
- An agreement between the parties;
- Referring the Respondent to targeted preventive educational and training programs; and
- Conducting a follow-up review to ensure that the resolution has been carried out effectively.

Except for the limitations stated above, the Director of Safety and Equal Opportunity has sole discretion to determine whether the complaint is appropriate for Alternative Resolution, to determine the type of resolution to pursue, and to stop the process at any time before its conclusion and move to a Formal Investigation. Participation in Alternative Resolution is voluntary, meaning both the Reporting and the Responding Parties must mutually agree, in writing, to participate. If Alternative Resolution is selected, the Director of Safety and Equal Opportunity will provide timely written notice to both parties that that discloses the allegations and that:

- The Director of Safety and Equal Opportunity has begun the process;
- The process is voluntary and will end upon either party's request;
- Termination of Alternative Resolution may result in Formal Investigation;
- They may be accompanied by an advisor throughout the process; and
- The Director of Safety and Equal Opportunity will notify both parties of the process's outcome
- Conclusion of the Alternative Resolution process will preclude the parties from resuming a formal complaint arising from the same allegations unless the parties failed to satisfy the terms of the agreement; and
- Records of the process will be maintained and shared

The Director of Safety and Equal Opportunity will conduct the Alternative Resolution process unless good cause requires another individual. The Director of Safety and Equal Opportunity will endeavor to complete the Alternative Resolution process promptly, typically within 30 to 60 business days of notifying the parties in writing of starting the process. However, the Director of Safety and Equal Opportunity may extend the Alternative Resolution process past 60 days for good cause. The Director of Safety and Equal Opportunity will notify the parties in writing of the reason for any extension and the projected new timeline. The actual time required will depend on the specific circumstances, including the complexity of the allegations and the nature of the alleged conduct.

Once the parties have agreed to the terms of an Alternative Resolution, the University will not conduct a formal investigation unless the Director of Safety and Equal Opportunity determines that the Respondent failed to satisfy the terms of the Alternative Resolution.

The Director of Safety and Equal Opportunity will keep records of all reports and conduct addressed through Alternative Resolution.

## Investigation

Once the decision is made to commence a formal investigation, the Director of Safety and Equal Opportunity appoints an investigator to conduct the investigation, usually within two (2) days of determining that an investigation should proceed. Investigations are completed expeditiously, normally within fourteen (14) days, though some investigations take several weeks or even months, depending on the nature, extent and complexity of the allegations, availability of parties and witnesses, police involvement, etc.

All investigations will be thorough, reliable, impartial, prompt and fair. Investigations entail interviews with all relevant parties and witnesses, obtaining available evidence and identifying sources of expert information, as necessary.

The investigator(s) will typically take the following steps, if not already completed (not necessarily in order):

- In coordination with University partners, initiate or assist with any necessary remedial actions;
- Determine the identity and contact information of the reporting party;
- Identify all policies allegedly violated;
- Meet with the reporting party to finalize their statement;
- Commence a thorough, reliable and impartial investigation by developing a strategic investigation plan, including a witness list, evidence list, intended timeframe, and order of interviews for all witnesses and the responding party, who may be given notice prior to or at the time of the interview;
- Provide written notification to the parties prior to their interviews that they may have the assistance of an advisor of their choosing present for all meetings attended by the advisee;
- Provide the parties with a written description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable procedures and a statement of the potential sanctions/responsive actions that could result;
- Prior to the conclusion of the investigation, provide the reporting party and the responding party with a list of witnesses whose information will be used to render a finding;
- Allow each party the opportunity to suggest questions they wish the investigators to ask of the other party and witnesses.
- Provide the parties with all relevant evidence to be made available at the hearing and provide each with a full and fair opportunity to address that evidence prior to review by the Review Board;
- Complete the investigation promptly, and without unreasonable deviation from the intended timeline;
- Provide regular updates to the reporting party and responding party throughout the investigation;

- Finalize and present the investigation report to both parties prior to review by the Review Board.

At any point during the investigation, if it is determined there is no reasonable cause to believe that University policy has been violated; the Director of Safety and Equal Opportunity has authority to terminate the investigation and end resolution proceedings.

Witnesses (as distinguished from the parties) are expected to cooperate with and participate in the University's investigation. Any witness who declines to participate in or cooperate with an investigation will not be permitted to offer evidence or testimony at a later date. Witnesses may provide written statements in lieu of interviews during the investigation and may be interviewed remotely by phone, Skype (or similar technology), if they cannot be interviewed in person or if the investigators determine that timeliness or efficiency dictate a need for remote interviewing. Parties who elect not to participate in the investigation or to withhold information from the investigation will not have the opportunity to offer evidence during the review or appeal stages of the process if it could have been offered during the investigation. Failure to offer evidence prior to an appeal does not constitute grounds for appeal based on new evidence.

No unauthorized audio or video recording of any kind is permitted during investigation meetings or other proceedings.

## **Advisors**

Each party is allowed to have an advisor of their choice present with them for all meetings and proceedings, from intake through to final determination. The parties may select whomever they wish to serve as their advisor as long as the advisor is eligible and available, and usually not otherwise involved in the resolution process, such as serving as a witness. The advisor may be a friend, mentor, family member, attorney or any other supporter a party chooses to advise them who is available and eligible. Witnesses cannot also serve as advisors. The parties may choose advisors from inside or outside the community. The parties may proceed without an advisor.

The parties may be accompanied by their advisor in all meetings and interviews at which the party is entitled to be present, including intake and interviews. Advisors should help their advisees prepare for each meeting, and are expected to advise ethically, with integrity and in good faith. The University cannot guarantee equal advisory rights, meaning that if one party selects an advisor who is an attorney, but the other party does not, or cannot afford an attorney, the University is not obligated to provide one.

All advisors are subject to the same rules, whether they are attorneys or not. Advisors may not address university officials in a meeting or interview unless invited to. The advisor may not make a presentation or represent the reporting party or the responding party during any meeting or proceeding and may not speak on behalf of the advisee to the investigator. The parties are expected to respond to questions on their own behalf, without representation by their advisor. Advisors may confer quietly with their advisees or in writing as necessary, as long as they do not disrupt the process. For longer or more involved discussions, the parties and their advisors should ask for breaks or step out of meetings to allow for private conversation. Advisors will typically be given an opportunity to meet in advance of any interview or meeting with the administrative officials conducting that interview or meeting. This pre-meeting will allow advisors to clarify any questions they may have and allows the University an opportunity to clarify the role the advisor is expected to take.

Advisors are expected to refrain from interference with the investigation and resolution. Any advisor who steps out of their role will be warned once and only once. If the advisor continues to disrupt or otherwise fails to respect the limits of the advisor role, the advisor will be asked to leave the meeting. When an advisor is removed from a meeting, that meeting will typically continue without the advisor present. Subsequently, the Director of Safety and Equal Opportunity will determine whether the advisor may be reinstated or may be replaced by a different advisor.

The University expects that the parties will wish to share documentation related to the allegations with their advisors. The University provides a consent form that authorizes such sharing. The parties must complete this form before the University is able to share records with an advisor, though parties may share the information directly with their advisor if they wish. Advisors are expected to maintain the privacy of the records shared with them. These records may not be shared with third parties, disclosed publicly, or used for purposes not explicitly authorized by the University. The University may seek to restrict the role of any advisor who does not respect the sensitive nature of the process or who fails to abide by the University's privacy expectations.

The University expects an advisor to adjust their schedule to allow them to attend University meetings when scheduled. The University does not typically change scheduled meetings to accommodate an advisor's inability to attend. However, the University will make reasonable provisions to allow an advisor who cannot attend in person to attend a meeting by telephone, video and/or virtual meeting technologies as may be convenient and available.

A party may elect to change advisors during the process and is not locked into using the same advisor throughout.

The parties must advise the investigators of the identity of their advisor at least one (1) day before the date of their first meeting with investigators (or as soon as possible if a more expeditious meeting is necessary or desired). The parties must provide timely notice to investigators if they change advisors at any time.

## **Resolution**

The investigator has the authority to address all collateral misconduct, meaning that they investigate all allegations of discrimination, harassment and retaliation, but also may address any additional alleged policy violations that have occurred in concert with the discrimination, harassment or retaliation, even though those collateral allegations may not specifically fall within the nondiscrimination policies. Accordingly, investigations will be conducted with as wide a scope as necessary and any other policy violations outside of those policies will be forwarded to the appropriate process.

Any evidence that the investigator believes is relevant and credible may be considered, including history and pattern evidence. The investigator may exclude irrelevant or immaterial evidence and may choose to disregard evidence lacking in credibility or that is improperly prejudicial.

Unless the investigator determines it is appropriate, the investigation and the hearing will not consider incidents not directly related to the possible violation, unless they show a pattern. While previous conduct violations by the responding party are not generally admissible as information about the present allegation, the investigators may consider information about previous good faith allegations and/or findings to consider as evidence of pattern and/or predatory conduct.

The investigator(s) will not meet with character witnesses but will accept up to two (2) letters supporting the character of each of the parties.

## **Judgment and Disciplinary Policy and Procedures**

### ***Review Board***

Typically, within five (5) days of the conclusion of an investigation, the investigator will forward an investigation report, all recorded interviews, and all submitted evidence to the Review Board for final adjudication and possible sanction.

A review will usually be convened within ten (10) days of the completion of the investigation and will be conducted in a private session. The investigator will present the investigation report and relay their impressions of the credibility of each party and any witnesses.

### ***Deliberation and Decisions***

Upon conclusion of the review, three (3) members of the Review Board will deliberate in closed session to determine whether the responding party is responsible or not responsible for the policy violation(s) in question. The board will base its determination(s) on a preponderance of the evidence standard (i.e., that it is more likely than not that the responding party committed each alleged violation). If a majority of the board finds a responding party or organization responsible, the board will recommend appropriate sanctions.

The Chair will prepare a written decision and deliver it to the Director of Safety and Equal Opportunity, detailing the recommended finding, the information cited by the panel in support of its recommendation and any information the board excluded from its consideration and why. The decision should conclude with any recommended sanctions. This decision should not exceed two (2) pages in length and must be submitted to the Title IX Coordinator within two (2) days of the end of deliberations, unless the Director of Safety and Equal Opportunity grants an extension.

The Director of Safety and Equal Opportunity will finalize the recommendations and will inform the parties of the final determination – both the finding(s) and applicable sanction(s) within three (3) days of the Review, without significant time delay between notifications. Notification will be made in writing and may be delivered by one or more of the following methods: in person; mailed to the local or permanent address of the parties as indicated in official University records; or emailed to the parties' University-issued email account. Once mailed, emailed and/or received in-person, notice will be presumptively delivered. The notification of outcome will specify the finding on each alleged policy violation, any sanctions that may result which the University is permitted to share according to state or federal law, and the rationale supporting the essential findings to the extent the University is permitted to share under state or federal law. The notice will also include information on when the results are considered by the University to be final, any changes that occur prior to finalization and any appeals options that are available.

### **Possible Sanctions**

The Review Board will recommend sanctions or responsive actions to the Title IX Coordinator. Factors considered when determining a sanction/responsive action may include:

- The nature, severity of, and circumstances surrounding the violation

- An individual's disciplinary history
- Previous allegations or allegations involving similar conduct
- Any other information deemed relevant by the hearing board
- The need for sanctions/responsive actions to bring an end to the discrimination
- The need for sanctions/responsive actions to prevent the future recurrence of discrimination
- The need to remedy the effects of the discrimination on the reporting party and the community

### ***Student Sanctions***

The following are the usual sanctions that may be imposed upon students singly or in combination:

- **Probation:** A written reprimand for violation of the Code of Student Conduct, providing for more severe disciplinary sanctions in the event that the student or organization is found in violation of any University policy, procedure or directive within a specified period of time. Terms of the probation will be specified and may include denial of specified social privileges, exclusion from co-curricular activities, non-contact orders and/or other measures deemed appropriate.
- **Suspension:** Termination of student status for a definite period of time not to exceed two years, and/or until specific criteria are met. Students who return from suspension are automatically placed on probation through the remainder of their tenure at University.
- **Dismissal:** Permanent termination of student status, revocation of rights to be on site for any reason or attend University-sponsored events. This sanction will be noted as a Conduct Dismissal on the student's official transcript.
- **Withholding Diploma:** The University may withhold a student's diploma for a specified period of time and/or deny a student participation in commencement activities if the student has an allegation pending, or as a sanction if the student is found responsible for an alleged violation.
- **Revocation of Degree:** The University reserves the right to revoke a degree awarded from the University for fraud, misrepresentation or other violation of University policies, procedures or directives in obtaining the degree, or for other serious violations committed by a student prior to graduation.
- **Other Actions:** In addition to or in place of the above sanctions, the University may assign any other sanctions as deemed appropriate.

### ***Employee Sanctions***

Responsive actions for an employee who has engaged in sexual harassment, and/or retaliation include

- Performance Improvement/Management Process
- Required Counseling
- Required Training or Education

- Probation
- Loss of Annual Pay Increase
- Loss of Oversight or Supervisory Responsibility
- Demotion
- Suspension with pay
- Suspension without pay
- Termination
- **Other Actions:** In addition to or in place of the above sanctions, the University may assign any other sanctions as deemed appropriate.

### **Withdrawal or Resignation While Charges Pending**

**Students:** Should a student decide to leave and/or not participate, the process will nonetheless proceed in the student's absence to a reasonable resolution and that student will not be permitted to return to the University unless all sanctions have been satisfied. The student will not have access to an academic transcript until the allegations have been resolved.

**Employees:** Should an employee resign with unresolved allegations pending, the records of the Human Resources Department will reflect that status, and any University responses to future inquiries regarding employment references for that individual may indicate the former employee is ineligible for rehire.

### **Appeals**

All requests for appeal consideration must be submitted in writing to the Chair of the Review Board within three (3) days of the delivery of the written finding of the hearing panel. Any party may appeal the findings and/or sanctions only under the grounds described, below

Any party may appeal, but appeals are limited to the following grounds:

- A procedural error or omission occurred that significantly impacted the outcome of the hearing (e.g. substantiated bias, material deviation from established procedures, etc.).
- To consider new evidence, unknown or unavailable during the original hearing or investigation, that could substantially impact the original finding or sanction. A summary of this new evidence and its potential impact must be included.

The Review Board will review the appeal request(s). The original finding and sanction/responsive actions will stand if the appeal is not timely or is not based on the grounds listed above, and such a decision is final. The party requesting appeal must show that the grounds for an appeal request have been met, and the other party or parties may show the grounds have not been met, or that additional grounds are met. The original finding and sanction are presumed to have been decided reasonably and appropriately. When any party requests an appeal, the Chair will share the appeal request with the other party(ies), who may file a response within three (3) days and/or bring their own appeal on separate grounds within the original timeframe. If new grounds are

raised, the original appealing party will be permitted to submit a written response to these new grounds within three (3) days. Any response or appeal request will be shared with each party.

Where the Review Board finds that at least one of the grounds is met by at least one party, additional principles governing the hearing of appeals will include the following:

- Decisions by the Review Board are to be deferential to the original decision, making changes to the finding only where there is clear error and to the sanction/responsive action only if there is a compelling justification to do so.
- Appeals are not intended to be full re-investigations (de novo) of the allegation. In most cases, appeals are confined to a review of the written documentation or record of the original investigation, and pertinent documentation regarding the grounds for appeal.
- Sanctions imposed as the result of the Resolution process are implemented immediately, pending the outcome of the appeal.
- The Director of Safety and Equal Opportunity will confer with the Review Board, incorporate the results of any remanded grounds, and render a written decision on the appeal to all parties within three (3) days from review of the appeal or remand.
- All parties should be informed of whether the grounds for an appeal are accepted and the results of the appeal decision or remand.
- Once an appeal is decided, the outcome is final: further appeals are not permitted, even if a decision or sanction is changed on remand (except in the case of a new hearing). Where appeals result in no change to the finding or sanction, that decision is final. Where an appeal results in a new finding or sanction, that finding, or sanction can be appealed one final time on the grounds listed above, and in accordance with these procedures.
- All parties will be informed in writing within three (3) days of the outcome of the Review Board, without significant time delay between notifications, and in accordance with the standards for notice of outcome as defined above.
- In cases where the appeal results in reinstatement to the University or resumption of privileges, all reasonable attempts will be made to restore the responding party to their prior status, recognizing that some opportunities lost may be irreparable in the short term.

### **Long-Term Remedies/Actions**

Following the conclusion of the Discrimination Investigation Process and in addition to any sanctions implemented, the Director of Safety and Equal Opportunity may utilize long-term remedies or actions stop the harassment or discrimination, remedy its effects and prevent their reoccurrence. These remedies/actions may include, but are not limited to:

- Referral to community counseling and health services
- Referral to the Employee Assistance Program
- Education to the community
- Permanently altering work arrangements for employees



- Providing on site escorts
- Climate surveys
- Policy modification
- Implementing long-term contact limitations between the parties
- Offering adjustments to academic deadlines, course schedules, etc.

At the discretion of the Director of Safety and Equal Opportunity, long-term remedies may also be provided even when the responding party is found not responsible.

The institution will maintain as confidential any long-term remedies/actions or protective measures, provided confidentiality does not impair the institution's ability to provide the actions or protective measures.

### **Failure to Complete Sanctions/Comply with Interim and Long-term Remedies/Responsive Actions**

All responding parties are expected to comply with conduct sanctions, responsive actions and corrective actions within the timeframe specified by the Director of Safety and Equal Opportunity. Failure to abide by these conduct sanctions, responsive actions and corrective actions by the date specified, whether by refusal, neglect or any other reason, may result in additional sanctions/responsive/corrective actions and/or suspension, expulsion and/or termination from the University and may be noted on a student's official transcript. A suspension will only be lifted when compliance is achieved to the satisfaction of the Director of Safety and Equal Opportunity.

### **Records**

In implementing this policy, records of all allegations, investigations, resolutions, and hearings will be kept by the Director of Safety and Equal Opportunity indefinitely.

## Appendix A

### **State of Wisconsin Definitions**

**Consent:** Consent means an affirmative indication of willingness; but a failure to say no or to resist does not constitute consent. Consent, in reference to crimes of sexual assault, means words or overt actions by a person who is competent to give informed consent indicating a freely given agreement to have sexual intercourse or sexual contact.

“Without consent” means no consent in fact or that consent is given for one of the following reasons:

1. Because the actor put the victim in fear by the use or threat of imminent use of physical violence on the victim, or on a person in the victim's presence, or on a member of the victim's immediate family; or
2. Because the actor purports to be acting under legal authority; or
3. Because the victim does not understand the nature of the thing to which the victim consents, either by reason of ignorance or mistake of fact or of law other than criminal law or by reason of youth or defective mental condition, whether permanent or temporary.

<https://docs.legis.wisconsin.gov/statutes/statutes/940/II/225>

**Dating Violence:** Under Wisconsin law, dating violence is classified as a form of domestic abuse. Accordingly, dating violence is properly defined as any of the following acts engaged in by an adult against an adult with whom the individual has or had a dating relationship:

1. Intentional infliction of physical pain, physical injury or illness.
2. Intentional impairment of physical condition.
3. Sexual Assault.
4. Criminal Property Damage involving property that belongs to the individual.
5. A threat to engage in the above conduct.

Dating relationship means a romantic or intimate social relationship between two (2) adult individuals. But, the term “dating relationship” does not include a casual relationship or an ordinary fraternization between two (2) individuals in a business or social context. A court shall determine if a dating relationship existed by considering the length of the relationship, the type of the relationship, and the frequency of the interaction between the adult individuals involved in the relationship.

<https://docs.legis.wisconsin.gov/statutes/statutes/968/075>

**Domestic Violence:** Wisconsin law defines domestic violence as domestic abuse. Although reference is made in the definition to adults only, similar acts upon a child are unlawful. Such acts would be classified as child abuse, not domestic abuse.

1. Domestic abuse means any of the following acts engaged in by an adult family member or adult household member against another adult family member or adult household member, by an adult caregiver against an adult who is under the caregiver's care, by an adult against

his or her adult former spouse, by an adult against an adult with whom the individual has or had a dating relationship, or by an adult against an adult with whom the person has a child in common:

1. Intentional infliction of physical pain, physical injury or illness.

Intentional impairment of physical condition.

2. Sexual Assault.
3. Criminal Property Damage involving property that belongs to the individual.
4. A threat to engage in the above conduct.

<https://docs.legis.wisconsin.gov/statutes/statutes/968/075>

**Sexual Assault:** Wisconsin law defines the term “sexual assault” in varying degrees, depending on whether certain extenuating circumstances exist. The crime of sexual assault can be a Class A felony, or a misdemeanor, depending on the surrounding facts. However, the basic act of sexual assault can be defined as sexual intercourse or sexual contact with a person without the consent of that person.

Also, Wisconsin law recognizes a sexual assault when a person commits the following crimes:

1. Sexual Assault in the First through Fourth Degrees (Wisconsin Statutes section 940.225),
2. Sexual assault of a child (Wisconsin Statutes section 948.02),
3. Engaging in repeated acts of sexual assault of the same child (Wisconsin Statutes section 948.025),
4. Physical abuse of a child (Wisconsin Statutes section 948.03),
5. Causing a child to view or listen to sexual activity (Wisconsin Statutes section 948.055),
6. Incest with a child (Wisconsin Statutes section 948.06),
7. Child enticement (Wisconsin Statutes section 948.07),
8. Soliciting a child for prostitution (Wisconsin Statutes section 948.08),
9. Sexual assault of a child placed in substitute care (Wisconsin Statutes section 948.085),
10. Sexual intercourse with a child age 16 or older (Wisconsin Statutes section 948.09)
11. Exposing genitals or pubic area (Wisconsin Statutes section 948.10)

<https://docs.legis.wisconsin.gov/statutes/statutes/940/II/225>

**Stalking:** Stalking occurs when all of the following exists

1. The actor intentionally engages in a course of conduct directed at a specific person that would cause a reasonable person under the same circumstances to suffer serious emotional distress or to fear bodily injury to or the death of himself or herself or a member of his or her family or household.
2. The actor knows or should know that at least one of the acts that constitute the course of conduct will cause the specific person to suffer serious emotional distress or place the specific person in reasonable fear of bodily injury to or the death of himself or herself or a member of his or her family or household.
3. The actor's acts cause the specific person to suffer serious emotional distress or induce fear in the specific person of bodily injury to or the death of himself or herself or a member of his or her family or household.

The term "Course of conduct" means a series of two (2) or more acts carried out over time, however short or long, that show a continuity of purpose, including any of the following:

1. Maintaining a visual or physical proximity to the victim.
2. Approaching or confronting the victim.
3. Appearing at the victim's workplace or contacting the victim's employer or coworkers.
4. Appearing at the victim's home or contacting the victim's neighbors.
5. Entering property owned, leased, or occupied by the victim.
6. Contacting the victim by telephone or causing the victim's telephone or any other person's telephone to ring repeatedly or continuously, regardless of whether a conversation ensues.
7. Photographing, videotaping, audio taping, or, through any other electronic means, monitoring or recording the activities of the victim. This subdivision applies regardless of where the act occurs.
8. Sending material by any means to the victim or, for the purpose of obtaining information about, disseminating information about, or communicating with the victim, to a member of the victim's family or household or an employer, coworker, or friend of the victim.
9. Placing an object on or delivering an object to property owned, leased, or occupied by the victim.
10. Delivering an object to a member of the victim's family or household or an employer, coworker, or friend of the victim or placing an object on, or delivering an object to, property owned, leased, or occupied by such a person with the intent that the object be delivered to the victim.
11. Causing a person to engage in any of the acts described in 1 to 9.

<http://docs.legis.wisconsin.gov/statutes/statutes/940/II/32>

## Appendix B

### Sexual Harassment Examples

1. A professor insists that a student have sex with them in exchange for a good grade. This is harassment regardless of whether the student accedes to the request and irrespective of whether a good grade is promised, or a bad grade is threatened.
2. A student repeatedly sends sexually oriented jokes around on an email list they created, even when asked to stop, causing one recipient to avoid the sender on campus and in the residence hall in which they both live.
3. Explicit sexual pictures are displayed in a professor's office or on the exterior of a residence hall door.
4. Two supervisors frequently 'rate' several employees' bodies and sex appeal, commenting suggestively about their clothing and appearance.
5. A professor engages students in her class in discussions about their past sexual experiences, yet the conversation is not in any way germane to the subject matter of the class. She probes for explicit details, and demands that students answer her, though they are clearly uncomfortable and hesitant.
6. An ex-girlfriend widely spreads false stories about her sex life with her former boyfriend to the clear discomfort of the boyfriend, turning him into a social pariah on campus.
7. Male students take to calling a particular brunette student "Monica" because of her resemblance to Monica Lewinsky. Soon, everyone adopts this nickname for her, and she is the target of relentless remarks about cigars, the president, "sexual relations" and Weight Watchers.
8. A student grabbed another student by the hair, then grabbed her breast and put his mouth on it. While this is sexual harassment, it is also a form of sexual violence.

### Sexual Exploitation Examples

1. Sexual voyeurism (such as watching a person undressing, using the bathroom or engaged in sexual acts without the consent of the person observed).
2. Invasion of sexual privacy.
3. Taking pictures or video or audio recording another in a sexual act, or in any other private activity without the consent of all involved in the activity or exceeding the boundaries of consent (such as allowing another person to hide in a closet and observe sexual activity or disseminating sexual pictures without the photographed person's consent).
4. Prostitution.
5. Sexual exploitation also includes engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV), a sexually transmitted disease (STD) or infection (STI) without informing the other person of the infection.
6. Administering alcohol or drugs (such as "date rape" drugs) to another person without their knowledge or consent (assuming the act is not completed).
7. Exposing one's genitals in non-consensual circumstances.

8. Sexually-based stalking and/or bullying may also be forms of sexual exploitation.

### Examples of Lack of Consent

1. Amanda and Bill meet at a party. They spend the evening dancing and getting to know each other. Bill convinces Amanda to come up to his room. From 11:00pm until 3:00am, Bill uses every line he can think of to convince Amanda to have sex with him, but she adamantly refuses. He keeps at her, and begins to question her religious convictions, and accuses her of being "a prude." Finally, it seems to Bill that her resolve is weakening, and he convinces her to give him a "hand job" (hand to genital contact). Amanda would never had done it but for Bill's incessant advances. He feels that he successfully seduced her, and that she wanted to do it all along, but was playing shy and hard to get. Why else would she have come up to his room alone after the party? If she really didn't want it, she could have left. **Bill is responsible for violating the university Non-Consensual Sexual Contact policy. It is likely that campus decision-makers would find that the degree and duration of the pressure Bill applied to Amanda are unreasonable. Bill coerced Amanda into performing unwanted sexual touching upon him. Where sexual activity is coerced, it is forced. Consent is not valid when forced. Sex without consent is sexual misconduct.**
2. Jiang is a junior at the university. Beth is a sophomore. Jiang comes to Beth's residence hall room with some mutual friends to watch a movie. Jiang and Beth, who have never met before, are attracted to each other. After the movie, everyone leaves, and Jiang and Beth are alone. They hit it off and are soon becoming more intimate. They start to make out. Jiang verbally expresses his desire to have sex with Beth. Beth, who was abused by a babysitter when she was five, and has not had any sexual relations since, is shocked at how quickly things are progressing. As Jiang takes her by the wrist over to the bed, lays her down, undresses her, and begins to have intercourse with her, Beth has a severe flashback to her childhood trauma. She wants to tell Jiang to stop but cannot. Beth is stiff and unresponsive during the intercourse. Is this a policy violation? **Jiang would be held responsible in this scenario for Non-Consensual Sexual Intercourse. It is the duty of the sexual initiator, Jiang, to make sure that he has mutually understandable consent to engage in sex. Though consent need not be verbal, it is the clearest form of consent. Here, Jiang had no verbal or non-verbal mutually understandable indication from Beth that she consented to sexual intercourse. Of course, wherever possible, it is important to be as clear as possible as to whether or not sexual contact is desired, and to be aware that for psychological reasons, or because of alcohol or drug use, one's partner may not be in a position to provide as clear an indication as the policy requires. As the policy makes clear, consent must be actively, not passively, given.**
3. Kevin and John are at a party. Kevin is not sure how much John has been drinking, but he is pretty sure it's a lot. After the party, he walks John to his room, and John comes on to Kevin, initiating sexual activity. Kevin asks him if he is really up to this, and John says yes. Clothes go flying, and they end up in John's bed. Suddenly, John runs for the bathroom. When he returns, his face is pale, and Kevin thinks he may have thrown up. John gets back into bed, and they begin to have sexual intercourse. Kevin is having a good time, though he can't help but notice that John seems pretty groggy and passive, and he thinks John may have even passed out briefly during the sex, but he does not let that stop him. When Kevin runs into John the next day, he thanks him for the wild night. John remembers nothing, and decides to make a report to the Dean. **This is a violation of the Non-Consensual Sexual Intercourse Policy. Kevin should have known that John was incapable of making a rational, reasonable decision about sex. Even if John seemed to consent, Kevin was**

**well aware that John had consumed a large amount of alcohol, and Kevin thought John was physically ill, and that he passed out during sex. Kevin should be held accountable for taking advantage of John in his condition. This is not the level of respectful conduct the university expects.**

### **Retaliation Examples**

1. Student-athlete A files an allegation against a coach for sexual harassment; the coach subsequently cuts the student-athlete's playing time in half without a legitimate justification
2. A faculty member complains of gender inequity in pay within her department; the Department Chair then revokes his prior approval allowing her to attend a national conference, citing the faculty member's tendency to "ruffle feathers."
3. A student from Organization A participates in a sexual misconduct hearing against the responding individual – also a member of Organization A; the student is subsequently removed as a member of Organization A because he participated in the hearing.

### **Intimate Partner Violence Examples**

1. A boyfriend shoves his girlfriend into a wall upon seeing her talking to a male friend. This physical assault based in jealousy is a violation of the Intimate Partner Violence policy.
2. An ex-girlfriend shames her female partner, threatening to out her as a lesbian if she doesn't give the ex another chance. Psychological abuse is a form of Intimate Partner Violence.
3. A graduate student refuses to wear a condom and forces his girlfriend to take hormonal birth control though it makes her ill, in order to prevent pregnancy.
4. Married employees are witnessed in the parking garage, with one partner slapping and scratching the other in the midst of an argument.

### **Stalking Examples**

1. A student repeatedly shows up at another student's on-campus residence, always notifying the front desk attendant that they are there to see the resident. Upon a call to the resident, the student informs residence hall staff that this visitor is uninvited and continuously attempts to see them, even so far as waiting for them outside of classes and showing up to their on-campus place of employment requesting that they go out on a date together.
2. A graduate student working as an on-campus tutor received flowers and gifts delivered to their office. After learning the gifts were from a student they recently tutored, the graduate student thanked the student, stated that it was not necessary, and would appreciate if the gift deliveries stop. The student then started leaving notes of love and gratitude on the graduate assistant's car, both on-campus and at home. Asked again to stop, the student stated by email: "You can ask me to stop, but I'm not giving up. We are meant to be together, and I'll do anything necessary to make you have the feelings for me that I have for you." When the tutor did not respond, the student emailed again, "You cannot escape me. I will track you to the ends of the earth. We are meant to be together".

## Appendix C

### Frequently Asked Questions

Here are some frequently asked questions regarding Herzing University's policies and procedures related to safety and security:

#### ***Q: Does information about a report remain private?***

**A:** The privacy of all parties to a report of sexual misconduct must be respected, except insofar as it interferes with the university's obligation to fully investigate allegations of sexual misconduct. Where privacy is not strictly kept, it will still be tightly controlled on a need-to-know basis. The university will not disseminate information and/or written materials to persons not involved in the resolution process without the consent of both parties. Witnesses are also required to maintain the privacy of information shared with them during interviews and/or hearings. Violations of the privacy of the reporting party or the responding party may lead to conduct action by the university, though both parties are allowed to share their perspectives and experiences. All parties, including witnesses, involved in an allegation are strongly encouraged to maintain the privacy of information and/or written materials.

In all resolutions of sexual misconduct, all parties will be informed of the outcome. In some instances, the administration also may choose to make a brief public announcement of the nature of the violation and the action taken, without using the name or identifiable information of the alleged victim. Certain university administrators are informed of the outcome within the bounds of student privacy (e.g., the University President, etc.). The institution also must statistically report the occurrence on campus of major violent crimes, including certain sex offenses, in an "Annual Security Report" of campus crime statistics. This statistical report does not include personally identifiable information.

#### ***Q: Will my parents be told?***

**A:** No, not unless you tell them. Whether you are the reporting party or the responding party, the University's primary relationship is to the student and not to the parent. However, in the event of major medical, disciplinary, or academic jeopardy, students are strongly encouraged to inform their parents. University officials will directly inform parents when requested to do so by a student, in a life-threatening situation.

#### ***Q: Do I have to name the responding party?***

**A:** Yes, if you want formal disciplinary action to be taken against the responding party. You can report the incident without the identity of the responding party but doing so will limit the University's ability to respond comprehensively.

#### ***Q: Will the responding party know my identity?***

**A:** Yes, if the university determines there is reasonable cause to believe a violation has occurred and investigates the matter. The responding party has the right to know the identity of the reporting party.

#### ***Q: What do I do if I am accused of sexual misconduct?***

**A: Do not** contact the reporting party. You may immediately want to contact someone who can act as your advisor; anyone may serve as your advisor. You may also contact the Title IX Coordinator



who can explain the University's procedures for addressing sexual misconduct reports. You may also wish to seek counseling independently. See below regarding legal representation.

***Q: Will I (as a victim) have to pay for counseling and/or medical care?***

**A:** If you are accessing counseling and healthcare resources in the community, payment will be subject to state/local laws, and the requirements of your health insurance plan.

***Q: Will I have to pay for legal advice?***

**A:** Victims of criminal sexual assault need not retain a private attorney to pursue criminal prosecution as representation is handled by the District Attorney's office. You may wish to retain an attorney if you are considering filing a civil action, or if you are the responding party. The responding party may retain counsel at their own expense if they determine that they need legal advice about criminal prosecution and/or the University's resolution process. Both the responding party and the reporting party may also use an attorney as their advisor during the University's resolution process. Attorneys are subject to the same restrictions as other advisors in the process.

***Q: How is a report of sexual misconduct decided?***

**A:** The University investigates allegations of harassment, discrimination, or misconduct to determine whether there is evidence to indicate that a policy violation is "highly and substantially likely" to have occurred. This standard, called the clear and convincing standard of evidence, corresponds to an amount of evidence indicating a policy violation is more than 75% likely.

***Q: Will the reporting party be sanctioned when reporting a sexual misconduct policy violation if he/she has illegally used drugs or alcohol?***

**A:** No. The seriousness of sexual misconduct is a major concern and the University does not want any of the circumstances (e.g. drug or alcohol use) to inhibit the reporting of sexual misconduct. The University provides amnesty from any consequences for minor policy violations that occur during or become known as the result of a victim's report of sexual misconduct. The University may still refer a reporting party to counseling services related to drug and alcohol use.

***Q: Will either party's prior use of drugs and/or alcohol or prior sexual history be a factor when investigating sexual misconduct?***

**A:** Not unless there is a compelling reason to believe that such history is relevant to the present matter.

***Q: What should I do if I am uncertain about what happened?***

**A:** If you believe that you have experienced sexual misconduct, but are unsure of whether it was a violation of the institution's sexual misconduct policy, you can contact the institution's Title IX Coordinator (this will trigger at least a preliminary investigation into the incident) or you may choose to contact confidential community resources to help you define and clarify the events.

## **Appendix D**

### **Investigator Pool Members**

Emilie Thompson – Director of Safety and Equal Opportunity/Title IX Coordinator

Kristen Hubert – Human Resources Business Partner

### **Hearing/Review Board Pool**

Dr. Katherine Kautzer – Provost (Chair)

Larry Doty – Associate Provost for Academic Operations (Alternate Chair)

BriAnne Danielson – Associate Vice President of Student Services

Jeff Ramsey – Director of Student Services