



# Annual Security Report

— 2024 —

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Herzing University has made the safety and security of its campus community a top priority. To meet this objective, and in compliance with applicable federal regulations, Herzing University - Birmingham, located at 280 West Valley Avenue, Birmingham, Alabama, annually publishes for public review this security report. The Annual Security Report discloses the University's safety and security policies and procedures, and statistics regarding certain types of crimes reported to the University and local law enforcement agencies during the prior three years. Herzing University intends for this report to be the primary resource for all students and employees, both prospective and current, regarding the University's safety and security policies and procedures.

This report is made available to the public on Herzing University's website. Notice of this report's availability is distributed to all prospective students and employees prior to enrollment or employment. Annual notice of publication is also distributed via Herzing email to all current students and employees. Paper copies of this report are available upon request.

## Security Awareness and Personal Responsibility

Herzing University believes that the cooperation and involvement of our students, faculty, and staff is necessary in order to maintain the safety and security of our community. Herzing University also recognizes and encourages others to be aware that no environment is completely free of risk. Each individual should understand their own responsibility for their own safety and the security of their property by following simple precautions and operating with common sense. That said, Herzing University strives to provide a safe and secure learning environment and workplace for all students, faculty, and staff by complying with all applicable federal, state and local laws, building codes, and board of health or fire marshal regulations.

## Security of and Access to Campus Facilities

The Herzing University Birmingham building located at 280 West Valley Road, Birmingham, Alabama is owned and managed by Herzing University, Ltd. Access to this facility is controlled at all times. Access for staff through designated doors is available from Monday – Thursday 8:00 a.m. - 10:00 p.m. and Friday 8:00 a.m. – 5:00 p.m. All other persons must enter the building through the main entrance and sign a visitor's log with the receptionist. Visitors are welcome from 8:00 a.m. - 5:00 p.m. Monday-Friday, when the front desk is staffed by reception, unless an exception has been granted by the Director of Campus Operations. All doors to the building are secured outside of posted open hours, and only designated personnel have access to the building during those times. These premises are considered off limits to all but those members of the general public who have specific business concerns or relations with Herzing University. Therefore, all unidentified visitors may be challenged for purpose of visit at any time by members of the Herzing University staff and administration. Visitors deemed to be intruders will be reported to the Director of Campus Operations, and local law enforcement may be contacted if a staff member is unable to cause the unauthorized individual to vacate Herzing University property. Students, staff, and faculty are urged to report suspected intruders immediately to members of the administration.

## Third-Party Security

The Herzing University Birmingham campus does not employ any dedicated security staff. The Chief Campus Security Authority for the Birmingham campus is the Birmingham Director of Campus Operations. Any criminal incidents are referred to the local law enforcement authorities, who have jurisdiction over the campus.

## University Jurisdiction

This policy applies to behaviors that take place on University property, at University-sponsored events and may also apply off-site and to actions online, when the Title IX Coordinator determines that the off-site conduct affects a substantial University interest. A substantial University interest is defined to include:

- a. Any action that constitutes a criminal offense as defined by law. This includes, but is not limited to, single or repeat violations of any local, state or federal law;
- b. Any situation where it appears that a Responding Party may present a danger or threat to the health or safety of self or others;
- c. Any situation that significantly impinges upon the rights, property or achievements of self or others or significantly breaches the peace and/or causes social disorder; and/or



- d. Any situation that is detrimental to the educational interests of Herzing University.

## Drug and Alcohol Policy

### Drug-Free Campus Statement

It is Herzing University's policy to provide a drug and alcohol-free, safe, and healthy environment that is conducive to both productive employees and students. To that end, the unlawful possession, use, or distribution of illicit drugs and alcohol on school property or in connection with any work or school activity is strictly prohibited. Reporting to or remaining at work or school under the influence of, or impaired by alcohol or illicit drugs is also prohibited. This prohibition applies to all employees and students. Violation of these provisions by a student may lead to the imposition of disciplinary sanctions, up to and including suspension or expulsion. Herzing University employees are also subject to disciplinary sanctions for violation of these provisions occurring on University property or any work site during work time, up to and including termination of employment. Referral for criminal prosecution may occur where appropriate.

Employees or students who must possess and consume legal prescription/non-prescription drugs, which could impair their ability to safely and appropriately perform their work and/or school responsibilities, must inform their supervisor and/or their Student Services advisor or instructors prior to reporting for work and/or school.

### Legal Sanctions

Students and employees must be aware that significant criminal penalties exist under state and federal laws for the unlawful possession or distribution of alcohol and illegal drugs.

Legal sanctions under local, state, and federal laws vary by location, but may include:

- Monetary fines
- Jail time
- Suspension, revocation, or denial of a driver's license
- Property seizure

Federal penalties for drug trafficking may be found at <http://www.dea.gov/druginfo/ftp3.shtml>.

Those who are concerned about specific circumstances should consult applicable local, state, and federal law and/or seek legal counsel.

### Health Risks

Various health risks are associated with the use of illicit drugs. Some of the more common risks are cited below and may be found at <http://www.dea.gov/druginfo/factsheets.shtml>.



| Drug  | Risk of Physical Dependency | Risk of Psychological Dependency | Health Risks   |
|---|-----------------------------|----------------------------------|--|
| Narcotics (e.g., heroin, oxycodone, morphine)                   | High                        | High                             | Drowsiness, slow and shallow breathing, confusion, muscle weakness, nausea, convulsions, coma, death                               |
| Stimulants (e.g., crack/cocaine, amphetamines, methamphetamine) | Possible                    | High                             | High fever, agitation, panic, headache, dizziness, tremors, convulsions, cardiac arrest, stroke, death                             |
| Depressants (e.g. Valium, Xanax, Rohypnol)                      | Moderate                    | Moderate                         | Loss of motor coordination, weakness, headache, blurred vision, dizziness, nausea, low blood pressure, slow breathing, coma, death |
| Hallucinogens (e.g. LSD, MDMA, PCP)                             | None                        | Unknown                          | Seizures, muscle cramps, nausea, liver kidney and cardiovascular failure, coma, death  |
| Inhalants   | Unknown                     | High                             | Muscle weakness, disorientation, nausea, nervous system and organ damage, asphyxiation, death                                      |
| Marijuana   | Unknown                     | Moderate                         | Dizziness, nausea, dry mouth, loss of motor coordination, panic attacks  |

## Alcohol

For those individuals who choose to use alcohol, Herzing University encourages them to drink responsibly and to never drink and drive. Consuming alcohol has many risk factors and can lead to dependency. With excessive use, liver, brain, heart, and stomach damage can occur without apparent warning signs. Alcohol is one of the leading causes of preventable deaths in the United States.

## Counseling, Treatment, and Rehabilitation

Drug and alcohol counseling, treatment, and rehabilitation programs for employees and students are available from a variety of community sources. Anyone who recognizes a personal drug or alcohol problem, who is concerned about a student or coworker, or who wishes to know more about drug and alcohol abuse may contact a campus executive officer, the human resources department, or [consumerinfo@herzing.edu](mailto:consumerinfo@herzing.edu) for more information. Community resources near a student or employee's respective campus or location may be found by contacting the ADA and Title IX Coordinator, the Human Resource Department, or [consumerinfo@herzing.edu](mailto:consumerinfo@herzing.edu).

## ***National Resources***

Herzing University also encourages anyone dealing with substance abuse issues to contact the following national agencies for guidance and assistance in identifying counseling, treatment, or rehabilitation programs.

Alcohol/Drug Helpline: (800) 821-4357

Substance Abuse and Mental Health Services Administration (SAMHSA) Hotline: (800) 662-HELP

Al-Anon: (888) 425-2666 (local information can be found in your local telephone directory)

## ***Employee Resources***

Herzing University provides an employee assistance program (EAP) as a benefit to all employees regardless of whether they opt in to other benefits through Herzing University, such as health or dental insurance. This service provides referrals and treatment sessions as needed and can connect employees to additional outpatient or inpatient services that could be eligible for coverage through the employee health care plan. Information about contacting the EAP can be obtained through the Human Resource Department.

## ***Student Resources***

Herzing University employs wellness counselors that are available to meet with students about a variety of concerns, including substance abuse. Appointment requests can be made through the Student Resource Center in Canvas or by emailing [counseling@herzing.edu](mailto:counseling@herzing.edu).

## **Biennial Review**

Herzing University conducts a biennial review of this program to determine the effectiveness of the program and implement changes as needed. This review also ensures that disciplinary sanctions are uniformly enforced.

## **Firearms & Other Dangerous Weapons Policy**

For health, safety and security reasons, firearms, explosives, flammables or other dangerous weapons of any kind are not allowed in any Herzing buildings or at any Herzing-related event. This prohibition includes, but is not limited to rifles, shotguns, pistols, BB guns, pellet guns, bows and arrows, stun guns, knives, and martial arts equipment. Exceptions will be allowed for knives brought on to the premises by employees or students for the sole purpose of cutting or serving food or knives used in classes or as tools.

If allowed by respective state laws, individuals who possess a valid concealed weapons license may keep a firearm inside their privately-owned vehicle when their vehicle is parked on University property in a designated parking facility or space. Herzing will not be responsible for theft of any concealed weapons from employee-owned vehicles, even if that vehicle is used for work purposes.

Each Herzing location has clearly marked signage on entrance doors, which indicates that dangerous weapons and/or firearms are prohibited inside the premises. Anyone possessing a dangerous weapon or firearm will be asked

to immediately remove the weapon from the building. Employees possessing firearms and/or other dangerous weapons on Herzing property will be subject to disciplinary action, up to and including termination of employment. Students possessing firearms and/or other dangerous weapons on Herzing property will be subject to disciplinary action, up to and including dismissal. Visitors violating this policy and failing to remove the weapon from the premise may be reported to local law enforcement and will be banned from Herzing's premises.

Herzing prohibits all persons who enter University property from carrying a handgun, firearm, or prohibited weapon of any kind onto the property regardless of whether the person is licensed to carry the weapon or not.

Uniformed law enforcement officials are exempt from this policy.

## **Unlawful Discrimination, Harassment, and Retaliation**

Herzing is committed to providing an environment free from all forms of harassment, discrimination and all other negative conduct that inhibits effective communication and productivity. Herzing expects all students, employees, business partners, managers, supervisors, contractors, and visitors to adhere to a standard of conduct that exemplifies a professional work and learning environment.

Harassment on the basis of a protected classification, such as race, color, religion, sex, national origin, age, creed, veteran status, disability, sexual orientation, gender identity, marital status, arrest or conviction record, genetic information or pre-disposition, or any other characteristic protected by law, is expressly prohibited under this policy.

Harassment on any of these bases is illegal under federal, state and/or local law. Herzing will take immediate and appropriate action when it determines that harassment and/or discrimination has occurred.

### **General Nondiscrimination Policy**

Herzing University admits students of any race, sex, religion, age, color, creed, national or ethnic origin, disability, sexual orientation, gender identity or expression, or disabled and/or Vietnam era veteran status to all the rights, privileges, programs, and activities generally accorded or made available to students at Herzing University. Herzing University does not discriminate on the basis of race, sex, religion, age, color, creed, national or ethnic origin, disability, sexual orientation, gender identity or expression, or disabled and/or Vietnam era veteran status in the recruitment, admission or treatment of students, the recruitment, hiring, or treatment of faculty and staff, and the operation of its activities and programs, as specified by state and federal laws including but not limited to the Equal Pay Act of 1963, Titles VI and VII of the Civil Rights Act of 1964 as amended, the Age Discrimination in Employment Act of 1967, Title IX of 1972 Educational Amendments to the Higher Education Act, Executive Order 11246, as amended, Sections 503/504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, and all other laws which pertain to access, equality and nondiscrimination.

For further information or inquiries regarding Herzing University's nondiscrimination policy, please contact:

Human Resources  
Herzing University  
275 W Wisconsin Ave Ste 210  
Milwaukee, WI 53203  
+1 (414) 271-8103

## Definitions

**Discrimination:** May occur when employment, professional, or academic decisions are threatened or made, implicitly or explicitly, based upon race, color, religion, sex, national origin, age, creed, veteran status, disability, sexual orientation, gender identity, marital status, arrest or conviction record, genetic information or pre-disposition, or any other characteristic protected by law.

Discrimination exists whenever:

- An individual's academic rights, employment rights, or opportunity for employment is adversely affected and such action is taken based upon the individual's race, color, religion, sex, national origin, age, creed, veteran status, disability, sexual orientation, gender identity, marital status, arrest or conviction record, genetic information or pre-disposition, or any other characteristic protected by law.

**Harassment:** May occur whenever unwelcome verbal or nonverbal conduct, comments, touching, teasing, joking or intimidation based on any of these behaviors interferes with work, or creates an intimidating, hostile, or offensive work or learning environment.

Harassment exists whenever:

- Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
- Submission to or rejection of such conduct is used as the basis for an academic or employment decision affecting an individual; or
- The conduct interferes with an individual's performance or creates an intimidating, hostile, or offensive work or learning environment.

## Recognizing Sexual Harassment

Unwelcome actions such as the following are inappropriate and, depending on the circumstances, may in and of themselves meet the definition of sexual harassment or contribute to a hostile work or learning environment:

- Sexual pranks, or repeated sexual teasing, jokes, or innuendo, in person, or via email; Verbal abuse of a sexual nature;
- Touching or grabbing of a sexual nature;
- Repeatedly standing too close to or brushing up against a person;
- Repeatedly asking a person to socialize during off-duty hours when the person has said no or has indicated they are not interested (supervisors in particular should be careful not to pressure their employees to socialize);
- Giving gifts or leaving objects that are sexually suggestive;
- Repeatedly making sexually suggestive gestures;
- Making or posting sexually demeaning or offensive pictures, cartoons, or other materials in the learning environment or workplace;

- Off-duty, unwelcome conduct of a sexual nature that affects the work or learning environment.

Harassment may be subtle, manipulative, and is not always evident. It does not refer to occasional compliments of a socially acceptable nature. It refers to behavior that is not welcome and is personally offensive. All forms of sex-based harassment are covered.

A victim of sexual harassment can be a man or a woman. The victim can be of the same sex as the harasser. The harasser can be a supervisor, instructor, co-worker, employee, client, student, classmate, consultant, contractor and/or vendor.

Examples of Sexual Harassment can be found in [Appendix B](#).

## Recognizing Other Forms of Harassment

The following are protected categories that are the foundation of the harassment and discrimination laws, and as such have been given special protection under the law.

- Race/color – a person's ancestry or ethnic characteristics
- Religion – an individual's moral or ethical beliefs
- National Origin – a person's birthplace, culture, or language
- Age – Federal law protects individuals over 40 years of age
- Disability – a mental or physical condition that substantially limits one or more major life activities
- Military or Veteran Status – as stated
- Sexual Orientation – an individual's sexual preference
- Pregnancy – includes childbirth, potential for pregnancy, and related medical condition
- Political Affiliation – as stated
- Physical Appearance – hair color, facial structure, being over/underweight

It is Herzing University's responsibility to:

- Provide all employees with annual anti-harassment and nondiscrimination education and training.
- Provide an environment that encourages students and employees to report all incidents of harassment or discrimination.
- Provide a mechanism to handle and investigate harassment and discrimination complaints.

Management personnel have a responsibility to:

- Protect all employees and students from harassment and discrimination.
- Respond immediately to complaints.

- Discipline those employees and/or students found guilty of violating the anti-harassment or nondiscrimination policy.
- Carry out supervisory responsibilities, including performance reviews, training, and discipline in a manner that does not abuse authority, undermine performance, or intimidate staff.
- Take corrective action when they are aware of harassment/discrimination. Failure to act may result in disciplinary action.

Employees and students have a responsibility to:

- Refrain from engaging in any behavior that may be perceived as harassment or discrimination.
- Report incidents of harassment, discrimination, or retaliation.

### **Non-retaliation**

Retaliating or discriminating against anyone for complaining about harassment or discrimination is prohibited. Retaliating against witnesses or other individuals who cooperate in a harassment or discrimination investigation is also prohibited.

### **Staff/Student Relationship Policy**

There are inherent risks in any romantic or sexual relationship between individuals in unequal positions (such as faculty/staff and student, supervisor and employee). These relationships may be less consensual than perceived by the individual whose position confers power. Each of the parties, particularly in retrospect, also may view the relationship in different ways. Furthermore, circumstances may change, and conduct that was previously welcome may become unwelcome. Even when both parties have consented at the outset to a romantic or sexual involvement, this past consent may not remove grounds for a later charge of a violation of applicable sections of this policy. Herzing University does not wish to interfere with private choices regarding personal relationships when these relationships do not interfere with the goals and policies of Herzing University. For the personal protection of members of this community, relationships in which power differentials are inherent (faculty-student, staff-student, administrator-student) are generally discouraged.

Consensual romantic or sexual relationships in which one party maintains a direct supervisory or evaluative role over the other party are unethical. Therefore, persons with direct supervisory or evaluative responsibilities who are involved in such relationships must bring those relationships to the timely attention of their supervisor and will likely result in the necessity to remove the employee from the supervisory or evaluative responsibilities or shift a party out of being supervised or evaluated by someone with whom they have established a consensual relationship. While no relationships are prohibited by this policy, failure to timely self-report such relationships to a supervisor as required can result in disciplinary action for an employee.

### **Americans with Disabilities Act (ADA) Policy**

It is the policy of Herzing University to comply with the Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act, other federal mandates, and state and local laws regarding individuals with disabilities. These laws protect students with disabilities, and students may request reasonable accommodations for their disabilities

from Herzing University. Reasonable accommodations are determined on an individual basis and made available to the extent that they meet the student's needs and do not compromise the academic integrity of Herzing University's educational programs.

Questions related to Herzing University's policies and procedures related to disability services should be directed to the central ADA Coordinator at [ada@herzing.edu](mailto:ada@herzing.edu).

## Requesting Accommodations

Students with disabilities who wish to request accommodation under the ADA must:

1. Submit a request for accommodation with appropriate documentation to their student services specialist.
2. Meet with the Campus ADA Coordinator to discuss the request.
3. Alert the Campus ADA Coordinator if accommodations provided are not working or do not meet their needs.

## Documentation Policy

Students with disabilities are responsible for providing documentation of their disability to their Student Services Specialist. Documentation provided must both establish that the student has a disability and provide enough detail regarding the functional limitations caused by the disability so that appropriate accommodations can be identified and provided. Documentation will be kept confidential and maintained securely on Herzing University intranet.

All documentation must:

1. Come from an appropriately licensed clinical professional familiar with the history and functional impact of the student's disability.
2. Verify the nature and extent of the student's disability aligned to current professional standards and techniques, and include a description of applicable diagnostic criteria, evaluation methods, procedures, tests and dates of administration, as well as a clinical narrative, observation and specific results.
3. Be dated, signed, and submitted on official letterhead including the name, title and professional credentials of the evaluator.
4. Describe how the disability affects the student's ability to participate in University activities and programs.
5. Reflect the student's current level of functioning and demonstrate whether and how a major life activity is substantially limited by providing a clear sense of the severity, frequency and pervasiveness, and progression or prognosis of the condition(s).
6. Include a description of any current and past medications, auxiliary aids, assistive devices, support services, and accommodations, including their known effectiveness in alleviating functional limitations of the disability.
7. Include recommendations for accommodations, adaptive devices, assistive services, compensatory strategies, and/or collateral support services.

Additionally;



- If the original documentation is incomplete or inadequate to determine the extent of the disability or reasonable accommodation, Herzing University has the discretion to require additional documentation. Any cost incurred in obtaining additional documentation when the original records are inadequate is the responsibility of the student.
- Documentation that includes a diagnosis or testing battery performed by a member of the student's family will not be accepted.
- Students requesting accommodations for functional limitations due to multiple disabilities must provide evidence of all such conditions.
- Documentation forms and guidelines for documentation of specific disabilities, such as learning disabilities, psychiatric disabilities, or others as identified are available through the Student Services Department; please contact your Student Services Specialist for more information.

## Confidentiality

Herzing University is committed to ensuring that all information and communication pertaining to a student's disability is maintained as confidential as required or permitted by law.

The following guidelines apply to the treatment of such information:

1. No one will have immediate access to student files except appropriate staff of Herzing University. Any information regarding a student's disability is protected by the Family Educational Rights and Privacy Act (FERPA) and will only be disclosed as permitted or required by FERPA.
2. Sensitive information in student files will not be released except in accordance with federal and state laws.
3. A student's file may be released pursuant to a court order or subpoena.
4. If a student wishes to have information about his/her disability shared with others, the student must provide written authorization to release the information. Before giving such authorization, the student should understand the purpose of the release and to whom the information is being released.
5. A student has the right to review their own file with reasonable notification.

## Definitions

**Disability:** A physical or mental impairment that limits one or more of an individual's major life activities.

**Major Life Activities:** Basic functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, working, sleeping, standing, lifting, reading, concentrating, thinking, communicating, helping, eating, bending, or operation of a bodily function.

**Substantial Limitation:** Significant restriction in the condition, manner or duration in which a major life activity is performed compared to most people.

**Reasonable Accommodation:** Any change in an educational environment that effectively and appropriately enables an individual with a disability to have equal educational opportunities to participate in programs and activities.

An accommodation is not reasonable if it:

- Poses a direct threat to the health or safety of others;
- Requires a substantial change to an essential element of course curricula or a substantial alteration in the manner in which services are offered or provided for other students; or
- Poses an undue financial or administrative burden.

**Undue Hardship or Burden:** action that requires either significant difficulty or expense, or that would fundamentally alter the nature of a program. Factors to be considered include:

- The nature and cost of the accommodation needed, and
- The overall financial resources of Herzing University.

## Accessibility of Facilities

Herzing University facilities (including restrooms and classrooms) are designed to permit individuals with disabilities to enroll in and benefit from educational programs. Accessible parking provides convenient access to building entrances. Accessible parking spaces are reserved for students, visitors, or employees who display an appropriate state-issued placard or license plate.

## Service Animals

Herzing University requests that students with service animals contact the ADA Coordinator to register their service animal. Higher education institutions may not require any documentation about the training or certification of a service animal. Herzing University requires proof that a service animal has any vaccinations required by state or local laws that apply to all animals. Herzing University reserves the right to make special modifications, within the confines of applicable law, to policies to reasonably accommodate the person requesting the accommodation. Emotional support animals, comfort animals, and therapy animals are not service animals under Title II and Title III of the ADA.

Under Title II and III of the ADA, service animals are limited to dogs. However, entities must make reasonable modifications in policies to allow individuals with disabilities to use miniature horses if they have been individually trained to do work or perform tasks for individuals with disabilities. Herzing University may also assess the type, size, and weight of a miniature horse in determining whether or not the horse will be allowed access to the premises.

## Emotional Support Animals on University Property

Emotional support animals are not permitted on any University property, including, but not limited to classrooms, computer labs, employment areas, libraries and clinic spaces.

## ***Service Animals on University Property***

Service animals are generally permitted to accompany people with disabilities on all University properties where students, faculty, staff, and visitors are allowed, in buildings/facilities. A service animal's access to certain areas on University property may need to be limited should the service animal's presence create an undue hardship to Herzing University. Service animals must be housebroken (i.e., trained so that it controls its waste elimination, absent illness or accident) and must be kept under control by a harness, leash, or other tether unless the person is unable to hold those, or such use would interfere with the service animal's performance of work or tasks. In such instances, the service animal must be kept under control by voice, signals, or other effective means. Individuals must comply with all applicable laws and regulations, including vaccination, licensure, animal health and leash laws.

Students needing a service animal are encouraged to work with the ADA Coordinator prior to bringing the service animal to campus to ensure reasonable accommodations are appropriately provided to the student. The service animal handler can best provide recommendations for faculty, staff, and students on procedures to interact with service animals. The ADA Coordinator can assist with this communication, if requested.

Faculty and staff (or applicants for employment positions) needing a service animal are encouraged to contact Human Resources prior to bringing the service animal to campus to ensure the accommodation request process is followed and reasonable accommodations are appropriately provided to the employee or applicant.

## ***Exceptions and Exclusions to General Rules Applying to Service Animals on Campus***

Herzing University may impose some restrictions on, and may even exclude or ban, a service animal in certain instances. Restrictions or exclusions will be considered on a case-by-case basis in accordance with applicable laws. Access to University property may be restricted or revoked under the following circumstances.

### ***Service Animal Creates a Direct Threat:***

The service animal may be denied access to or banned from campus if it poses a direct threat to the health or safety of others that cannot be reduced or eliminated by reasonable modifications. An example of this would be a service animal that exhibits aggression or has injured a person or another animal. In considering whether an assistance animal poses a direct threat to the health or safety of others, Herzing University will make an individualized assessment based on reasonable judgment, current medical knowledge, or the best available objective evidence to determine 1) the nature, duration, and severity of the risk; 2) the probability that the potential injury will actually occur; and 3) whether reasonable modifications of policies, practices, or procedures will mitigate the risk.

### ***Service Animal is Uncontrolled:***

A service animal may have its access to University property restricted or revoked if the assistance animal is out of control and the owner does not take effective action to gain and maintain control. An example of this may be an assistance animal that repeatedly gets loose and runs at large, even if it does not physically injure a person or other assistance animal.

### ***Property Damage or Injury Caused by Service Animal:***

The owner of a service animal is responsible for any damage to University or personal property and any injuries to individuals caused by their animal.

### ***Improper/Inadequate Care for Service Animal:***

Failure to properly care for a service animal may result in the animal's access to University property being restricted or revoked. Additionally, if it appears that anyone has abused or neglected a service animal, Herzing University may report the animal abuse or neglect to the appropriate authorities.

## **Service Animal is Not Housebroken or Maintained in a Healthy, Clean Manner:**

Any individual utilizing a service animal on campus must ensure the animal is properly housebroken and/or trained. They must also ensure that the animal, and its environment, are maintained in a healthy, clean manner. The service animal owner is responsible for the removal and disposal of any waste products of the animal.

## **Service Animal Fundamentally Alters the Nature of an Educational Program:**

Students may be denied the accommodation of a service animal in an academic setting if the animal's presence fundamentally alters the nature of the educational program. An example of this may be a lab course that requires a sterile/clean working environment and the service animal's presence would compromise the sanitation/operational standards for the lab. Another example may be a lab course involving the use of lab animals and the service animal's presence will be disruptive to the lab animals. Clarifying note: This exception applies only to service animals, since emotional support animals are generally not permitted to accompany students to class (or to on-campus jobs).

## **Clinical Sites:**

Students with a service animal who are in a program with a clinical component must adhere to the guidelines for service animals established by each clinical facility they are assigned to. In many cases, a service animal may not be permitted to accompany a student to the clinical site due to health and safety standards at those clinical sites.

## **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."

## **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.

## **Retaliation and Harassment**

- a. Harassment of any member of Herzing University based on sex, 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 academic modifications, 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 academic modification, 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 annual 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.

### Title IX Coordinator

The ADA and Title IX Coordinator serves as the Title IX Coordinator and oversees implementation of Herzing 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 Affairs, Danielle Laban at [dlaban@herzing.edu](mailto:dlaban@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  
ADA and Title IX Coordinator  
275 W Wisconsin Ave Ste 210  
Milwaukee, WI 53203  
(414) 271-5622  
[emthompson@herzing.edu](mailto:emthompson@herzing.edu)

The Title IX coordinator is responsible for coordinating the dissemination of information and education and training programs to:

- assist members of the Herzing community in understanding that Sex Discrimination and Sexual Harassment are prohibited by this policy;
- ensure that Investigators are trained to respond to and investigate complaints of Sex Discrimination and Sexual Harassment;
- ensure that faculty, staff, and students are aware of the procedures for reporting and addressing complaints of Sex Discrimination and Sexual Harassment; and
- coordinating responses to all complaints involving Sex Discrimination and Sexual Harassment.

**To report information about conduct that may constitute Sex Discrimination, Sexual Harassment, or Retaliation, or make a complaint of Sex Discrimination, Sexual Harassment, or Retaliation under Title IX, please go to:** <http://tinyurl.com/ethicsstudent-herzing>.

If the Title IX Coordinator determines that the alleged conduct does not reasonably constitute Sex Discrimination, inquiries or complaints, where appropriate, are referred to Human Resources or the Office of the Provost.

Inquiries about the application of Title IX or its application to Herzing University, or formal grievances regarding Sex Discrimination or Sexual Harassment may be made externally to:

**Office for Civil Rights (OCR)**  
U.S. Department of Education  
400 Maryland Avenue, SW

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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/>

### **Sex Discrimination Policy**

“Sex Discrimination” includes, but is not limited to:

Discrimination based on:

- Sex
- Pregnancy or related conditions; or
- Sex in connection with parental, family, or marital status

Excluding from participation, denying benefits, or otherwise subjecting to discrimination any person based on sex in a manner that subjects them to more than de minimis harm, except with respect to:

- Housing; and
- Athletic teams.

Herzing University maintains a zero-tolerance policy for Sex Discrimination of any kind.

### **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 (where possible given state and accreditor restrictions on distance learning hours), 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 modifications are necessary and appropriate, and to inform faculty members of the need to adjust academic parameters accordingly.

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

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

## **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, infertility, false pregnancy, miscarriage, ectopic pregnancy, elective 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 academic modifications.

**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.

**Reasonable Modifications (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 Modifications for 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 other temporary medical conditions.



- Students with pregnancy-related disabilities, like any student with a short-term or temporary disability, are entitled to reasonable academic modifications 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 modifications, but Herzing University is limited in its ability to enact or implement modifications retroactively.
- Reasonable modifications may include, but are not limited to:
  - Providing modifications 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 modifications. The Title IX office will communicate all requests under this policy to students' student services specialists and coordinate modification-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 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.

## **Sexual Harassment Policy**

Herzing University prohibits all forms of Sexual Harassment, including, but not limited to, sexual assault, 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 Harassment 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 Sexual Harassment, as stated below, for which action under this policy may be imposed. Generally speaking, Herzing 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, Herzing 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-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 Harassment may be committed by any person upon any other person, regardless of the sex of those involved.

## Definitions

**Complainant:** a student or employee of Herzing University who is alleged to have been subjected to conduct that could constitute Sexual Harassment under Title IX; or a person other than a student or employee of Herzing University who is alleged to have been subjected to conduct that could constitute Sexual Harassment under Title IX at a time when that individual was participating or attempting to participate in Herzing University's education program or activity. Reports of Sexual Harassment may also be made by a parent, guardian, or other authorized legal representative of a Complainant, or the Title IX Coordinator.

**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 Complainant.

**Age of Consent:** Age of consent in the State of Alabama is 16. 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](#).

**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.

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

**Retaliation:** as it relates to this Sexual Harassment policy, is taking adverse action against an individual or individuals for reporting an incident of Sexual Harassment, for supporting a party bringing an allegation forward, or for participating in a Sexual Harassment 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.

## **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:** Conduct on the basis of sex that is:

1. Quid pro quo harassment. An employee, agent, or other person authorized by Herzing to provide an aid, benefit, or service under Herzing's program or activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct;
2. Hostile environment harassment. Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from Herzing's education program or activity (i.e., creates a hostile environment);
3. Sexual Assault;
4. Intimate Partner Violence; and/or
5. Stalking

**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](#).

## 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 campus, seek assistance from a campus 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 campus 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 Harassment:

- **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

### ***Immediately Following an Incident***

If any individual (student or employee) is a victim of Sexual Harassment (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 Harassment, do not wash or change clothes, as valuable evidence could be lost.

### ***Reporting Policy and Procedures for Sexual Harassment or Retaliation Complaints***

Reports of Sexual 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 Herzing 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  
ADA and Title IX Coordinator  
275 W Wisconsin Ave Ste 210  
Milwaukee, WI 53203  
(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 Herzing 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 Herzing 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 Affairs.

Individuals experiencing Sexual Harassment also have the right to file a formal grievance with the United States Department of Education, Assistant Secretary, Office for Civil Rights:

U.S. Department of Education

Office for Civil Rights

Lyndon Baines Johnson Department of Education Bldg.

400 Maryland Avenue, SW

Washington, DC 20202-1100

Telephone – 800-421-3481

Fax – 202-453-6012; TDD: 800-877-8339

Email: [OCR@ed.gov](mailto:OCR@ed.gov)

Web: <https://ocrcas.ed.gov/contact-ocr>

## **Sexual Harassment Reports**

Any student or employee who reports to Herzing 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 campus 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 Herzing 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 Herzing 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 Complainant must be the responsibility of that individual. However, Herzing University will assist students who are seeking alternate housing by providing recommendations or a source of appropriate housing recommendations.

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

- Changing Instructors
- Changing Course Schedule
- Temporary Withdrawal

## **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**

Certain Herzing University employees (faculty, staff, and administrators) are expected to report when they have information about conduct that reasonably may constitute Sexual Harassment to the Title IX Coordinator 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 Herzing University resources. The following describes the reporting options at Herzing University:

### ***Confidential Reporting***

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

- Licensed counseling staff in their counseling capacity

If a Complainant would like the details of an incident to be kept confidential, the Complainant 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 of the above-listed individuals will maintain confidentiality except in extreme cases of immediacy of threat or danger or abuse of a minor.

## Formal Reporting Options

All Herzing 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 Title IX Coordinator by employees, unless the Complainant clearly indicates that they wish a report to be made. Remedial actions may result from such disclosures without formal Herzing University action.

If a Complainant 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 Complainant 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 campus and comply with federal law. Note that Herzing University's ability to remedy and respond to a reported incident may be limited if the Complainant does not want the institution to proceed with an investigation and/or the appropriate resolution process.

In cases indicating pattern, predation, threat, weapons and/or violence, Herzing University will likely be unable to honor a request for confidentiality. In cases where the Complainant requests confidentiality and the circumstances allow Herzing University to honor that request, Herzing University will offer interim supports and remedies to the Complainant and the community, but will not otherwise pursue formal action. A Complainant 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 Affairs, and Herzing 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 Complainant'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 Sexual Harassment of which they become aware is a violation of Herzing University 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, Herzing 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. Herzing 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 Sexual Harassment**

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 Sexual Harassment. 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 both the Complainant and Responding Party. The Title IX Coordinator will advise the Complainant of their options for resolution. Herzing University presumes that the Responding Party is not responsible for the alleged policy violation until a determination is made at the conclusion of its resolution procedures.

Herzing 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, Herzing University will promptly implement effective remedies designed to end the Sexual Harassment, prevent its recurrence and address its effects.

## **Title IX Investigative Process**

### ***Title IX Training***

Allegations under the Title IX Policy are investigated by a trained Title IX investigator ("**Investigator**"). Investigators are announced in an annual distribution of this policy to the Herzing University community, prospective students, 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 Herzing 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: the definition of Sexual Harassment, the scope of Herzing's education program or activity, how to conduct an investigation and grievance process, including hearings, appeals, and informal resolution process, as applicable, how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias, any technology to be used at a live hearing, and on issues of relevance of questions and evidence, including when questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant.

Any materials used to train Title IX Coordinators, Investigators, decision-makers, and any person who facilitates an informal resolution process, shall not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of Sexual Harassment.

Herzing University will publish all training materials on its website.

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 Sexual Harassment***

Any member of the community, guest or visitor who believes that Sexual Harassment has occurred or is occurring 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 potential Sexual Harassment 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 Herzing University's obligation to redress severe violations, every effort will be made to maintain the privacy of those initiating an allegation. In all cases, Herzing University will consider the wishes of the Complainant 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 Complainant 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 Sexual Harassment, the Title IX Coordinator engages in a preliminary inquiry to determine if there is reasonable cause to believe Sexual Harassment has occurred. The preliminary inquiry is typically 2-3 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 Complainant 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 Complainant's request for no action and will investigate only so far as necessary to determine appropriate remedies. As necessary, Herzing University reserves the right to initiate resolution proceedings without a Formal Complaint or participation by the Complainant in cases where there is a significant and articulable risk to the community.

In cases where the Complainant wishes to proceed, or Herzing University determines it must proceed, and the preliminary inquiry shows that reasonable cause exists, the Title IX Coordinator will facilitate the filing of a Formal Complaint.

## ***Filing a Formal Complaint***

Herzing University utilizes a prompt, equitable and impartial grievance process to evaluate Formal Complaints of Sexual Harassment, which may be filed by a Complainant or by IEC's Title IX Coordinator. A **"Formal Complaint"** is a document (hardcopy or electronic) filed by a Complainant or signed by the Title IX Coordinator alleging Sexual Harassment against a Responding Party and requesting that the school investigate. A Formal Complaint must be signed (physical or digital) by the Complainant, the Title IX Coordinator or otherwise indicate that that Complainant is the person filing the Formal Complaint. When filing a Formal Complaint, the Complainant must be participating in or attempting to participate in the education program or activity of Herzing University.

The Title IX Coordinator may consolidate Formal Complaints where the allegations arise out of the same facts.

## ***Written Notice of Allegations***

Once a Formal Complaint has been filed, the Title IX Coordinator will provide written notification of the allegations to the Complainant and the Responding Party. 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 Herzing University records; or emailed to the parties' Herzing University-issued email account. Once mailed, emailed and/or received in-person, parties will be given five (5) days to respond before any initial interview. Written notices of allegation will include the following:

- Herzing University's resolution procedures, including information on informal resolution;
- Sufficient information available at the time to allow the parties to respond to the allegations, including the identities of the parties involved in the incident(s), the conduct alleged to constitute Sexual Harassment, and the date(s) and location(s) of the alleged incident(s);
- Notice that Retaliation is prohibited;
- A statement that the Responding Party is presumed not responsible for the alleged policy violation until a determination is made at the conclusion of the resolution process;
- Prior to such a determination the parties will have an opportunity to present relevant and not otherwise impermissible evidence to a trained, impartial decisionmaker;
- The parties may have an advisor of their choice who may be, but is not required to be, an attorney;

- The parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence or an investigative report that accurately summarizes this evidence. If provided with access to an investigative report, the parties are entitled an equal opportunity to access the relevant and not impermissible evidence upon the request of any party; and
- Herzing University's Student Code of Conduct prohibits knowingly making false statements or knowingly submitting false information during resolution procedures.

The parties will also be provided with separate written notice of any investigative interview, meeting or hearing. Interview/meeting notices will include the date, time, location, participants and purpose of the investigative interview or meeting.

If, in the course of an investigation, Herzing University decides to investigate allegations about the Complainant or Responding Party that are not included in the notice provided pursuant to this section, Herzing University will provide notice of the additional allegations to the parties whose identities are known.

Herzing 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 Complaint process, the Title IX Coordinator determines: (i) the allegations in the Formal Complaint do not meet the definition of Sexual Harassment; (ii) the conduct did not occur in the school's education program or activity; or (iii) the conduct did not occur against a person in the United States, then the Title IX Coordinator will dismiss the formal complaint. This decision lies in the sole discretion of the Title IX Coordinator.

The Title IX Coordinator may, in its sole discretion, dismiss a Formal Complaint where: (i) Complainant notifies the Title IX Coordinator in writing that the Complainant wishes to withdraw the Formal Complaint or allegations; (ii) the Responding Party is no longer enrolled or employed by Herzing University; or (ii) specific circumstances prevent Herzing University from gathering evidence sufficient to reach a determination regarding the Formal Complaint or allegations therein.

When a complaint is dismissed, Herzing University will, at a minimum:

- Offer supportive measures to the Complainant as appropriate;
- If the Responding Party has been notified of the allegations, offer supportive measures to the Responding Party as appropriate; and
- Take other prompt and effective steps, as appropriate, through the Title IX Coordinator to ensure that Sexual Harassment does not continue or recur within Herzing University's education program or activities.

Herzing University shall provide the parties with written notice of a dismissal, whether mandatory or discretionary, and the reason for the dismissal. Dismissal of the Formal Complaint under this policy does not preclude Herzing University from investigating the allegations under a different Herzing or institutional policy.



## ***Interim Remedies/Actions***

During the Formal Complaint process, the Associate Vice President of Student Affairs or the Vice President of Human Resources may provide interim remedies intended to address the needs of the Complainant, Responding Party, and the Herzing 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.

## ***Emergency Removal of Responding Party from Campus***

Herzing University may temporarily remove an individual from campus on an interim basis during the pendency of a Formal Complaint in limited emergency circumstances where there is an immediate threat to physical health or safety. Before taking this emergency measure, Herzing University will:

- Undertake an individualized safety and risk analysis to determine whether there is an immediate threat to the physical health or safety of any person arising from the allegations of Sexual Harassment;
- Make an affirmative determination that such an immediate threat exists based on its individualized safety and risk analysis; and
- Provide the Responding Party with notice and an opportunity to challenge the emergency decision immediately following the Responding Party's removal.

## ***Alternative Resolution***

Once a Formal Complaint has been filed, 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:

- Mediation

- Referral for disciplinary action;
- An agreement between the parties;
- Referring the Responding Party 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 and to determine the type of resolution to pursue. 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 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 continuing the formal investigation and hearing process to address the Formal Complaint;
- 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
- How records of the process will be maintained and shared

The Title IX Coordinator will coordinate the Alternative Resolution process unless good cause requires another individual. Any direct mediation between parties will be conducted by Herzing University's wellness counseling staff. A report summarizing any mediation session will be sent to the Title IX Coordinator. 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, Herzing University will not conduct a formal investigation unless the Title IX Coordinator determines that the Responding Party 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*

The Title IX Coordinator will appoint an Investigator to conduct a formal investigation, usually within two (2) days of the filing of a Formal Complaint. 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.

Herzing 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. Herzing 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 burden is on Herzing University and not any party to conduct an investigation that collects sufficient evidence to determine whether the allegation(s) occurred, if necessary;
- Prepare the written 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;
- 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 Complainant 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 an equal opportunity for the parties to present fact witnesses and other inculpatory and exculpatory evidence that are relevant and not otherwise impermissible;
- Review all evidence gathered through the investigation and determine what evidence is relevant and what evidence is impermissible regardless of relevance;
- Provide the parties with all relevant evidence to be made available at the live hearing and provide each with a full and fair opportunity to address that evidence prior to the live hearing;
- Complete the investigation promptly, and without unreasonable deviation from the intended timeline;

- Provide regular updates to the Complainant and Responding Party throughout the investigation;
- Finalize and present the investigation report to both parties prior to the live 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 Herzing 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. Herzing University cannot guarantee equal advisory rights, meaning that if one party selects an advisor who is an attorney, but the other party does not have, or cannot afford an attorney, Herzing 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 Complainant 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 Herzing 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.

Herzing University expects that the parties will wish to share documentation related to the allegations with their advisors. Herzing University provides a consent form that authorizes such sharing. The parties must complete this form before Herzing 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 Herzing University. Herzing 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 Herzing University's privacy expectations.

Herzing University expects an advisor to adjust their schedule to allow them to attend University meetings when scheduled. Herzing University does not typically change scheduled meetings to accommodate an advisor's inability to attend. However, Herzing 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. If a party does not have an advisor for the live hearing, Herzing University shall provide, without fee or charge to that party, an advisor of Herzing University's choice.

An advisor is allowed to be present at any meeting but is required to be at the live hearing for the purpose of conducting cross-examinations. The Complainant and Responding Party may not conduct cross-examination.

## **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 Complainant (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***

If a Formal Complaint is not or cannot be resolved through informal resolution, Herzing University will hold a live 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. The Title IX Hearing Board will oversee the hearing, separate from the Title IX Coordinator or Investigator and will be free from conflicts of interest or bias.

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.

The hearing may be conducted with all parties present physically or virtually, so long as all participants are able to see and hear one another in real time. A party is prohibited from solely participating in the hearing by telephone. At the request of either party, the Hearing Board will permit the parties to be in separate rooms during the entirety of the hearing. Herzing University will create an audio or audiovisual recording, or transcript of the live hearing and make it available to the parties for inspection and review.

### ***Cross-Examination***

During the hearing, every witness may be subjected to cross-examination by the party's advisor. Herzing University will allow a party's advisor to directly and in real time present all relevant questions and follow up questions to another party or witness, including the advisor challenging the credibility of a party.

If a party or witness does not submit to live cross-examination, the Hearing Board will not rely on any statement made by that party or witness when making the decision about the Responding Party's responsibility. Only



statements that have been tested for credibility through cross-examination at the hearing may be considered by the Hearing Board in reaching a responsibility determination. This includes statements against interest.

The Hearing Board will not draw any inference regarding responsibility based solely on a party's or witness' absence from the live hearing or refusal to answer cross-examination or other questions.

### ***Questions Must Be Relevant***

Questions posed to parties and witnesses at the hearing must be relevant. Before a Complainant, Responding Party, or witness answers a cross-examination or other question, the Hearing Board must determine whether the question being asked is relevant and provide an explanation as to any decision to exclude a question as not relevant. Questions relating to a Complainant's prior sexual behavior are irrelevant unless the questions are offered to prove someone else was responsible for the alleged conduct or offered to prove consent.

### ***Evidence Limitations***

The Hearing Board will not rely on or seek disclosure of information protected under a legally recognized privilege unless the person holding such privilege has waived the privilege.

### ***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 preponderance evidentiary standard (i.e., that it is more likely than not that the Responding Party committed each alleged violation). The standard of proof requires the Hearing Board to evaluate relevant and not otherwise impermissible evidence for its persuasiveness. If a majority of the Hearing Board is not persuaded under the applicable standard by the evidence that Sexual Harassment occurred, whatever the quantity of the evidence is, the Hearing Board will not determine that Sexual Harassment occurred. If a majority of the board finds a Responding Party responsible, the board will recommend appropriate sanctions.

The Hearing 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 determination will include: (i) identification of the allegations potentially constituting Sexual Harassment, (ii) a description of the procedure from Formal Complaint through hearing, (iii) conclusions regarding the application of and clearly state a conclusion regarding whether the alleged conduct occurred as alleged or at all and support each conclusion with the rationale relied upon. The written determination will also indicate the sanctions imposed on the Responding Party, if any, and whether remedies will be provided to the Complainant

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 Herzing University is permitted to share according to state or federal law, and the



rationale supporting the essential findings to the extent Herzing University is permitted to share under state or federal law. The notice will also include information on when the results are considered by Herzing 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 Complainant 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 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 may be noted as a Conduct Dismissal on the student's official transcript.
- **Withholding Diploma:** Herzing University may withhold a student's diploma for a specified period 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:** Herzing University reserves the right to revoke a degree awarded from Herzing 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, Herzing 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, Herzing University may assign any other sanctions as deemed appropriate.

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

***Students:*** Herzing 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 Herzing 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, which could substantially impact the original finding or sanction. A summary of this new evidence and its potential impact must be included.
- The Title IX Coordinator, Investigator, or a decisionmaker had a conflict of interest or bias for or against Complainants or Responding Parties generally or the individual Complainant or Responding Party that would change the outcome.

Herzing University's Chief Operating Officer 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 Title IX Coordinator 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 Chief Operating Officer 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 Chief Operating Officer 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 Chief Operating Officer 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 Chief Operating Officer, 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 Herzing 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 Herzing 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. In each instance, the Title IX Coordinator will document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the school's education program or activity. If Herzing University does not provide a Complainant with supportive measures, the Title IX Coordinator will document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

## 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 Title IX Coordinator, that individual will implement any interim supportive measures deemed reasonable and necessary to the Complainant and Responding Party. The Title IX Coordinator will advise the Complainant of their options for resolution.

If so, Herzing University will initiate a confidential investigation that is thorough, reliable, impartial, prompt and fair. The investigation and the subsequent resolution process determine whether Herzing University's policies have been violated. If so, Herzing 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 Herzing 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 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 investigative process

Investigators and members of the Review 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; Herzing 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 Herzing 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 Herzing 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 Herzing 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 Complainant 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 Complainant 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 Herzing University's policies on sexual harassment and sexual misconduct. The preliminary inquiry is typically 2-3 days in duration.

In cases where the Complainant 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 ADA and 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 Complainant is typically copied on such correspondence. Herzing 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 investigator determines that there is no reasonable cause to believe that the policy has been violated, the process will end unless the Complainant 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 Student Services or Human Resources departments may provide interim remedies intended to address the needs of the Complainant, Responding Party, and Herzing 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 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, Herzing 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.

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 Complainant;
- Identify all policies allegedly violated;
- Meet with the Complainant 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 Complainant 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 Complainant 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 Complainant 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 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 Herzing 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. Herzing 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, Herzing 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 Complainant 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 Herzing 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.

Herzing University expects that the parties will wish to share documentation related to the allegations with their advisors. Herzing University provides a consent form that authorizes such sharing. The parties must complete this form before Herzing 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 Herzing University. Herzing 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 Herzing University's privacy expectations.

Herzing University expects an advisor to adjust their schedule to allow them to attend University meetings when scheduled. Herzing University does not typically change scheduled meetings to accommodate an advisor's inability to attend. However, Herzing 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 Complainant (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 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 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 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 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 Herzing University is permitted to share according to state or federal law, and the rationale supporting the essential findings to the extent Herzing University is permitted to share under state or federal law. The notice will also include information on when the results are considered by Herzing 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 Complainant 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:** Herzing 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:** Herzing University reserves the right to revoke a degree awarded from Herzing 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, Herzing 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, Herzing 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 Herzing 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 Title IX Coordinator 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 Herzing 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 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 Herzing 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 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 Title IX Coordinator, the Title IX Coordinator will implement any interim supportive measures deemed reasonable and necessary to both the Complainant and Responding Party. The Title IX Coordinator will advise the Complainant of their options for resolution. Herzing University presumes that the respondent is not responsible for the alleged policy violation until a determination is made at the conclusion of its resolution procedures.

Herzing University will initiate a confidential investigation that is thorough, reliable, impartial, prompt and fair. The investigation and the subsequent resolution process determine whether Herzing University's policies have been violated. If so, Herzing 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 Herzing 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 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 investigative process

Investigators and members of the Discrimination Review 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 discrimination; Herzing 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 Herzing University's nondiscrimination policies have been violated should contact 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 Herzing University's nondiscrimination policies are expected to promptly contact the Title IX Coordinator, within 24 hours of becoming aware of a report or incident.

## Preliminary Inquiry

Following receipt of notice or a report of discrimination, the Title IX Coordinator 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 2-3 days in duration.

In cases where the Complainant 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:

## Written Notice of Allegations

- 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 Title IX Coordinator will provide written notification of the allegations to the parties at an appropriate time during the investigation. Once mailed, emailed and/or received in-person, parties will be given five (5) days to respond before any initial interview. Written notices of allegation will include the following:

- Herzing University's resolution procedures, including information on informal resolution;
- Sufficient information available at the time to allow the parties to respond to the allegations, including the identities of the parties involved in the incident(s), the conduct alleged to constitute discrimination, and the date(s) and location(s) of the alleged incident(s);
- Notice that retaliation is prohibited;
- A statement that the Responding Party is presumed not responsible for the alleged policy violation until a determination is made at the conclusion of the resolution process;
- Prior to such a determination the parties will have an opportunity to present relevant and not otherwise impermissible evidence to a trained, impartial investigator;
- The parties may have an advisor of their choice who may be, but is not required to be, an attorney;
- The parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence or an investigative report that accurately summarizes this evidence. If provided with access to an investigative report, the parties are entitled to an equal opportunity to access the relevant and not impermissible evidence upon the request of any party; and
- Herzing University's Student Code of Conduct prohibits knowingly making false statements or knowingly submitting false information during resolution procedures.

If, in the course of an investigation, the Title IX Coordinator decides to investigate additional allegations by the Responding Party toward the Complainant that are not included in the written notice or that are included in a consolidated complaint, Herzing University will provide written notice of the additional allegations to the parties.

Herzing 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 investigator determines that there is no reasonable cause to believe that the nondiscrimination policy has been violated, the process will end unless the Complainant 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 Affairs or the Vice President of Human Resources may provide interim remedies intended to address the needs of the Complainant, Responding Party, and Herzing 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 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. Herzing University will not offer Informal Resolution to resolve a complaint when such a process would conflict with Federal, State, or local law.

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 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
- How records of the process will be maintained and shared

The Title IX Coordinator will coordinate the Alternative Resolution process unless good cause requires another individual. Any direct mediation between parties will be conducted by Herzing University's wellness counseling staff. A report summarizing any mediation session will be sent to the Title IX Coordinator. 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, Herzing University will not conduct a formal investigation unless the Title IX Coordinator determines that the Responding Party 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.

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 burden is on Herzing University and not any party to conduct an investigation that collects sufficient evidence to determine whether the allegation(s) occurred.

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 Complainant;
- Identify all policies allegedly violated;
- Meet with the Complainant to finalize their statement, if necessary;
- Prepare the written 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;

- 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 Complainant 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 an equal opportunity for the parties to present fact witnesses and other inculpatory and exculpatory evidence that are relevant and not otherwise impermissible;
- Review all evidence gathered through the investigation and determine what evidence is relevant and what evidence is impermissible regardless of relevance;
- Provide the parties with all relevant evidence to be made available to the Review Board 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 Complainant 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 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 Herzing 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. Herzing University cannot guarantee equal advisory rights, meaning that if one party selects an advisor who is an attorney, but the other party does not have, or cannot afford an attorney, Herzing 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 Complainant 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 Herzing 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.

Herzing University expects that the parties will wish to share documentation related to the allegations with their advisors. Herzing University provides a consent form that authorizes such sharing. The parties must complete this form before Herzing 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 Herzing University. Herzing 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 Herzing University's privacy expectations.

Herzing University expects an advisor to adjust their schedule to allow them to attend University meetings when scheduled. Herzing University does not typically change scheduled meetings to accommodate an advisor's inability to attend. However, Herzing 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, which includes determinations on each policy violation, 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 deliberation report and deliver it to the Title IX Coordinator within 2 business days 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 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 Herzing University is permitted to share according to state or federal law, and the rationale supporting the essential findings to the extent Herzing University is permitted to share under state or federal law. The notice will also include information on when the results are considered by Herzing 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 Complainant 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 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 may be noted as a Conduct Dismissal on the student's official transcript.
- **Withholding Diploma:** Herzing University may withhold a student's diploma for a specified period 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:** Herzing University reserves the right to revoke a degree awarded from Herzing 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, Herzing 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, Herzing 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 Herzing 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 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, which could substantially impact the original finding or sanction. A summary of this new evidence and its potential impact must be included.
- The Review Board, Title IX Coordinator, or investigator had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that would change the outcome.

Herzing University's Chief Operating Officer 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. Where the Chief Operating Officer 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 Chief Operating Officer 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 Chief Operating Officer 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 Chief Operating Officer, 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 Herzing 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 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. 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 Herzing 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.

## Information on Registered Sex Offenders

In compliance with the Campus Sex Crimes Prevention Act of 2000 (CSCPA), the Jeanne Clery Act, and the Family Educational Rights and Privacy Act of 1974 (FERPA), Herzing University is providing the below link to the Federal Bureau of Investigation's (FBI) *National Sex Offender Public Website*, which provides law enforcement information for each state concerning registered sex offenders:

<http://www.fbi.gov/scams-safety/registry>

The information provided through the link above should be used for informational purposes only, to aid in protection of the general public, and children in particular. The use of sex offender registry information to engage in intimidation, harassment, or any other illegal activity could be subject to criminal prosecution.

## Reporting Suspected Physical or Sexual Abuse of Children

Any University employee who in the course of employment receives information concerning suspected physical or sexual abuse of a child or who reasonably suspects the physical or sexual abuse of a child must immediately report such information to the Title IX Coordinator and to the Vice President of Human Resources if the abuse involves an employee. If there is reason to believe that a child may be in danger and that immediate protection for that child is warranted, an oral report will also be made immediately to the appropriate law enforcement agency by the Title IX Coordinator.

## Reporting Crimes or Emergencies on Campus

Herzing University students and employees are encouraged to report all observed criminal action, emergencies, or other safety concerns to the Director of Campus Operations, even if the victim of such an event is unable or opts not to make such a report. In the absence of the Director of Campus Operations, the report should be made to another Campus Security Authority as listed below.

### **Birmingham Campus Security Authorities:**

Sarah Higgins – Regional Vice President of Operations - South

Kandis Steele –Director of Campus Operations

Kentray Sims – Sr. Financial Aid Advisor

Herzing University maintains a close relationship with local law enforcement, and if necessary, the Director of Campus Operations or other designee will contact the emergency response unit of the local police department by dialing 911. The administrator to whom the crime or emergency is reported will make written notation, including names, date and time of the reported incident and will remain on duty to assist the police in establishing details of

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the incident reported. This notation will be provided to the Director of Campus Operations to be added to the campus crime log. In the absence of all Campus Security Authorities, reporting of criminal actions, and/or emergencies to the appropriate law enforcement agencies should be undertaken directly by the employee or student who either has been victimized or has observed an alleged criminal action or emergency.

## Timely Warning Policy

In the event that certain crimes take place either on or off-campus that the Director of Campus Operations believes constitute an ongoing threat to the campus community, a campus-wide timely warning notice will be issued to the campus community. The goal of issuing a timely warning is to prevent future such crimes from occurring. The notice will be issued through the Herzing University email system to students, faculty and staff. Related information will also be posted to Canvas and in staff common areas as appropriate. The warning will withhold the names of victims as confidential information.

## Immediate Notification Policy

If an event occurs, either on or off-campus, that the Director of Campus Operations believes constitutes a significant emergency or an immediate threat to the health or safety of the campus community, a campus-wide notification will be issued by activating the Emergency Alert System. Herzing University maintains the Emergency Alert System to provide information to Herzing University community in the event of an emergency situation. The means of delivery of emergency information is email, text messaging to mobile phones, and voice messaging to either mobile or landline phones. As Herzing University provides all students with an individual email address, this is the email address that will be used by default in the emergency alert system. Students can update their emergency alert preferences through the Herzing Portal site. Herzing University faculty and staff members can update their personal emergency notification information through the Human Resources department.

The Emergency Alert System is triggered on confirmation of an emergency or situation involving an immediate threat to the health or safety of students or employees occurring at or near the campus. “Immediate” threat in this case would mean an imminent or impending threat. “Confirmation” means that an institutional official(s) has verified that a legitimate emergency or threat exists.

Examples of significant emergencies or dangerous situations are:

- Extreme weather (e.g. flash flood, tornado)
- Gas leak
- Bomb threat
- Active shooter

The Emergency Alert System is also used in the event of a building closure due to such event as a snow closure or power outage as an additional means of notifying students, faculty, and staff that they should not report to the building and that service may be limited.

Prior to activation of the Emergency Alert System, the Director of Campus Operations will determine whether in their judgment the information suggesting that an emergency has occurred is credible, and whether issuing a notification would compromise efforts to assist a victim or to contain, respond to, or otherwise mitigate the emergency situation. If the Director of Campus Operations is unable to carry out the aforementioned duties, they will be carried out by another member of the Emergency Management Team.

In the event of an emergency, the Director of Campus Operations will draft a brief notice containing relevant information about the nature of the emergency (e.g. approaching tornado, gas leak, etc.) and include direction regarding the appropriate response (e.g. shelter in place, evacuate, etc.). In addition to activating the Emergency Alert System, the Director of Campus Operations may also send an email notification to all staff or send runners to locations throughout the campus building to notify students and staff of the need to take action.

## Emergency Preparedness Plan

The *Herzing University Emergency Preparedness Plan* establishes and delineates policies, procedures, and an organizational structure to prepare for and respond appropriately and effectively to on-campus emergencies. Accordingly, the Emergency Preparedness Plan specifies administrative steps for response to, stabilization of, and recovery from an emergency event. Additionally, the plan outlines protocol Herzing University will follow to communicate with students, faculty, staff and the public during an emergency and clearly defines the responsibilities of the Emergency Management Team.

### Emergency Management Team

The main purpose of the Emergency Management Team is to execute emergency preparedness, response, and recovery functions as detailed in the Emergency Preparedness Plan. The Emergency Management Team is additionally responsible for implementation of such emergency procedures as: initiation of the Emergency Alert System (detailed below), evacuations, lockdowns, crowd control, and coordination with responding emergency service providers. That campus' Emergency Management Team will also assess the efficacy of the campus' Emergency Preparedness Plan annually, and a report made to the Home Office.

The Birmingham Campus Emergency Management Team consists of:

Sarah Higgins – Regional Vice President of Operations - South

Kandis Steele – Director of Campus Operations

Kentray Sims – Sr. Financial Aid Advisor

### Emergency Response Quick Reference Guide

The *Herzing University Emergency Response Quick Reference Guide* outlines the appropriate emergency or evacuation procedures for specific emergency events (e.g. fire, severe weather, bomb threat). The Quick Reference Guide is published in an easy-to-use poster form that is readily available in public spaces on campus. All students, faculty and staff are encouraged to review the Quick Reference Guide periodically to be prepared in the event of an emergency. Herzing University tests emergency response and evacuation procedures on an annual basis and makes updates as necessary.

## Emergency Actions

### Evacuation

Each classroom, office, common area and workstation has evacuation routes posted indicating the ideal evacuation route for that space.

In the event of a situation that the Director of Campus Operations or appropriate designee deems to require an evacuation of the campus, emergency evacuation procedures will be enacted as follows:

1. The Director of Campus Operations or designee will announce the evacuation.
  - a. An announcement may be made in any practical manner, including, but not limited to: triggering a fire alarm, sending runners throughout the building to announce the evacuation, email/text/phone alerts, via a public address (PA) system if available.
2. Individuals will follow the posted evacuation plan for their location.
  - a. If an exit is blocked due to some hazard, the next closest evacuation route should be used.
  - b. In the event of an evacuation due to fire or toxic substances, never use an elevator. An elevator may become stuck, leaving its occupants exposed to smoke inhalation or an otherwise dangerous environment. Proceed to the nearest staircase and descend to a safe egress level.
  - c. Meet at the assembly point. **The assembly point for the Birmingham campus is the main parking lot, leaving space for emergency vehicles.** Stay grouped by department or class.
  - d. **A backup location if the original location is compromised is the Parking Lot at 298 West Valley Avenue.**
3. Take attendance to account for all students and staff members, if possible.
  - a. Directors of each department should account for all department members.
  - b. Instructors should account for all students present in class.
4. Notify members of the Emergency Management Team immediately if anyone is unaccounted for.
5. A member of the Emergency Management Team must activate the AMG alert system to notify campus community members that an evacuation has taken place, the reason for the evacuation, and that they should stay off campus until further notice.
6. The evacuation should be maintained until a campus administrator gives an all-clear notice.

### Shelter in Place

Each classroom, office, common area and workstation has shelter in place areas posted indicating the ideal shelter location for that space.

In the event of a situation that the Director of Campus Operations or appropriate designee deems to require the campus to shelter in place, emergency shelter in place procedures will be enacted as follows:

1. The Director of Campus Operations or designee will announce the need to shelter in place. *Note: If a tornado siren sounds, do not wait for further instruction to begin moving to a safe location.*
    - a. An announcement may be made in any practical manner, including, but not limited to: sending runners throughout the building to announce the shelter in place process, email/text/phone alerts, or via a public address (PA) system if available.
  2. Individuals will follow the posted shelter in place instructions for their area. The ideal shelter area may vary based on the type of event.
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- a. For a severe wind event, such as a tornado, the ideal location for shelter is in the basement level of a structure. If a basement is not available, shelter should be taken in an interior room with no windows on the lowest level of the building. If all rooms have windows, or not enough space is available without windows, shelter can be taken in an interior staircase.
  - b. For a toxic external atmosphere, the ideal shelter location is any area of campus with limited external ventilation, or an area where ventilation can be controlled. Rooms without windows or at least without windows that can be opened are best.
  - c. For a hurricane, the best location for shelter is on the lowest floor possible (this may not be the main floor if flooding occurs) in a space with no windows or external walls. If all rooms have windows, or not enough space is available without windows, shelter can be taken in an interior staircase.
3. In the event of an order to shelter in place due to severe weather or toxic external substances, never use an elevator. An elevator may become stuck, leaving its occupants trapped due to interruption of power to the building or exposed to an otherwise dangerous environment. Proceed to the nearest staircase and descend to a level with an appropriate shelter area.
4. Directors should attempt to account for all members of their teams, and instructors should account for all individuals who were present in class.
5. Notify members of the Emergency Management Team immediately if anyone is unaccounted for.
6. A member of the Emergency Management Team should activate the AMG alert system to notify campus community members of any ongoing threat and that they should stay off campus until further notice, if applicable.
7. All individuals should remain sheltered until a campus administrator has given an all-clear notice.

## Lockdown

In the event of a situation that the Director of Campus Operations or appropriate designee deems to require a lockdown of the campus, emergency lockdown procedures will be enacted as follows:

1. The Director of Campus Operations or designee will announce the lockdown.
  - a. An announcement may be made in any practical manner, including, but not limited to: sending runners throughout the building to announce the lockdown, email/text/phone alerts, or via a public address (PA) system if available.
2. A member of the Emergency Management Team must activate the AMG alert system to notify campus community members that a lockdown is in effect, the reason for the lockdown, and that they should stay away from campus until further notice.
3. When an order to “Lockdown” has been given, all staff and faculty members must follow the below instructions given.
  - a. Classroom instructors are to:
    - i. Quickly glance outside the classroom to direct any students or staff members in the hall into your room immediately.
    - ii. Lock the classroom door.
    - iii. Lower or close any blinds or shades.
    - iv. Instruct students to sit or stand against the wall so an intruder cannot see them looking in the door. Find your “Safe Corner”.
    - v. Locate and hold onto the attendance log to account for all students in the event evacuation is ordered.
    - vi. Turn out any lights or computer monitors.
    - vii. Keep everyone in the room quiet.

- b. Staff members with an office are to:
    - i. Quickly glance outside the office to invite any other staff or students in the immediate area inside.
    - ii. Lock the door to the office.
    - iii. Shut the blinds or shades.
    - iv. Turn out the lights and computer monitor.
    - v. Sit on the floor against the wall or behind a desk so as not to be seen from the door.
    - vi. Remain quiet.
  - c. Any students or staff in an open common area or hallway should move to the nearest classroom or office to lockdown.
  - d. Any students or staff in common area with a door that locks (e.g. a break room, computer lab, library, etc.) are to:
    - i. Quickly glance outside the room to invite any other staff or students inside.
    - ii. Lock the door.
    - iii. Shut the blinds or shades.
    - iv. Turn out any lights and computer monitors.
    - v. Sit quietly in a space that is not easily seen from the door.
  - e. Anyone in the bathroom during a lockdown should lock the bathroom, if possible, otherwise they should move into a stall, lock the door, and crouch on top of the toilet so that feet cannot be seen under the door.
  - f. Anyone outside of the building should stay where they are, low to the ground, and remain still.
- 4. Everyone must remain in the lockdown position unless directed by a law enforcement officer or campus administrator to move or evacuate. Doors should never be unlocked during a lockdown, even in the event the fire alarm sounds.
  - 5. An administrator will signal when the lockdown has been lifted.
  - 6. If an evacuation occurs, a law enforcement official or campus administrator will direct all individuals/classrooms to a safe location.
  - 7. Once evacuated, all instructors should take attendance for their class to ensure that all students are accounted for. Staff departments should assemble to account for any missing staff.

Immediately notify a member of the Emergency Management Team if any student or staff member is unaccounted for.

## Post-Emergency Measures

Following any emergency, the Chief Operations Officer, Regional Vice President of Operations, and Director of Campus Operations will communicate details of the emergency and any action taken to the Home Office if they were not in communication with the Home Office during the emergency situation. The Emergency Management Team will begin coordination with the Home Office to assess the situation and identify and mitigate any remaining risk to the campus community. The Emergency Management Team will work to maintain order and restore general campus operations as quickly as is practical.

If necessary, a member of the Emergency Management Team will notify external emergency response entities (e.g. local law enforcement or the fire department) that an emergency took place. Any necessary follow-up communications to students or staff will be sent out via Herzing email or posted to the online student portal.

## Annual Testing

Herzing University conducts annual tests of the Emergency Alert System and Emergency Management Team response to ensure preparedness in the event of an actual emergency. Tests include sending an alert via the Emergency Alert System and conducting a scheduled drill or exercise on campus with appropriate follow-through activities to assess the effectiveness of the emergency alert plan. Both the Home Office and the campus maintain documentation of each test. Documentation includes a description of the exercise, the date and time the exercise took place, and whether it was announced or unannounced.

## Annual Notification

Herzing University publishes and distributes this report annually to current and prospective employees and students.

## Crime Statistics

Each year Herzing University prepares the crime statistics included in this report with assistance from Herzing University's campus security authorities and local law enforcement agencies. When compiling and preparing the statistics disclosed in this report, Herzing University examines crime information received from local law enforcement, incident reports filed by any member of the campus community or the campus security authorities, and the campus crime log.

The Clery Act requires institutions to report statistics concerning the occurrence on campus and in other geographic areas specified in the Act of the following criminal offenses reported to campus security authorities or local police: 1) criminal homicide, murder and non-negligent manslaughter, negligent manslaughter; 2) sex offenses, forcible or non-forcible; 3) robbery; 4) aggravated assault; 5) burglary; 6) motor vehicle theft; 8) arson; 9) domestic violence; 10) dating violence; 11) stalking; and 12) arrests or persons referred for campus disciplinary action for liquor law violations, drug-related violations and illegal weapons possessions.

In addition, the Act requires institutions to report statistics for certain bias-motivated crimes. Hate crime statistics must account for all of the offenses mentioned above, as well as the additional offenses of larceny-theft, simple assault, intimidation, and destruction, damage, or vandalism of property, and of other crimes involving bodily injury to any person in which the victim is intentionally selected because of the actual or perceived race, gender, gender identity, religion, sexual orientation, ethnicity, national origin, or disability of the victim. These statistics must be presented according to category of prejudice. Herzing University only lists out categories of prejudice and the additional offenses on this disclosure if a hate crime has been reported. In the event that no hate crimes have been reported for the given period, a statement to that effect is made with the listing of the standard statistics.

See following page for statistics.

## Herzing University – Birmingham Crime Statistics

|  | 2021 |    |    | 2022 |    |    | 2023 |    |    |
|--|------|----|----|------|----|----|------|----|----|
|  | OC   | NC | PP | OC   | NC | PP | OC   | NC | PP |
| Murder /Non-Negligent Manslaughter   | 0    | 0  | 0  | 0    | 0  | 0  | 0    | 0  | 0  |
| Negligent Manslaughter   | 0    | 0  | 0  | 0    | 0  | 0  | 0    | 0  | 0  |
| Rape   | 0    | 0  | 0  | 0    | 0  | 0  | 0    | 0  | 0  |
| Fondling   | 0    | 0  | 0  | 0    | 0  | 0  | 0    | 0  | 0  |
| Statutory Rape   | 0    | 0  | 0  | 0    | 0  | 0  | 0    | 0  | 0  |
| Incest   | 0    | 0  | 0  | 0    | 0  | 0  | 0    | 0  | 0  |
| Domestic Violence  | 0    | 0  | 0  | 0    | 0  | 0  | 0    | 0  | 0  |
| Dating Violence  | 0    | 0  | 0  | 0    | 0  | 0  | 0    | 0  | 0  |
| Stalking   | 0    | 0  | 0  | 0    | 0  | 0  | 0    | 0  | 0  |
| Robbery  | 0    | 0  | 0  | 0    | 0  | 0  | 0    | 0  | 0  |
| Aggravated Assault   | 0    | 0  | 0  | 0    | 0  | 0  | 0    | 0  | 0  |
| Burglary   | 0    | 0  | 0  | 0    | 0  | 0  | 0    | 0  | 0  |
| Motor Vehicle Theft  | 0    | 0  | 0  | 0    | 0  | 0  | 0    | 0  | 0  |
| Arson  | 0    | 0  | 0  | 0    | 0  | 0  | 0    | 0  | 0  |
| In addition to the above crimes, the following numbers of arrests were made for these specific violations: |      |    |    |      |    |    |      |    |    |
|  | 2021 |    |    | 2022 |    |    | 2023 |    |    |
|  | OC   | NC | PP | OC   | NC | PP | OC   | NC | PP |
| Liquor Law Arrests   | 0    | 0  | 0  | 0    | 0  | 0  | 0    | 0  | 0  |
| Drug Law Arrest  | 0    | 0  | 0  | 0    | 0  | 0  | 0    | 0  | 0  |
| Illegal Weapons Possession Arrests   | 0    | 0  | 0  | 0    | 0  | 0  | 0    | 0  | 0  |

OC - On Campus Property, NC - Non-Campus Property, PP - Public Property

**There were no reported hate crimes for the years 2021, 2022 or 2023.**



## Appendix A

### State of Alabama Definitions

#### **Consent:**

##### **Section 13A-6-70**

##### **Lack of consent.**

(a) Unless otherwise stated, an element of every offense defined in this article is that the sexual act was committed without the consent of the victim.

(b) Lack of consent results from either of the following:

(1) Forcible compulsion.

(2) Being incapable of consent.

(c) A person is deemed incapable of consent if he or she is either:

(1) Less than 16 years old.

(2) Incapacitated.

(d) Consent to engage in sexual intercourse, sodomy, sexual acts, or sexual contact may be communicated by words or actions. The existence of a current or previous marital, dating, social, or sexual relationship with the defendant is not sufficient to constitute consent. Evidence that the victim suggested, requested, or otherwise communicated to the defendant that the defendant use a condom or other birth control device or sexually transmitted disease protection, without additional evidence of consent, is not sufficient to constitute consent.

<https://law.justia.com/codes/alabama/2021/title-13a/chapter-6/article-4/section-13a-6-70/>

**Dating Violence:** The term dating violence is not defined by Alabama law, as such. However, the term dating violence is incorporated into the definition of domestic violence because the definition of domestic violence includes “dating or engagement” relationships. Accordingly, dating violence is properly defined as “Any incident resulting in the abuse , assault , harassment or the attempt or threats thereof, between members of a dating or engagement relationship.

<https://law.justia.com/codes/alabama/2021/title-13a/chapter-6/article-7/>

#### **Domestic Violence:**

##### **Section 13A-6-130**

##### **Domestic violence - First degree.**

(a)(1) A person commits the crime of domestic violence in the first degree if the person commits the crime of assault in the first degree pursuant to Section 13A-6-20; aggravated stalking pursuant to Section 13A-6-91; or burglary in the first degree pursuant to Section 13A-7-5 and the victim is a current or former spouse, parent, step-parent, child,

step-child, any person with whom the defendant has a child in common, a present household member, or a person who has or had a dating relationship with the defendant.

(2) For the purposes of this section, a household member excludes non-romantic or non-intimate co-residents, and a dating relationship means a current or former relationship of a romantic or intimate nature characterized by the expectation of affectionate or sexual involvement by either party.

(b) Domestic violence in the first degree is a Class A felony, except that the defendant shall serve a minimum term of imprisonment of one year without consideration of probation, parole, good time credits, or any other reduction in time for any second or subsequent conviction under this subsection.

(c) The minimum term of imprisonment imposed under subsection (b) shall be double without consideration of probation, parole, good time credits, or any reduction in time if either of the following occurs:

(1) A defendant willfully violates a protection order issued by a court of competent jurisdiction and in the process of violating the order commits domestic violence in the first degree.

(2) The offense was committed in the presence of a child under the age of 14 years at the time of the offense, who is the victim's child or step-child, the defendant's child or step-child, or who is a child residing in or visiting the household of the victim or defendant. For purposes of this subsection, "in the presence of a child" means that the child was in a position to see or hear the act.

(d) The court shall make a written finding of fact, to be made part of the record upon conviction or adjudication, of whether or not the act was committed in the presence of a child. If a defendant has a trial by jury and the jury finds the defendant guilty, the jury shall also render a special verdict as to whether or not the defendant committed the act in the presence of a child.

## **Section 13A-6-131**

### **Domestic violence - Second degree.**

(a)(1) A person commits the crime of domestic violence in the second degree if the person commits the crime of assault in the second degree pursuant to Section 13A-6-21; the crime of intimidating a witness pursuant to Section 13A-10-123; the crime of stalking pursuant to Section 13A-6-90; the crime of burglary in the second or third degree pursuant to Sections 13A-7-6 and 13A-7-7; or the crime of criminal mischief in the first degree pursuant to Section 13A-7-21 and the victim is a current or former spouse, parent, step-parent, child, step-child, any person with whom the defendant has a child in common, a present household member, or a person who has or had a dating relationship with the defendant.

(2) For the purposes of this section, a household member excludes non-romantic or non-intimate co-residents, and a dating relationship means a current or former relationship of a romantic or intimate nature characterized by the expectation of affectionate or sexual involvement by either party.

(b) Domestic violence in the second degree is a Class B felony, except the defendant shall serve a minimum term of imprisonment of six months without consideration of probation, parole, good time credits, or any reduction in time for any second or subsequent conviction under this subsection.

(c) The minimum term of imprisonment imposed under subsection (b) shall be double without consideration of probation, parole, good time credits, or any reduction in time if either of the following applies:

(1) A defendant willfully violates a protection order issued by a court of competent jurisdiction and in the process of violating the order commits domestic violence in the second degree.

(2) The offense was committed in the presence of a child under the age of 14 years at the time of the offense, who is the victim's child or step-child, the defendant's child or step-child, or who is a child residing in or visiting the household of the victim or defendant. For purposes of this subsection, "in the presence of a child" means that the child was in a position to see or hear the act.

(d) The court shall make a written finding of fact, to be made part of the record upon conviction or adjudication, of whether or not the act was committed in the presence of a child. If a defendant has a trial by jury and the jury finds the defendant guilty, the jury shall also render a special verdict as to whether or not the defendant committed the act in the presence of a child.

## **Section 13A-6-132**

### **Domestic violence - Third degree.**

(a)(1) A person commits domestic violence in the third degree if the person commits the crime of assault in the third degree pursuant to Section 13A-6-22; the crime of menacing pursuant to Section 13A-6-23; the crime of reckless endangerment pursuant to Section 13A-6-24; the crime of criminal coercion pursuant to Section 13A-6-25; the crime of harassment pursuant to subsection (a) of Section 13A-11-8; the crime of criminal surveillance pursuant to Section 13A-11-32; the crime of harassing communications pursuant to subsection (b) of Section 13A-11-8; the crime of criminal trespass in the third degree pursuant to Section 13A-7-4; the crime of criminal mischief in the second or third degree pursuant to Sections 13A-7-22 and 13A-7-23; or the crime of arson in the third degree pursuant to Section 13A-7-43; and the victim is a current or former spouse, parent, step-parent, child, step-child, any person with whom the defendant has a child in common, a present household member, or a person who has or had a dating relationship with the defendant.

(2) For the purpose of this section, a household member excludes non-romantic or non-intimate co-residents, and a dating relationship means a current or former relationship of a romantic or intimate nature characterized by the expectation of affectionate or sexual involvement by either party.

(b) Domestic violence in the third degree is a Class A misdemeanor. The minimum term of imprisonment imposed under subsection (a) shall be 30 days without consideration of reduction in time if a defendant willfully violates a protection order issued by a court of competent jurisdiction and in the process of violating the order commits domestic violence in the third degree.

(c) A second conviction under subsection (a) is a Class A misdemeanor, except the defendant shall serve a minimum term of imprisonment of 10 days in a city or county jail or detention facility without consideration for any reduction in time.

(d) A third or subsequent conviction under subsection (a) is a Class C felony.

(e) If the defendant has a previous conviction for domestic violence in the first degree pursuant to Section 13A-6-130, domestic violence in the second degree pursuant to Section 13A-6-131, domestic violence by strangulation or suffocation pursuant to Section 13A-6-138, or a domestic violence conviction or other substantially similar conviction from another state or jurisdiction, a conviction under subsection (a) is a Class C felony.

(f) For purposes of determining second, third, or subsequent number of convictions, convictions in municipal court shall be included.

## **Section 13A-6-138**

### **Domestic violence by strangulation or suffocation.**

(a) For the purposes of this section, the following terms have the following meanings:

(1) **STRANGULATION.** Intentionally causing asphyxia by closure or compression of the blood vessels or air passages of the neck as a result of external pressure on the neck.

(2) **SUFFOCATION.** Intentionally causing asphyxia by depriving a person of air or by preventing a person from breathing through the inhalation of toxic gases or by blocking or obstructing the airway of a person, by any means other than by strangulation.

(b) A person commits the crime of domestic violence by strangulation or suffocation if he or she commits an assault with intent to cause physical harm or commits the crime of menacing pursuant to Section 13A-6-23, by strangulation or suffocation or attempted strangulation or suffocation and the victim is a current or former spouse, parent, step-parent, child, step-child, any person with whom the defendant has a child in common, a present household member, or a person who has or had a dating relationship with the defendant. For the purpose of this section, a household member excludes non-romantic or non-intimate co-residents, and a dating relationship means a current or former relationship of a romantic or intimate nature characterized by the expectation of affectionate or sexual involvement by either party.

(c) Domestic violence by strangulation or suffocation is a Class B felony punishable as provided by law.

<https://law.justia.com/codes/alabama/2021/title-13a/chapter-6/article-7/>

**Sexual Assault:** Sexual assault has been defined to include any sexual offense set out in Ala. Code 1975, §§ 13A-6-60 through 13A-6-71.

The following crimes are set out under those sections of the Alabama Criminal Code:

## **Section 13A-6-60**

### **Definitions.**

The following definitions apply in this article:

(1) **FORCIBLE COMPULSION.** Use or threatened use, whether express or implied, of physical force, violence, confinement, restraint, physical injury, or death to the threatened person or to another person. Factors to be considered in determining an implied threat include, but are not limited to, the respective ages and sizes of the victim and the accused; the respective mental and physical conditions of the victim and the accused; the atmosphere and physical setting in which the incident was alleged to have taken place; the extent to which the accused may have been in a position of authority, domination, or custodial control over the victim; or whether the victim was under duress. Forcible compulsion does not require proof of resistance by the victim.

(2) **INCAPACITATED.** The term includes any of the following:

a. A person who suffers from a mental or developmental disease or disability which renders the person incapable of appraising the nature of his or her conduct.

b. A person is temporarily incapable of appraising or controlling his or her conduct due to the influence of a narcotic, anesthetic, or intoxicating substance and the condition was known or should have been reasonably known to the offender.

c. A person who is unable to give consent or who is unable to communicate an unwillingness to an act because the person is unconscious, asleep, or is otherwise physically limited or unable to communicate.

(3) SEXUAL CONTACT. Any touching of the sexual or other intimate parts of a person done for the purpose of gratifying the sexual desire of either party. The term does not require skin to skin contact.

(4) SEXUAL INTERCOURSE. Such term has its ordinary meaning and occurs upon any penetration, however slight; emission is not required.

(5) SODOMY. Any sexual act involving the genitals of one person and the mouth or anus of another person.

## **Section 13A-6-61**

### **Rape in the first degree.**

(a) A person commits the crime of rape in the first degree if he or she does any of the following:

(1) Engages in sexual intercourse with another person by forcible compulsion.

(2) Engages in sexual intercourse with another person who is incapable of consent by reason of being incapacitated.

(3) Being 16 years old or older, engages in sexual intercourse with another person who is less than 12 years old.

(b) Rape in the first degree is a Class A felony.

## **Section 13A-6-62**

### **Rape in the second degree.**

(a) A person commits the crime of rape in the second degree if, being 16 years old or older, he or she engages in sexual intercourse with another person who is 12 years old or older, but less than 16 years old; provided, however, the actor is at least two years older than the other person.

(b) Rape in the second degree is a Class B felony.

## **Section 13A-6-63**

### **Sodomy in the first degree.**

(a) A person commits the crime of sodomy in the first degree if he or she does any of the following:

(1) Engages in sodomy with another person by forcible compulsion.

(2) Engages in sodomy with another person who is incapable of consent by reason of being incapacitated.

(3) Being 16 years old or older, engages in sodomy with a person who is less than 12 years old.

(b) Sodomy in the first degree is a Class A felony.

## **Section 13A-6-64**

### **Sodomy in the second degree.**

(a) A person commits the crime of sodomy in the second degree if, being 16 years old or older, he or she engages in sodomy with another person 12 years old or older, but less than 16 years old; provided, however, the actor is at least two years older than the other person.

(b) Sodomy in the second degree is a Class B felony.

## **Section 13A-6-65**

### **Sexual misconduct.**

(a) A person commits the crime of sexual misconduct if he or she does any of the following:

(1) Engages in sexual intercourse with another person without his or her consent, under circumstances other than those covered by Sections 13A-6-61 and 13A-6-62; or with consent where consent was obtained by the use of any fraud or artifice.

(2) Engages in sodomy with another person, without his or her consent, under circumstances other than those covered by Sections 13A-6-63 and 13A-6-64; or with consent where consent was obtained by the use of fraud or artifice.

(3) Engages in sexual contact with another person without his or her consent under circumstances other than those under Sections 13A-6-66, 13A-6-67, and 13A-6-69.1; or with consent where consent was obtained by the use of fraud or artifice.

(b) Sexual misconduct is a Class A misdemeanor.

## **Section 13A-6-65.1**

### **Sexual torture.**

(a) A person commits the crime of sexual torture if he or she does any of the following:

(1) Penetrates the vagina, anus, or mouth of another person with an inanimate object, by forcible compulsion, with the intent to sexually torture, sexually abuse, or to gratify the sexual desire of either party.

(2) Penetrates the vagina, anus, or mouth of a person who is incapable of consent by reason of being incapacitated, with an inanimate object, with the intent to sexually torture, sexually abuse, or to gratify the sexual desire of either party.

(3) Penetrates the vagina, anus, or mouth of a person who is less than 12 years old, with an inanimate object, by a person who is 16 years old or older with the intent to sexually torture, sexually abuse, or to gratify the sexual desire of either party.

(4) By inflicting physical injury, including, but not limited to, burning, crushing, wounding, mutilating, or assaulting the sex organs or intimate parts of another person, with the intent to sexually torture, sexually abuse, or to gratify the sexual desire of either party.

(b) The crime of sexual torture is a Class A felony.

## **Section 13A-6-66**

### **Sexual abuse in the first degree.**

(a) A person commits the crime of sexual abuse in the first degree if he or she does either of the following:

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- (1) Subjects another person to sexual contact by forcible compulsion.
- (2) Subjects another person to sexual contact who is incapable of consent by reason of being incapacitated.
- (b) Sexual abuse in the first degree is a Class C felony.

## **Section 13A-6-67**

### **Sexual abuse in the second degree.**

- (a) A person commits the crime of sexual abuse in the second degree if he or she does either of the following:
  - (1) Subjects another person to sexual contact who is incapable of consent by reason of some factor other than being less than 16 years old.
  - (2) Being 19 years old or older, subjects another person to sexual contact who is less than 16 years old, but more than 12 years old.
- (b) Sexual abuse in the second degree is a Class A misdemeanor, except as provided in subsection (c), or if a person commits a second or subsequent offense of sexual abuse in the second degree within one year of another sexual offense, the offense is a Class C felony.
- (c) If a person violates subdivision (a)(2), and he or she is at least 15 years older than the victim, the offense shall be a Class C felony.

## **Section 13A-6-68**

### **Indecent exposure.**

- (a) A person commits the crime of indecent exposure if, with intent to arouse or gratify sexual desire of himself or herself, or of any person other than his or her spouse, he or she exposes his or her genitals under circumstances in which he or she knows the conduct is likely to cause affront or alarm.
- (b) Indecent exposure is a Class A misdemeanor except a third or subsequent conviction shall be a Class C felony.

## **Section 13A-6-69**

### **Enticing child to enter vehicle, house, etc., for immoral purposes.**

- (a) It shall be unlawful for any person with lascivious intent to entice, allure, persuade, or invite, or attempt to entice, allure, persuade, or invite, any child under 16 years of age to enter any vehicle, room, house, office, or other place for the purpose of proposing to such child the performance of an act of sexual intercourse or an act which constitutes the offense of sodomy or for the purpose of proposing the fondling or feeling of the sexual or genital parts of such child or the breast of such child, or for the purpose of committing an aggravated assault on such child, or for the purpose of proposing that such child fondle or feel the sexual or genital parts of such person.
- (b) A violation of this section is a Class C felony.

## **Section 13A-6-69.1**

### **Sexual abuse of a child less than 12 years old.**

- (a) A person commits the crime of sexual abuse of a child less than 12 years old if he or she, being 16 years old or older, subjects another person who is less than 12 years old to sexual contact.



(b) Sexual abuse of a child less than 12 years old is a Class B felony.

## **Section 13A-6-70**

### **Lack of consent.**

(a) Unless otherwise stated, an element of every offense defined in this article is that the sexual act was committed without the consent of the victim.

(b) Lack of consent results from either of the following:

(1) Forcible compulsion.

(2) Being incapable of consent.

(c) A person is deemed incapable of consent if he or she is either:

(1) Less than 16 years old.

(2) Incapacitated.

(d) Consent to engage in sexual intercourse, sodomy, sexual acts, or sexual contact may be communicated by words or actions. The existence of a current or previous marital, dating, social, or sexual relationship with the defendant is not sufficient to constitute consent. Evidence that the victim suggested, requested, or otherwise communicated to the defendant that the defendant use a condom or other birth control device or sexually transmitted disease protection, without additional evidence of consent, is not sufficient to constitute consent.

## **Section 13A-6-71**

### **Foster parent engaging in a sex act, etc., with a foster child.**

(a) A person commits the crime of engaging in a sex act with a foster child if he or she is a foster parent and engages in sexual intercourse or sodomy, as defined by Section 13A-6-60, with a foster child under the age of 19 years who is under his or her care or supervision. Engaging in a sex act with a foster child is a Class B felony.

(b) A person commits the crime of engaging in a sexual contact with a foster child if he or she is a foster parent and engages in a sexual contact, pursuant to Section 13A-6-60, with a foster child under the age of 19 years who is under his or her care or supervision. Engaging in sexual contact with a foster child is a Class C felony.

(c) A person commits the crime of soliciting a sex act or sexual contact with a foster child if he or she is a foster parent and solicits, persuades, encourages, harasses, or entices a foster child under the age of 19 years to engage in a sex act including, but not limited to, sexual intercourse, sodomy, or sexual contact, as defined by Section 13A-6-60. The crime of soliciting a sex act or sexual contact with a foster child is a Class A misdemeanor.

(d) Consent is not a defense to a charge under subsections (a), (b), or (c).

(e) For the purposes of this section a foster parent is an individual approved or licensed by the Department of Human Resources or other child placing agencies who provides care and supervision to a foster child under the temporary or permanent custody of the department.

<https://law.justia.com/codes/alabama/2021/title-13a/chapter-6/article-4/>

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## **Section 13A-6-90**

### **Stalking in the first degree.**

(a) A person who intentionally and repeatedly follows or harasses another person and who makes a threat, either expressed or implied, with the intent to place that person in reasonable fear of death or serious bodily harm is guilty of the crime of stalking in the first degree.

(b) The crime of stalking in the first degree is a Class C felony.

## **Section 13A-6-90.1**

### **Stalking in the second degree.**

(a) A person who, acting with an improper purpose, intentionally and repeatedly follows, harasses, telephones, or initiates communication, verbally, electronically, or otherwise, with another person, any member of the other person's immediate family, or any third party with whom the other person is acquainted, and causes material harm to the mental or emotional health of the other person, or causes such person to reasonably fear that his or her employment, business, or career is threatened, and the perpetrator was previously informed to cease that conduct is guilty of the crime of stalking in the second degree.

(b) The crime of stalking in the second degree is a Class B misdemeanor.

## **Section 13A-6-91**

### **Aggravated stalking in the first degree.**

(a) A person who violates the provisions of Section 13A-6-90(a) and whose conduct in doing so also violates any court order or injunction is guilty of the crime of aggravated stalking in the first degree.

(b) The crime of aggravated stalking in the first degree is a Class B felony.

## **Section 13A-6-91.1**

### **Aggravated stalking in the second degree.**

(a) A person who violates the provisions of Section 13A-6-90.1 and whose conduct in doing so also violates any court order or injunction is guilty of the crime of aggravated stalking in the second degree.

(b) The crime of aggravated stalking in the second degree is a Class C felony.

## **Section 13A-6-92**

### **Definitions.**

As used in this article, the following terms shall have the following meanings, respectively, unless the context clearly indicates otherwise.

(a) **COURSE OF CONDUCT.** A pattern of conduct composed of a series of acts over a period of time which evidences a continuity of purpose.

(b) CREDIBLE THREAT. A threat, expressed or implied, made with the intent and the apparent ability to carry out the threat so as to cause the person who is the target of the threat to fear for his or her safety or the safety of a family member and to cause reasonable mental anxiety, anguish, or fear.

(c) HARASSES. Engages in an intentional course of conduct directed at a specified person which alarms or annoys that person, or interferes with the freedom of movement of that person, and which serves no legitimate purpose. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress. Constitutionally protected conduct is not included within the definition of this term.

<https://law.justia.com/codes/alabama/2021/title-13a/chapter-6/article-5/>

## 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 have 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 baby-sitter 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 Herzing 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. Herzing 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 Complainant or the Responding Party may lead to conduct action by Herzing 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., Herzing 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 Complainant or the Responding Party, Herzing 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 Herzing University's ability to respond comprehensively.

#### ***Q: Will the Responding Party know my identity?***

**A:** Yes, if Herzing 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 Complainant.

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

**A: Do not** contact the Complainant. 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 Herzing



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 Herzing University's resolution process. Both the Responding Party and the Complainant may also use an attorney as their advisor during Herzing 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:** Herzing University investigates allegations of harassment, discrimination, or misconduct to determine whether there is evidence to indicate that a policy violation is "more likely than not" to have occurred. This standard, called the preponderance standard of evidence, corresponds to an amount of evidence indicating a policy violation is more than 50% likely.

***Q: Will the Complainant 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 Herzing University does not want any of the circumstances (e.g. drug or alcohol use) to inhibit the reporting of sexual misconduct. Herzing 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. Herzing University may still refer a Complainant 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 – ADA and Title IX Coordinator

Kristen Hubert – Human Resources Manager

Danielle Laban – Associate Vice President of Student Affairs

### Hearing/Review Board Pool Members

Dr. Katherine Kautzer – Provost (Chair)

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

Stephanie Marlowe – Human Resources Consultant

Don Patarino – Associate Vice President of Organizational Development

BriAnne Danielson – Vice President of Student Affairs

Jeff Ramsey – Associate Vice President of Student Services

Danielle Laban – Associate Vice President of Student Affairs