



ROCKHURST UNIVERSITY

SEXUAL HARASSMENT POLICY

Purpose: To articulate the University's prohibition of sexual harassment.

Applies to: All Administrators, faculty, staff, students, contractors, guests, and other members of the University community

Policy Owner: Title IX/Student Development

Policy Contact:

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Approval By: President’s Cabinet

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SEXUAL HARASSMENT POLICY

I. POLICY STATEMENT

Consistent with the University's Non-Discrimination Notice and the U.S. Department of Education's implementing regulations for Title IX of the Education Amendments of 1972 ("Title IX") (*see* 34 C.F.R. § 106 *et seq.*), the University prohibits Sexual Harassment that occurs within its education programs and activities.

For purposes of this policy, Sexual Harassment includes Quid Pro Quo Sexual Harassment, Hostile Environment Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence, and Stalking.

Administrators, faculty member, staff, students, contractors, guests, and other members of the University community who commit Sexual Harassment are subject to the full range of University discipline including verbal reprimand; written reprimand; mandatory training, coaching, or counseling; mandatory monitoring; partial or full probation; partial or full suspension; demotion; fines; permanent separation from the institution (that is, termination or dismissal); physical restriction from University property; cancellation of contracts; and any combination of the same.

The University will provide persons who have experienced Sexual Harassment ongoing remedies as reasonably necessary to restore or preserve access to the University's Education Programs and Activities.

Consistent with Title IX, the University also provides certain supports and modifications for persons who are experiencing pregnancy or pregnancy related conditions. The University has a separate [Pregnancy and parenting student Accommodations Policy for Students at <https://www.rockhurst.edu/campus-life/title-ix/pregnancy-accomodations>](https://www.rockhurst.edu/campus-life/title-ix/pregnancy-accomodations) and [Pregnancy Accommodation Policy for Employees at <https://resources.rockhurst.edu/human-resources/employee-handbook>](https://resources.rockhurst.edu/human-resources/employee-handbook) that governs the provision of such supports and modifications.

II. SCOPE

This policy applies to Sexual Harassment that occurs within the University's Education Programs and Activities and that is committed by an administrator, faculty member, staff, student, contractor, guest, or other member of the University community.

This policy does not apply in the following situations:

- Sexual Harassment that occurs off campus, in a private setting, and/or outside the scope of the University's Education Programs and Activities.
- Sexual Harassment that occurs outside the geographic boundaries of the United States, even if the Sexual Harassment occurs in the University's Education Programs and Activities, such as a study abroad program.

Sexual Harassment that occurs either off campus, in a private setting, and/or outside the scope of the University's Education Programs and Activities and/or outside the geographic boundaries of the United States is governed by the Student Conduct Code if alleged to have been committed by a student, the Faculty Handbook if by a faculty member, the Employee Handbook if by a covered employee, or other applicable University policies and standards, including but not limited to the Rockhurst University's Consensual Relationship Policy and Rockhurst University's Non-Discrimination Policy.

III. DEFINITIONS

- A. “Complainant” is an alleged victim of Sexual Harassment.
- B. “Respondent” is a person alleged to have perpetrated Sexual Harassment.
- C. “Sexual Harassment” is conduct on the basis of sex that constitutes Quid Pro Quo Sexual Harassment, Hostile Environment Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence, or Stalking.
- D. “Quid Pro Quo Sexual Harassment” is an employee of the University conditioning the provision of an aid, benefit, or service of the University on an individual’s participation in unwelcome sexual contact.
- E. “Hostile Environment Sexual Harassment” is unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person access to the University’s Education Programs and Activities.
- F. “**Sexual Assault**” consists of one or more of the following:
 - 1. Rape: Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, or by a sex-related object, without the consent of the victim. This definition also includes instance in which the victim is incapable of giving consent because of temporary or permanent mental or physical incapacity (include due to the influence of drugs or alcohol) or because of age. Physical resistance is not required on the part of the victim to demonstrate lack of consent.
 - 2. Fondling: The intentional touching of the clothed or unclothed body parts without consent of the victim for the purpose of sexual degradation, sexual gratification, or sexual humiliation; or the forced touching by the victim of the actor’s clothed or unclothed body parts, without consent of the victim for the purpose of sexual degradation, sexual gratification, or sexual humiliation. This includes instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
 - 3. Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by Missouri law.
 - 4. Sexual intercourse with a person who is under the statutory age of Consent as defined by Missouri law.
- G. “Domestic Violence” is felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of Missouri, or by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of Missouri.
- H. “Dating Violence” is violence committed by a person –
- I. Who is or has been in a social relationship of a romantic or intimate nature with the victim; and

- J.** Where the existence of such a relationship will be determined based on a consideration of the following factors:
- The length of the relationship
 - The type of relationships; and
 - The frequency of interaction between the persons involved in the relationship.
- K.** “Stalking” is engaging in a course of conduct directed at a specific person that would cause a reasonable person to:
- Fear for their safety or the safety of others; or
 - Suffer substantial emotional distress.
- L.** “Consent” refers to words or actions that a reasonable person in the perspective of the Respondent would understand as agreement to engage in the sexual conduct at issue. A person who is Incapacitated is not capable of giving Consent.
- M.** “Coercion” is direct or implied threat of force, violence, danger, hardship, or retribution sufficient to persuade a reasonable person of ordinary susceptibility to perform an act which otherwise would not have been performed or acquiesce in an act to which one would otherwise not have submitted. Coercion can include unreasonable and sustained pressure for sexual activity.
- N.** Coercive behavior differs from seductive behavior based on the type of pressure someone uses to get consent from another. A person’s words or conduct cannot amount to Coercion for purposes of this policy unless they wrongfully impair the other’s freedom of will and ability to choose whether or not to engage in sexual activity.
- O.** “Retaliation” is intimidation, Coercion, or discrimination against any individual for the purpose of interfering with any right or privilege secured by Title IX and its implementing regulations or because an individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this policy.
- P.** “Complainant” means an individual who is alleged to be the victim of conduct that could constitute Sexual Harassment.
- Q.** “Respondent” means an individual who has been reported to be the perpetrator of conduct that could constitute Sexual Harassment.
- R.** “Formal Complaint” means a document filed by a Complainant or signed by the Title IX Coordinator alleging Sexual Harassment against a Respondent and requesting that the University investigate the allegation of Sexual Harassment in accordance with this policy. At the time of filing a Formal Complaint, a Complainant must be participating in or attempting to participate in the University’s education programs and activities. A “document filed by a Complainant” means a document or electronic submission (such as an email) that contains the Complainant’s physical or electronic signature or otherwise indicates that the Complainant is the person filing the Complaint.
- S.** “Supportive Measures” are Non disciplinary-, non-punitive individualized services offered, as appropriate, and reasonably available, and without fee or charge, that are designed to restore or preserve equal access to the University’s Education Programs and Activities without unreasonably burdening another party, including measures designed to protect the safety of all parties implicated

by a report or the University's education environment, or to deter Sexual Harassment. Supportive measures may include: counseling, extensions of academic or other deadlines, course related- adjustments, modifications to work or class schedules, campus escort services, changes in work or housing locations, leaves of absence, increased security, and monitoring of certain areas of campus, and other similar measures. Supportive Measures may also include mutual restrictions on contact between the parties implicated by a report.

- T. "Education Programs and Activities" refers to all the operations of the University, including, but not limited to, in person- and online educational instruction, employment, research activities, extracurricular activities, athletics, residence life, dining services, performances, and community engagement and outreach programs. The term applies to all activity that occurs on campus or on other property owned or occupied by the University. It also includes off campus- locations, events, or circumstances over which the University exercises substantial control over the Respondent and the context in which the Sexual Harassment occurs, including Sexual Harassment occurring in any building owned or controlled by a student organization that is officially recognized by the University.

IV. UNDERSTANDING HOSTILE ENVIRONMENT SEXUAL HARASSMENT

In determining whether a hostile environment exists, the University will consider the totality of circumstances, including factors such as the actual impact the conduct has had on the Complainant; the nature and severity of the conduct at issue; the frequency and duration of the conduct; the relationship between the parties (including accounting for whether one individual has power or authority over the other); the respective ages of the parties; the context in which the conduct occurred; and the number of persons affected. The University will evaluate the totality of circumstances from the perspective of a reasonable person in the Complainant's position. A person's adverse subjective reaction to conduct is not sufficient, in and of itself, to establish the existence of a hostile environment.

The University encourages members of the University Community to report any and all instances of Sexual Harassment, even if they are unsure whether the conduct rises to the level of a policy violation.

Some specific examples of conduct that may constitute Sexual Harassment if unwelcome include, but are not limited to:

- Unreasonable pressure for a dating, romantic, or intimate relationship or sexual contact
- Unwelcome kissing, hugging, or massaging
- Sexual innuendos, jokes, or humor
- Displaying sexual graffiti, pictures, videos, or posters
- Using sexually explicit profanity
- Asking about, or telling about, sexual fantasies, sexual preferences, or sexual activities
- Email, internet, or other electronic use that violates this policy
- Leering or staring at someone in a sexual way, such as staring at a person's breasts or groin
- Sending sexually explicit emails, text messages, or social media posts

- Commenting on a person’s dress or body in a sexual manner
- Giving unwelcome personal gifts such as lingerie that suggest the desire for a romantic relationship
- Insulting, demeaning, or degrading another person based on sex or sex stereotypes.

V. UNDERSTANDING CONSENT AND INCAPACITATION

A. Consent

Lack of consent is a critical factor in determining whether Sexual Harassment has occurred. As defined above:

- Consent is not passive and requires an affirmative, mutually understood, act or statement by each participant to engage in the specific sexual acts. A verbal “no” constitutes lack of consent, even if it sounds insincere or indecisive.
- Consent is informed and freely given. If unreasonable manipulation—or any kind of Coercion, physical force, or weapon—is used, there is no consent.
- If a person is mentally or physically incapacitated (as described below), there is no consent.
- If a person is below the minimum age of consent in the applicable jurisdiction, there cannot be consent (Note: In Missouri, the minimum age of consent for purposes of Statutory Rape is age 17 and no one under 14 years of age is considered capable of consent.)
- Consent to one form of sexual activity does not imply consent to other forms of sexual activity.
- Consent can be withdrawn. When consent is withdrawn, sexual activity must immediately stop. A person who initially consents to sexual activity is deemed not to have consented to any sexual activity that occurs after he or she withdraws consent.
- Being in a romantic relationship with someone does not, in and of itself, imply consent to any form of sexual activity. Even in the context of an ongoing relationship, consent must be sought and freely given for each specific sexual act. Consent may be withdrawn at any time. (Rockhurst University’s Consensual Relationship Policy outlines limitations on consensual romantic or intimate relationships between and among University employees, and between University employees and students).

B. Incapacitation

Incapacitation is a state where an individual cannot make an informed and rational decision to consent to engage in sexual contact because the individual lacks conscious knowledge of the nature of the act (e.g., to understand the “who, what, where, when, why or how” of the sexual interaction) and/or is physically or mentally helpless. An individual is also considered incapacitated, and therefore unable to give consent, when asleep, unconscious, or otherwise unaware that sexual contact is occurring.

Incapacitation can only be found when the Respondent knew or should have known that the Complainant was incapacitated when viewed from the position of a reasonable person. One’s own intoxication is not an excuse for failure to recognize another person’s incapacitation.

Incapacitation may result from the use of alcohol and/or other drugs; however, consumption of alcohol of other drugs, inebriation, or intoxication alone are insufficient to establish incapacitation. Incapacitation is beyond mere

drunkenness or intoxication. The impact of alcohol or drugs varies from person to person, and evaluating incapacitation requires an assessment of how consumption of alcohol and/or drugs impacts an individual's:

- Decision-making ability
- Awareness of consequences
- Ability to make informed judgments
- Capacity to appreciate the nature of circumstances of the act.

No single factor is determinative of incapacitation. Some common signs that someone may be incapacitated include slurred speech, confusion, shaky balance, stumbling or falling down, vomiting, and unconsciousness.

VI. REPORTING SEXUAL HARASSMENT

A. Reporting Generally

Any person may report Sexual Harassment to the Title IX Coordinator. Reports may be made in person, by regular mail, telephone, electronic mail, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. In person reports must be made during normal business hours, but reports can be made by regular mail, telephone, or electronic mail at any time, including outside normal business hours.

The University has designated the following Title IX Coordinator to coordinate its compliance with Title IX and to receive inquiries regarding Title IX, including complaints of sex discrimination. The name and contact information for the Title IX Coordinator is:

Kimberly Brant Schmelzle
Director of Compliance and Risk Management/Title IX Coordinator
Massman 3
1100 Rockhurst Road
Kansas City, MO 641110
816-501-4036
TitleIX@rockhurst.edu

The University has designated two Deputy Title IX Coordinator for Students and a Deputy Title IX Coordinator for Employees. The Deputy Title IX Coordinators are available to receive inquiries regarding Title IX, including complaints of sex discrimination, when the Title IX Coordinator is unavailable, if a person is more comfortable engaging with one of the Deputies, or if the Title IX Coordinator has a conflict of interest. The contact information for the Deputy Title IX Coordinators are as follows:

Vice President & Dean of Students/Deputy Title IX Coordinator for Students
Massman Hall, Room 1
816-501-4030
TitleIX@rockhurst.edu

Director of Human Resources/Deputy Title IX Coordinator for Employees
Conway 102
816-501-4834
TitleIX@rockhurst.edu

For purposes of this policy, any references to "Title IX Coordinator" will also include the designated Deputy Title IX Coordinators.

A report can also be made online at: www.Rockhurst.edu/reporting.

B. Mandatory Reporting Obligation for Employees

University employees have a duty to report Sexual Harassment by filing a report with the Title IX Coordinator (or Deputy Title IX Coordinator for Employees) when they receive a report of such conduct from another person, witness such conduct, or otherwise obtain information about such conduct. This includes employees who may have a professional license requiring confidentiality if they are not employed by the University in that professional role. An employee not reporting Sexual Harassment as required by this policy may be disciplined accordingly, up to and including termination. This section does not apply to those identified in this policy as Confidential Resources when they are acting as confidential resources.

C. Reporting Options for Students

Students who wish to report Sexual Harassment should make a complaint to the Title IX Coordinator (or the Deputy Title IX Coordinators for Students). Students should be aware that all employees at the University, other than those identified in Section VI.F below, have an obligation to report Sexual Harassment that they witness or otherwise become aware of.

D. Reporting Options for Others

Any other persons who are involved in the University's education programs and activities, including visitors on campus, who wish to report Sexual Harassment should file a report with the Title IX Coordinator (or Deputy Title IX Coordinator for Employees).

E. Reporting to the U.S. Department of Education

Any person may also file a complaint of sex discrimination with the United States Department of Education's Office for Civil Rights regarding an alleged violation of Title IX by visiting www2.ed.gov/about/offices/list/ocr/complaintintro.html or by calling 1-800-421-3481.

F. Confidential Resources

If a person wishes to talk confidentially about Sexual Harassment, the University has designated certain persons who are permitted to have confidential conversations. Unless otherwise required to do so by law (e.g., if the victim is a minor), these persons will not disclose identifying information about the reported misconduct to the Title IX Coordinator or other University officials. The confidential resources are:

- The licensed psychologists, licensed social worker, and pre-doctoral intern(s) at the Rockhurst University Counseling Center, Massman 5, 816-501-4275 (for students only)
- Priests only when under the seal of the confessional (i.e., during the Sacrament of Reconciliation)
- The staff of Mutual of Omaha EAP program (benefits eligible employees only) -(800)-877-5176; www.mutualofomaha.com

There are also third-party advocacy and victim support groups in the Kansas City area that provide confidential support and counseling. These groups will not disclose information about Sexual Harassment to the University without your permission. These third-party groups include:

The Metropolitan Organization to Counter Sexual Assault
3100 Broadway, Suite 400

Kansas City, Missouri 64111-2591
Tel: 816-531-0233 or 913-642-0233
<https://mocsa.org/>

Kansas City Metropolitan Area Domestic Violence Hotline
Tel: 816-468-5463

Information on other third-party groups is available from the Title IX Coordinator or Deputy Coordinators.

VII. ROLES AND RESPONSIBILITIES

A. Title IX Coordinator

It is the responsibility of the Title IX Coordinator to: (1) receive reports and Formal Complaints under this policy; (2) coordinate dissemination of information and education and training programs; (3) assist members of the University community in understanding that Sexual Harassment is prohibited by this policy; (4) answer questions about this policy; (5) ensure that employees and students are aware of the procedures for reporting and addressing Sexual Harassment; and (6) to implement the procedures provided in this policy or to designate appropriate persons to do so.

B. Administrators, Deans, Department Chairs and Other Managers

It is the responsibility of administrators, deans, department chairs, and other managers (i.e., those that formally supervise other employees) to:

- Inform employees under their direction or supervision of this policy
- Work with the Title IX Coordinator to implement education and training programs for employees and students
- Implement any corrective actions that are imposed as a result of findings of a violation of this policy

C. Employees

It is the responsibility of all employees to review this policy and comply with it.

D. Students

It is the responsibility of students to review this policy and comply with it.

E. The University

The University will act in accordance with this policy and its procedures.

VIII. SPECIAL ADVICE FOR INDIVIDUALS REPORTING SEXUAL ASSAULT, DOMESTIC VIOLENCE, DATING VIOLENCE, OR STALKING

If you believe you are the victim of the crimes of Sexual Assault, Domestic Violence, or Dating Violence, get to safety and do everything possible to preserve evidence by making certain that the crime scene is not disturbed. Preservation of evidence may be necessary for proof of the crime or in obtaining a protection order. For those who believe that they are victims of Sexual Assault, Domestic Violence, or Dating Violence, the University recommends the following:

- Get to a safe place as soon as possible.
- Try to preserve all physical evidence of the crime—avoid bathing, using the toilet, rinsing one’s mouth, or changing clothes. If it is necessary, put all clothing that was worn at the time of the incident in a paper bag, not a plastic one.
- Do not launder or discard bedding or otherwise clean the area where the assault occurred- preserve for law enforcement
- Preserve all forms of electronic communication that occurred before, during, or after the assault
- Contact law enforcement by calling 911.
- Get medical attention all medical injuries are not immediately apparent. This will also help collect evidence that may be needed in case the individual decides to press charges. Local hospitals have evidence collection kits necessary for criminal prosecution should the victim wish to pursue charges. Take a full change of clothing, including shoes, for use after a medical examination.
- Contact a trusted person, such as a friend or family member for support.
 - Talk with a professional licensed psychologists and pre-doctoral interns at the Rockhurst University Counseling Center, Massman 5, 816-501-4275 (for students only), Priests only when under the seal of the confessional (i.e. during the Sacrament of Reconciliation) or professional health care provider who can help explain options, give information, and provide emotional support.
- Make a report to the Title IX Coordinator or Deputy Title IX Coordinator. A report can also be made at: www.Rockhurst.edu/reporting.

It is also important to take steps to preserve evidence in cases of Stalking, to the extent such evidence exists. Such evidence is more likely to be in the form of letters, emails, text messages, electronic images, etc. rather than evidence of physical contact and violence. This type of non-physical evidence will also be useful in all types of Sexual Harassment investigations.

Once a report of Sexual Assault, Domestic Violence, Dating Violence, or Stalking is made, the victim has several options such as, but not limited to:

- obtaining Supportive Measures
- contacting parents or a relative
- seeking legal advice
- seeking personal counseling (always recommended)
- pursuing legal action against the perpetrator
- filing a Formal Complaint
- requesting that no further action be taken.

The Title IX Coordinator or Campus Security can assist individuals in obtaining a personal protection order (“PPO”).

IX. AMNESTY

The University encourages reporting of sexual harassment and seeks to remove barriers to making a report. At times, students may be hesitant to report sexual harassment to University officials because they are concerned that they may be subject to student disciplinary action for policy/student conduct violations that occurred during the incident. These behaviors are not condoned by the University, but the importance of addressing alleged sexual harassment is the paramount consideration. Consequently, students who initiate contact with the Title IX Coordinator, a Deputy Title IX Coordinator, or another University employee for the purpose of reporting sexual harassment in good faith, as a complainant or witness, will not be subject to student disciplinary action for other policy/student conduct violations that occurred during the incident as long as such violations did not place the health and safety of any other person at risk. In the discretion of the Title IX Coordinator, amnesty may also be extended to students who do not report sexual harassment but whose participation in an investigation and/or hearing is deemed necessary. The University may, however, require students to participate in educational activities or other interventions as deemed appropriate. The Title IX Coordinator shall determine if amnesty is granted, which will be determined on a case-by-case basis considering the totality of the circumstances involved in the incident. Moreover, amnesty does not preclude or prevent action by law enforcement or other legal authorities.

X. PRELIMINARY ASSESSMENT

After receiving a report under “Reporting Sexual Harassment,” the Title IX Coordinator will conduct a preliminary assessment to determine:

- Whether the conduct, as reported, falls, or could fall within the scope of this policy (see “Scope”); and
- Whether the conduct, as reported, constitutes, or could constitute Sexual Harassment.

If the Title IX Coordinator determines that the conduct reported could not fall within the scope of this policy, and/or could not constitute Sexual Harassment, even if investigated, the Title Coordinator will close the matter and may notify the reporting party if doing so is consistent with the Family Educational Rights and Privacy Act (“FERPA”). The Title IX Coordinator may refer the report to other University offices, as appropriate.

If the Title IX Coordinator determines that the conduct reported could fall within the scope of this policy, and/or could constitute Sexual Harassment, if investigated, the Title IX Coordinator will proceed to contact the Complainant (see “Contacting the Complainant”).

As part of the preliminary assessment, the Title IX Coordinator may take investigative steps to determine the identity of the Complainant, if it is not apparent from the report.

XI. CONTACTING THE COMPLAINANT

If a report is not closed as a result of the preliminary assessment (see “Preliminary Assessment”) and the Complainant’s identity is known, the Title IX Coordinator will promptly contact the Complainant to discuss the availability of Supportive Measures (see “Supportive Measures”); to discuss and consider the Complainant’s wishes with respect to Supportive Measures; to inform the Complainant about the availability of Supportive Measures with or without filing a Formal Complaint; and to explain the process for filing and pursuing a Formal Complaint. The Complainant will also be provided options for filing complaints with the local police and information about resources that are available on campus and in the community.

XII. SUPPORTIVE MEASURES

If a report is not closed as a result of the preliminary assessment (see “Preliminary Assessment”), the University will offer and make available Supportive Measures to the Complainant regardless of whether the Complainant elects to file a Formal Complaint.

Contemporaneously with the Respondent being notified of a Formal Complaint (see “Notice of Formal Complaint”), the Title IX Coordinator will notify the Respondent of the availability of Supportive Measures for the Respondent, and the University will offer and make available Supportive Measures to the Respondent in the same manner in which it offers and makes them available to the Complainant. The University will also offer and make available Supportive Measures to the Respondent prior to the Respondent being notified of a Formal Complaint if the Respondent requests such measures.

The University will maintain the confidentiality of Supportive Measures provided to either a Complainant or Respondent, to the extent that maintaining such confidentiality does not impair the University’s ability to provide the Supportive Measures in question.

XIII. INTERIM REMOVAL

At any time after receiving a report of Sexual Harassment, the Title IX Coordinator may remove a student Respondent from one or more of the University’s education programs and activities on a temporary basis if an individualized safety and risk analysis determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of Sexual Harassment justifies removal. In the event the Title IX Coordinator imposes an interim removal, the Title IX Coordinator must offer to meet with the Respondent within twenty-four hours and provide the Respondent an opportunity to challenge the interim removal.

In the case of a Respondent who is a non-student employee (administrator, faculty, or staff), and in its discretion, the University may place the Respondent on administrative leave at any time after receiving a report of Sexual Harassment, including during the pendency of the investigation and adjudication process (see “Investigation” and “Adjudication”).

For all other Respondents, including independent contractors and guests, the University retains broad discretion to prohibit such persons from entering onto its campus and other properties at any time, and for any reason, whether after receiving a report of Sexual Harassment or otherwise.

XIV. FORMAL COMPLAINT

A Complainant may file a Formal Complaint with the Title IX Coordinator requesting that the University investigate and adjudicate a report of Sexual Harassment in accordance with the provisions of “Investigation” and “Adjudication.” Provided, however, that at the time the Complainant submits a Formal Complaint, the Complainant must be participating in, or attempting to participate in, one or more of the University’s Education Programs or Activities or be a parttime or full-time employee or faculty member of the University.

A Complainant may file a Formal Complaint with the Title IX Coordinator in person, by regular mail, or by email using the contact information specified in “Reporting Sexual Harassment.” No person may submit a Formal Complaint on the Complainant’s behalf.

In any case, including a case where a Complainant elects not to file a Formal Complaint, the Title IX Coordinator may file a Formal Complaint on behalf of the University if doing so is not clearly unreasonable. Such action will normally be taken in limited circumstances involving serious or repeated conduct or where the alleged perpetrator may pose a continuing threat to the University Community. Factors the Title IX Coordinator may consider include

(but are not limited to): (a) was a weapon involved in the incident; (b) were multiple assailants involved in the incident; (c) is the accused a repeat offender; and (d) does the incident create a risk of occurring again.

If the Complainant or the Title IX Coordinator files a Formal Complaint, then the University will commence an investigation as specified in “Reporting Sexual Harassment” and proceed to adjudicate the matter as specified in “Adjudication,” below. In all cases where a Formal Complaint is filed, the Complainant will be treated as a party, irrespective of the party’s level of participation.

In a case where the Title IX Coordinator files a Formal Complaint, the Title IX Coordinator will not act as a Complainant or otherwise as a party for purposes of the investigation and adjudication processes.

XV. CONSOLIDATION OF FORMAL COMPLAINTS

The University may consolidate Formal Complaints as to allegations of Sexual Harassment against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one party against the other party, where the allegations of Sexual Harassment arise out of the same facts or circumstances. Where the investigation and adjudication process involve more than one Complainant or more than one Respondent, references in this policy to the singular “party,” “Complainant,” or “Respondent” include the plural, as applicable. A Formal Complaint of Retaliation may be consolidated with a Formal Complaint of Sexual Harassment.

XVI. DISMISSAL PRIOR TO COMMENCEMENT OF INVESTIGATION

In a case where the Complainant files a Formal Complaint, the Title IX Coordinator will evaluate the Formal Complaint and must dismiss it if the Title IX Coordinator determines:

- The conduct alleged in the Formal Complaint would not constitute Sexual Harassment, even if proved; or
- The conduct alleged in the Formal Complaint falls outside the scope of the policy specified in “Scope” (that is, because the alleged conduct did not occur in the University’s Education Programs and Activities and/or the alleged conduct occurred outside the geographic boundaries of the United States).

In the event the Title IX Coordinator determines the Formal Complaint should be dismissed pursuant to this Section, the Title IX Coordinator will provide written notice of dismissal to the parties and advise them of their right to appeal as specified in “Appeal.” The Title IX Coordinator may refer the subject matter of the Formal Complaint to other University offices, as appropriate. A dismissal pursuant to this Section is presumptively a final determination for purposes of this policy, unless otherwise specified in writing by the Title IX Coordinator in the written notice of dismissal.

XVII. NOTICE OF FORMAL COMPLAINT

Within a reasonably prompt time period (not to exceed ten (10) days) of the Title IX Coordinator receiving a Formal Complaint, the Title IX Coordinator will transmit a written notice to the Complainant and Respondent that includes:

- A physical copy of this policy or a hyperlink to this policy;
- Sufficient details known at the time so that the parties may prepare for an initial interview with the investigator, to include the identities of the parties involved in the incident (if known), the conduct allegedly constituting Sexual Harassment, and the date and location of the alleged incident (if known);

- A statement that the Respondent is presumed not responsible for the alleged Sexual Harassment and that a determination of responsibility will not be made until the conclusion of the adjudication and any appeal;
- Notifying the Complainant and Respondent of their right to be accompanied by an advisor of their choice, as specified in “Advisor of Choice;”
- Notifying the Complainant and Respondent of their right to inspect and review evidence as specified in “Access to Evidence;”
- Notifying the Complainant and Respondent of the University’s prohibitions on retaliation and false statements specified in “Retaliation” and “Bad Faith Complaints and False Information;”
- Information about resources that are available on campus and in the community.

Should the University elect, at any point, to investigate allegations that are materially beyond the scope of the initial written notice, the University will provide a supplemental written notice describing the additional allegations to be investigated.

XVIII. INVESTIGATION

A. Commencement and Timing

After the written notice of Formal Complaint is transmitted to the parties, an investigator selected by the Title IX Coordinator or the Title IX Coordinator him/herself will undertake an investigation to gather evidence relevant to the alleged misconduct, including inculpatory evidence (which implies or tends to establish responsibility for a violation of this policy as alleged) and exculpatory evidence (which implies or tends to establish a lack of responsibility for a violation of this policy as alleged). The burden of gathering evidence sufficient to reach a determination in the adjudication lies with the University and not with the parties. The investigation will culminate in a written investigation report, as specified in “Investigation Report,” that will be submitted to the adjudicator during the selected adjudication process. Although the length of each investigation may vary depending on the totality of the circumstances, the University strives to complete each investigation within sixty (60) days of the transmittal of the written notice of Formal Complaint.

B. Equal Opportunity

During the investigation, the investigator will provide an equal opportunity for the parties to be interviewed, to present witnesses (including fact and expert witnesses), and to present other inculpatory and exculpatory evidence. However, the investigator retains discretion to limit the number of witness interviews the investigator conducts or the other evidence the investigator seeks to gather if the investigator finds that testimony or evidence would be unreasonably cumulative (that is, unreasonably repeats what has already been established), if the witnesses are offered solely as character references and do not have information relevant to the allegations at issue, if the investigator determines the witness or evidence is not reasonably available, or if the witnesses or evidence is offered to render testimony or provide information that is categorically inadmissible, such as testimony or evidence concerning sexual history of the Complainant, as specified in “Sexual History.” The investigator will not restrict the ability of the parties to gather and present relevant evidence on their own.

The investigation is a party’s opportunity to present testimonial and other evidence that the party believes is relevant to resolution of the allegations in the Formal Complaint. A party that is aware of and has a reasonable opportunity to present particular evidence and/or identify particular witnesses should do so during the investigation. The failure to do so may be considered a factor in assessing weight and credibility during the adjudication phase.

C. Documentation of Investigation

The investigator will take reasonable steps to ensure the investigation is documented. Interviews of the parties and witnesses may be documented by the investigator's notes, audio recorded, video recorded, or transcribed. The particular method utilized to record the interviews of parties and witnesses will be determined by the investigator in the investigator's sole discretion, although whatever method is chosen shall be used consistently throughout a particular investigation.

D. Access to the Evidence

At the conclusion of the evidence gathering- phase of the investigation, but prior to the completion of the investigation report, the investigator will transmit to each party and their advisor, in either electronic or hard copy form, the evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint, including (1) evidence on which the University may choose not to rely at any hearing and (2) inculpatory¹ or exculpatory² evidence whether obtained from a party directly involved in the investigation or some other source. The University considers material to be evidence "directly related to the allegations raised in the Formal Complaint" if the material is evidentiary in nature and could be relevant to resolving any important factual dispute in light of the allegations raised in the Formal Complaint. Logistical documents, information about supportive measures, communications with the parties about the investigation, personal memory aids of the investigator, and the like are not evidentiary in nature. The University may produce either an audio record or verbatim transcript of witness interviews but typically will not produce both forms. The parties will have ten (10) days in which to submit to the investigator a written response that the investigator will consider prior to completing the investigation report.

The parties and their advisors are permitted to review the evidence solely for the purposes of this grievance process and may not duplicate or disseminate the evidence to anyone else.

E. Investigation Report

After the period for the parties to provide any written response as specified "Access to Evidence" has expired, the investigator will complete a written investigation report that fairly summarizes the various steps taken during the investigation, summarizes the relevant evidence collected, lists material facts on which the parties agree, and lists material facts on which the parties do not agree. When the investigation report is complete, the investigator will transmit a copy to the Title IX Coordinator. The investigator will also transmit the investigation report to each party and their advisor, in either electronic or hard copy form.

XIX. ADJUDICATION PROCESS SELECTION

After the investigator has sent the investigation report to the parties, the Title IX Coordinator will transmit to each party a notice advising the party of the two different adjudication processes specified in "Adjudication." The notice will explain that the hearing process specified in "Hearing Process" is the default process for adjudicating all Formal Complaints and will be utilized unless both parties voluntarily consent to administrative adjudication as specified in "Administrative Adjudication (Optional)" as a form of informal resolution. The notice will be accompanied by a written consent to administrative adjudication and will advise each party that, if both parties execute the written consent to administrative adjudication, then the administrative adjudication process will be used in lieu of the hearing process. Parties are urged to carefully review this policy (including the entirety of "Adjudication"), consult with their advisor, and consult with other persons as they deem appropriate (including an attorney) prior to consenting to administrative adjudication.

¹ "Inculpatory" evidence is evidence that supports the allegations against the respondent.

² "Exculpatory" evidence is evidence that does not support the allegations against the respondent.

Each party will have three (3) days from transmittal of the notice specified in this Section to return the signed written consent form to the Title IX Coordinator. If either party does not timely return the signed written consent, that party will be deemed not to have consented to administrative adjudication and the Formal Complaint will be adjudicated pursuant to the hearing process.

XX. ADJUDICATION

A. Hearing Process

The default process for adjudicating Formal Complaints is the hearing process specified in this Section (“Hearing Process”). The hearing process will be used to adjudicate all Formal Complaints unless both parties’ timely consent to informal resolution.

1. Hearing Officer

After selection of the hearing process as the form of adjudication, the Title IX Coordinator will promptly appoint a hearing officer who will oversee the hearing process and render a determination of responsibility for the allegations in the Formal Complaint, at the conclusion of the hearing process. The Title IX Coordinator will see that the hearing officer is provided a copy of the investigation report, and a copy of all evidence transmitted to the parties by the investigator as specified in “Access to Evidence.”

2. Hearing Notice and Response to the Investigation Report

After the hearing officer is appointed by the Title IX Coordinator, the hearing officer will promptly transmit written notice to the parties notifying the parties of the hearing officer’s appointment; setting a deadline for the parties to submit any written response to the investigation report; setting a date for the pre-hearing conference; setting a date and time for the hearing; and providing a copy of the University’s Hearing Procedures. Neither the pre-hearing conference, nor the hearing itself, may be held any earlier than ten (10) days from the date of transmittal of the written notice specified in this Section (“Hearing Notice and Response to the Investigation Report”).

A party’s written response to the investigation report must include:

- To the extent the party disagrees with the investigation report, any argument or commentary regarding such disagreement;
- Any argument that evidence should be categorically excluded from consideration at the hearing based on privilege, relevancy, the prohibition on the use of sexual history specified in “Sexual History,” or for any other reason;
- A list of any witnesses that the party contends should be requested to attend the hearing pursuant to an attendance notice issued by the hearing officer;
- A list of any witnesses that the party intends to bring to the hearing without an attendance notice issued by the hearing officer;
- Any objection that the party has to the University’s Hearing Procedures;
- Any request that the parties be separated physically during the pre-hearing conference and/or hearing;

- Any other accommodations that the party seeks with respect to the pre-hearing conference and/or hearing;
- The name and contact information of the advisor who will accompany the party at the pre-hearing conference and hearing; and
- If the party does not have an advisor who will accompany the party at the hearing, a request that the University provide an advisor for purposes of conducting questioning as specified in “Hearing.”

A party’s written response to the investigation report may also include:

- Argument regarding whether any of the allegations in the Formal Complaint are supported by a preponderance of the evidence; and
- Argument regarding whether any of the allegations in the Formal Complaint constitute Sexual Harassment.

3. Pre-Hearing Conference

Prior to the hearing, the hearing officer will conduct a pre-hearing conference with the parties and their advisors. The pre-hearing conference will be conducted live, with simultaneous and contemporaneous participation by the parties and their advisors. By default, the pre-hearing conference will be conducted with the hearing officer, the parties, the advisors, and other necessary University personnel together in the same physical location. However, upon request of either party, the parties will be separated into different rooms with technology enabling the parties to participate simultaneously and contemporaneously by video and audio.

In the hearing officer’s discretion, the pre-hearing conference may be conducted virtually, by use of video and audio technology, where all participants participate simultaneously and contemporaneously by use of such technology.

During the pre-hearing conference, the hearing officer will discuss the Hearing Procedures with the parties; address matters raised in the parties’ written responses to the investigation report, as the hearing officer deems appropriate; discuss whether any stipulations may be made to expedite the hearing; discuss the witnesses the parties have requested be served with notices of attendance and/or witnesses the parties plan to bring to the hearing without a notice of attendance; and resolve any other matters that the hearing officer determines, in the hearing officer’s discretion, should be resolved before the hearing.

4. Issuance of Notices of Attendance

After the pre-hearing conference, the hearing officer will transmit notices of attendance to any University employee (including administrator, faculty, or staff) or student whose attendance is requested at the hearing as a witness. The notice will advise the subject of the specified date and time of the hearing and advise the subject to contact the hearing officer immediately if there is a material and unavoidable conflict.

The subject of an attendance notice should notify any manager, faculty member, coach, or other supervisor, as necessary, if attendance at the hearing will conflict with job duties, classes, or other obligations. All such managers, faculty members, coaches, and other supervisors are required to excuse the subject of the obligation, or provide some other accommodation, so that the subject may attend the hearing as specified in the notice.

The University will not issue a notice of attendance to any witness who is not an employee or a student.

5. Hearing

After the pre-hearing conference, the hearing officer will convene and conduct a hearing pursuant to the University's Hearing Procedures. The hearing will be audio recorded. The audio recording will be made available to the parties for inspection and review on reasonable notice given by a party to the University, including for use in preparing any subsequent appeal.

The hearing will be conducted live, with simultaneous and contemporaneous participation by the parties and their advisors. By default, the hearing will be conducted with the hearing officer, the parties, the advisors, witnesses, and other necessary University personnel together in the same physical location. However, upon request of either party, the parties will be separated into different rooms with technology enabling the parties to participate simultaneously and contemporaneously by video and audio.

In the hearing officer's discretion, the hearing may be conducted virtually, by use of video and audio technology, where all participants participate simultaneously and contemporaneously by use of such technology.

While the Hearing Procedures and rulings from the hearing officer will govern the particulars of the hearing, each hearing will include, at a minimum:

- Opportunity for each party to address the hearing officer directly and to respond to questions posed by the hearing officer;
- Opportunity for each party's advisor to ask directly, orally, and in real time, relevant questions, and follow up questions, of the other party and any witnesses, including questions that support or challenge credibility;
- Opportunity for each party to raise contemporaneous objections to testimonial or non-testimonial evidence and to have such objections ruled on by the hearing officer and a reason for the ruling provided;
- Opportunity for each party to submit evidence that the party did not present during the investigation due to mistake, inadvertence, surprise, or excusable neglect; and
- Opportunity for each party to make a brief closing argument.

Except as otherwise permitted by the hearing officer, the hearing will be closed to all persons except the parties, their advisors, the investigator, the hearing officer, the Title IX Coordinator, and other necessary University personnel. With the exception of the investigator, the Title IX Coordinator, and the parties, witnesses will be sequestered until such time as their testimony is complete.

During the hearing, the parties and their advisors will have access to the investigation report and evidence that was transmitted to them pursuant to "Access to Evidence."

While a party has the right to attend and participate in the hearing with an advisor, a party and/or advisor who materially and repeatedly violates the rules of the hearing in such a way as to be materially disruptive may be barred from further participation and/or have their participation limited, as the case may be, in the discretion of the hearing officer.

Subject to the minimum requirements specified in this Section ("Hearing"), the hearing officer will have sole discretion to determine the manner and particulars of any given hearing, including with respect to the length of the hearing, the order of the hearing, and questions of admissibility. The hearing officer will independently and contemporaneously screen questions for relevance in addition to resolving any contemporaneous objections raised by the parties and will explain the rationale for any evidentiary rulings.

The hearing is not a formal judicial proceeding, and strict rules of evidence do not apply. The hearing officer will have discretion to modify the Hearing Procedures, when good cause exists to do so, and provided the minimal requirements specified in this Section (“Hearing”) are met.

6. Deliberation and Determination

After the hearing is complete, the hearing officer will objectively evaluate all relevant evidence collected during the investigation, including both inculpatory and exculpatory evidence, together with testimony and Non testimony evidence received at the hearing, and ensure that any credibility determinations made are not based on a person’s status as a Complainant, Respondent, or witness. The hearing officer will take care to exclude from consideration any evidence that was ruled inadmissible at the prehearing conference or during the hearing. Additionally, since the formal rules of evidence do not apply in the University's hearings, the decision-maker has the discretion to give such weight to prior statements made either inside or outside of the hearing as the decision-maker determines is appropriate.

The hearing officer will resolve disputed facts using a preponderance of the evidence (that is, “more likely than not”) standard and reach a determination regarding whether the facts that are supported by a preponderance of the evidence constitute one or more violations of this policy as alleged in the Formal Complaint.

7. Discipline and Remedies

In the event the hearing officer determines that the Respondent is responsible for violating this policy, the hearing officer will, before issuing a written decision, consult with an appropriate University official with disciplinary authority over the Respondent and such official will determine any discipline to be imposed. The hearing officer will also, before issuing a written decision, consult with the Title IX Coordinator who will determine whether and to what extent ongoing support measures or other remedies will be provided to the Complainant.

8. Written Decision

After reaching a determination and consulting with the appropriate University official and Title IX Coordinator as required by “Discipline and Remedies,” the hearing officer will prepare a written decision that will include:

- Identification of the allegations potentially constituting Sexual Harassment made in the Formal Complaint;
- A description of the procedural steps taken by the University upon receipt of the Formal Complaint, through issuance of the written decision, including notification to the parties, interviews with the parties and witnesses, site visits, methods used to gather non-testimonial evidence, and the date, location, and people who were present at or presented testimony at the hearing;
- Articulate findings of fact, made under a preponderance of the evidence standard, that support the determination;
- A statement of, and rationale for, each allegation that constitutes a separate potential incident of Sexual Harassment, including a determination regarding responsibility for each separate potential incident;
- The discipline determined by the appropriate University official as referenced in “Discipline and Remedies;”

- Whether the Complainant will receive any ongoing support measures or other remedies as determined by the Title IX Coordinator; and
- A description of the University’s process and grounds for appeal, as specified in “Appeal.”

The hearing officer’s written determination will be transmitted to the parties. This transmission concludes the hearing process, subject to any right of appeal as specified in “Appeal.”

Although the length of each adjudication by hearing will vary depending on the totality of the circumstances, the University strives to issue the hearing officer’s written determination within fourteen (14) days of the conclusion of the hearing.

B. Administrative Adjudication (Optional)

In lieu of the hearing process, the parties may consent to have a Formal Complaint resolved by administrative adjudication as a form of informal resolution. Administrative adjudication is voluntary and must be consented to in writing by both parties and approved by the Title IX Coordinator as specified in “Adjudication Process Selection.” At any time prior to the issuance of the administrative officer’s determination, a party has the right to withdraw from administrative adjudication and request a live hearing as specified in “Hearing Process.”

If administrative adjudication is selected, the Title IX Coordinator will appoint an administrative officer. The Title IX Coordinator will see that the administrative adjudicator is provided a copy of the investigation report and a copy of all the evidence transmitted to the parties by the investigator as specified in “Access to Evidence.”

The administrative officer will promptly send written notice to the parties notifying them of the administrative officer’s appointment; setting a deadline for the parties to submit any written response to the investigation report; and setting a date and time for each party to meet with the administrative officer separately. The administrative officer’s meetings with the parties will not be held any earlier than ten (10) days from the date of transmittal of the written notice specified in this paragraph.

A party’s written response to the investigation report must include:

- To the extent the party disagrees with the investigation report, any argument or commentary regarding such disagreement;
- Any argument that a particular piece or class of evidence should be categorically excluded from consideration at the hearing based on privilege, relevancy, the prohibition on the use of sexual history specified in “Sexual History,” or for any other reason;
- Argument regarding whether any of the allegations in the Formal Complaint are supported by a preponderance of the evidence; and
- Argument regarding whether any of the allegations in the Formal Complaint constitute Sexual Harassment.

After reviewing the parties’ written responses, the administrative officer will meet separately with each party to provide the party with an opportunity make any oral argument or commentary the party wishes to make and for the administrative officer to ask questions concerning the party’s written response, the investigative report, and/or the evidence collected during the investigation.

After meeting with each party, the administrative officer will objectively reevaluate all relevant evidence, including both inculpatory and exculpatory evidence and ensure that any credibility determinations made are not based on

a person's status as a Complainant, Respondent, or witness. The administrative officer will take care to exclude from consideration any evidence that the administrative officer determines should be ruled inadmissible based on the objections and arguments raised by the parties in their respective written responses to the investigation report. The administrative officer will resolve disputed facts using a preponderance of the evidence (that is, "more likely than not") standard and reach a determination regarding whether the facts that are supported by a preponderance of the evidence constitute one or more violations of the policy as alleged in the Formal Complaint.

Thereafter, the administrative officer will consult with any University official and the Title IX Coordinator, in the manner specified in "Deliberation and Determination" and will prepare and transmit a written decision in the manner as specified in "Written Decision" which shall serve as a resolution for purposes of informal resolution.

Transmittal of the administrative officer's written determination concludes the administrative adjudication, subject to any right of appeal as specified in "Appeal."

Although the length of each administrative adjudication will vary depending on the totality of the circumstances, the University strives to issue the administrative officer's written determination within twenty-one (21) days of the transmittal of the initiating written notice specified in this Section ("Administrative Adjudication").

XXI. DISMISSAL DURING INVESTIGATION OR ADJUDICATION

The University shall dismiss a Formal Complaint at any point during the investigation or adjudication process if the Title IX Coordinator determines that one or more of the following is true:

- The conduct alleged in the Formal Complaint would not constitute Sexual Harassment, even if proved; or
- The conduct alleged in the Formal Complaint falls outside the scope of the policy specified in "Scope" (that is, because the alleged conduct did not occur in the University's Education Programs and Activities and/or the alleged conduct occurred outside the geographic boundaries of the United States).

The University may dismiss a Formal Complaint at any point during the investigation or adjudication process if the Title IX Coordinator determines that any one or more of the following is true:

- The Complainant provides the Title IX Coordinator written notice that the Complainant wishes to withdraw the Formal Complaint or any discrete allegations therein (in which case those discrete allegations may be dismissed);
- The Respondent is no longer enrolled or employed by the University, as the case may be; or
- Specific circumstances prevent the University from gathering sufficient evidence to reach a determination as to the Formal Complaint, or any discrete allegations therein (in which case those discrete allegations may be dismissed).

In the event the Title IX Coordinator dismisses a Formal Complaint pursuant to this Section, the Title IX Coordinator will provide written notice of dismissal to the parties and advise them of their right to appeal as specified in "Appeal." The Title IX Coordinator may refer the subject matter of the Formal Complaint to other University offices, as appropriate. A dismissal pursuant to this Section is presumptively a final determination as it pertains to this policy, unless otherwise specified in writing by the Title IX Coordinator in the written notice of dismissal.

XXII. APPEAL

Either party may appeal the determination of an adjudication, or a dismissal of a Formal Complaint, on one or more of the following grounds:

- A procedural irregularity affected the outcome;
- There is new evidence that was not reasonably available at the time the determination or dismissal was made that could have affected the outcome;
- The Title IX Coordinator, investigator, hearing officer, or administrative officer, as the case may be, had a conflict of interest or bias for or against complainants or respondents generally, or against the individual Complainant or Respondent, which affected the outcome.

No other grounds for appeal are permitted.

A party must file an appeal within seven (7) days of the date they receive notice of dismissal or determination appealed from or, if the other party appeals, within five (5) days of the other party appealing, whichever is later. The appeal must be submitted in writing to the designated appeal officer at titleixappeals@rockhurst.edu. When the case involves a faculty respondent, the appeal officer is the Chief Financial Officer or designee. In all other situations, the appeal officer is the Provost and Senior Vice President for Academic Affairs or designee. When an absence or conflict of interest makes it impossible for the designated appeal officer to resolve the appeal, the other appeal officer may resolve the appeal in place of the designated appeal officer. Either appeal officer may also designate this responsibility to another administrator should both appeal officers be absent or have a conflict of interest. The appeal must specifically identify the determination and/or dismissal appealed from, articulate which one or more of the three grounds for appeal are being asserted, explain in detail why the appealing party believes the appeal should be granted, and articulate what specific relief the appealing party seeks.

Promptly upon receipt of an appeal, the appeal officer will conduct an initial evaluation to confirm that the appeal is timely filed and that it invokes at least one of the permitted grounds for appeal. If the appeal officer determines that the appeal is not timely, or that it fails to invoke a permitted ground for appeal, the appeal officer will dismiss the appeal and provide written notice of the same to the parties.

If the appeal officer confirms that the appeal is timely and invokes at least one permitted ground for appeal, the appeal officer will provide written notice to the other party that an appeal has been filed and that the other party may submit a written opposition to the appeal within seven (7) days. The appeal officer shall also promptly obtain from the Title IX Coordinator any records from the investigation and adjudication necessary to resolve the grounds raised in the appeal.

Upon receipt of any opposition, or after the time period for submission of an opposition has passed without one being filed, the appeal officer will promptly decide the appeal and transmit a written decision to the parties that explains the outcome of the appeal and the rationale.

The determination of a Formal Complaint, including any discipline, becomes final when the time for appeal has passed with no party filing an appeal or, if any appeal is filed, at the point when the appeal officer has resolved all appeals, either by dismissal or by transmittal of a written decision.

No further review beyond the appeal is permitted. A party may not challenge the factual findings made in a written decision resolving a Formal Complaint through any other University process or policy.

Although the length of each appeal will vary depending on the totality of the circumstances, the University strives to issue the appeal officer's written decision within thirty (30) days of an appeal being filed.

XXIII. ADVISOR OF CHOICE

At any meeting described in this policy, and until an investigation, adjudication, and appeal are complete, the Complainant and Respondent will have the right to be accompanied by an advisor of their choice to all meetings, interviews, and hearings that are part of the investigation, adjudication, and appeal process. The advisor may be, but is not required to be, an attorney.

Except for the questioning of witnesses during the hearing specified in “Hearing,” the advisor will play a passive role and is not permitted to communicate on behalf of a party, insist that communication flow through the advisor, or communicate with the University about the matter without the party being included in the communication. In the event a party’s advisor of choice engages in material violation of the parameters specified in this Section and “Hearing,” the University may preclude the advisor from further participation, in which case the party may select a new advisor of their choice.

In the event a party is not able to secure an advisor to attend the hearing described in “Hearing,” and requests the University to provide an advisor, the University will provide the party an advisor, without fee or charge to the party, who will conduct questioning on behalf of the party at the hearing. The University will have sole discretion to select the advisor it provides. The advisor the University provides may be, but is not required to be, an attorney.

The University is not required to provide a party with an advisor in any circumstance except where the party does not have an advisor present at the hearing described in “Hearing,” and requests that the University provide an advisor.

XXIV. TREATMENT RECORDS AND OTHER PRIVILEGED INFORMATION

During the investigation and adjudication processes, the investigator and adjudicator, as the case may be, are not permitted to access, consider, disclose, permit questioning concerning, or otherwise use:

- a party’s records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional or paraprofessional’s capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party or
- information or records protected from disclosure by any other legally recognized privilege, such as the attorney client privilege unless the University has obtained the party’s voluntary, written consent to do so for the purposes of the investigation and adjudication process.

Notwithstanding the foregoing, the investigator and/or adjudicator, as the case may be, may consider any such records or information otherwise covered by this Section if the party holding the privilege affirmatively discloses the records or information to support their allegation or defense.

XXV. SEXUAL HISTORY

During the investigation and adjudication processes, questioning regarding a Complainant’s sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the Complainant’s prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged, or if the questions and evidence concern specific incidents of the Complainant’s prior sexual behavior with respect to the Respondent and are offered to prove consent. Notwithstanding the foregoing, a Complainant who affirmatively uses information otherwise considered irrelevant by this Section for the purpose of supporting the Complainant’s allegations, may be deemed to have waived the protections of this Section.

XXVI. INFORMAL RESOLUTION

At any time after the parties are provided written notice of the Formal Complaint as specified in “Notice of Formal Complaint,” and before the completion of any appeal specified in “Appeal,” the parties may voluntarily consent, with the Title IX Coordinator’s approval, to engage in mediation, facilitated resolution, or other form of dispute resolution the goal of which is to enter into a final resolution resolving the allegations raised in the Formal Complaint by agreement of the parties. Administrative Adjudication as specified in “Administrative Adjudication” is a form of informal resolution that can be used in lieu of having a live hearing as specified in the Hearing Process.

The specific process for any informal resolution will be determined by the parties and the Title IX Coordinator, in consultation together. Prior to commencing the informal resolution process agreed upon, the Title IX Coordinator will transmit a written notice to the parties that:

- Describes the parameters and requirements of the informal resolution process to be utilized;
- Identifies the individual responsible for facilitating the informal resolution (who may be the Title IX Coordinator, another University official, or a suitable third-party);
- Explains the effect of participating in informal resolution and/or reaching a final resolution will have on a party’s ability to resume the investigation and adjudication of the allegations at issue in the Formal Complaint; and
- Explains any other consequence resulting from participation in the informal resolution process, including a description of records that will be generated, maintained, and/or shared.

After receiving the written notice specified in this paragraph, each party must voluntarily provide written consent to the Title IX Coordinator before the informal resolution process may begin.

During the informal resolution process, the investigation and adjudication processes that would otherwise occur are stayed (that is, paused) and all related deadlines are suspended.

If the parties reach a resolution through the informal resolution process, and the Title IX Coordinator agrees that the resolution is not clearly unreasonable, the Title IX Coordinator will put the terms of the agreed resolution in writing and give them to the parties for their written signature indicating their agreement. Once both parties and the Title IX Coordinator sign the written resolution, the resolution is final; the allegations addressed by the resolution are considered resolved and will not be subject to further investigation, adjudication, remediation, or discipline by the University, unless otherwise provided in the resolution itself, absent a showing that a party induced the resolution by fraud, misrepresentation, or other misconduct or where required to avoid a manifest injustice to either party or to the University.

However, if the form of informal resolution is administrative adjudication (see “Administrative Adjudication”) there shall not be an agreed resolution requiring the parties’ signatures; instead, the determination issued by the administrative officer shall serve as the resolution and conclude the informal resolution process, subject only to any right of appeal.

A party may withdraw their consent to participate in informal resolution at any time before a resolution has been finalized. With the exception of Administrative Adjudication, all other forms of Informal resolution, once finalized, are not subject to appeal.

Unless the Title IX Coordinator provides an extension, any informal resolution process must be completed within twenty-one (21) days from the parties agreeing to the informal resolution process. If an informal resolution

process does not result in a resolution within twenty-one (21) days, and absent an extension, abeyance (a temporary suspension of the process), or other contrary ruling by the Title IX Coordinator, the informal resolution process will be deemed terminated, and the Formal Complaint will be resolved through the investigation and adjudication procedures provided in this policy. The Title IX Coordinator may adjust any time periods or deadlines in the investigation and/or adjudication process that were suspended pursuant to this Section.

Other language in this Section notwithstanding, informal resolution will not be permitted if the Respondent is a non-student employee accused of committing Sexual Harassment against a student.

XXVII. PRESUMPTION OF NON-RESPONSIBILITY

From the time a report or Formal Complaint is made, a Respondent is presumed not responsible for the alleged misconduct until a determination regarding responsibility is made final.

XXVIII. RESOURCES

Any individual affected by or accused of Sexual Harassment will have equal access to support and counseling services offered through the University. The University encourages any individual who has questions or concerns to seek support of University identified resources. The Title IX Coordinator is available to provide information about the University's policy and procedure and to provide assistance. A list of University identified resources is located at the following link: <https://www.rockhurst.edu/about/human-resources/sexual-misconduct-prevention-response/policy>.

XXIX. CONFLICTS OF INTEREST, BIAS, AND PROCEDURAL COMPLAINTS

The Title IX Coordinator, investigator, hearing officer, administrative officer, appeal officer, and informal resolution facilitator will be free of any material conflicts of interest or material bias. Any party who believes one or more of these University officials has a material conflict of interest or material bias must raise the concern promptly so that the University may evaluate the concern and find a substitute, if appropriate. The failure of a party to timely raise a concern of a conflict of interest or bias may result in a waiver of the issue for purposes of any appeal specified in "Appeal."

XXX. OBJECTIONS GENERALLY

Parties are expected to raise any objections, concerns, or complaints about the investigation, adjudication, and appeals process in a prompt and timely manner so that the University may evaluate the matter and address it, if appropriate.

XXXI. CONSTITUTIONAL RIGHTS AND ACADEMIC FREEDOM

The University will construe and apply this policy consistent with the principles of academic freedom specified in the Faculty Handbook. In no case will a Respondent be found to have committed Sexual Harassment based on expressive conduct that is protected by the principles of academic freedom specified in the Faculty Handbook.

XXXII. RELATIONSHIP WITH CRIMINAL PROCESS

This policy sets forth the University's processes for responding to reports and Formal Complaints of Sexual Harassment. The University's processes are separate, distinct, and independent of any criminal processes. While the University may temporarily delay its processes under this policy to avoid interfering with law enforcement efforts if requested by law enforcement, the University will otherwise apply this policy and its processes without regard to the status or outcome of any criminal process.

XXXIII. RECORDINGS

Wherever this policy specifies that an audio or video recording will be made, the recording will be made only by the University and is considered property of the University, subject to any right of access that a party may have under this policy, FERPA, and other applicable federal, state, or local laws. Only the University is permitted to make audio or video recordings under this policy. The surreptitious recording of any meeting, interview, hearing, or other interaction contemplated under this policy is strictly prohibited. Any party who wishes to transcribe a hearing by use of a transcriptionist must seek pre-approval from the hearing officer.

XXXIV. VENDORS, CONTRACTORS AND THIRD PARTIES

The University does business with various vendors, contractors, and other third parties who are not students or employees of the University. Notwithstanding any rights that a given vendor, contractor, or third-party Respondent may have under this policy, the University retains its right to limit any vendor, contractor, or third-party's access to campus for any reason. The University retains all rights it enjoys by contract or law to terminate its relationship with any vendor, contractor, or third-party irrespective of any process or outcome under this policy.

XXXV. BAD FAITH COMPLAINTS AND FALSE INFORMATION

It is a violation of this policy for any person to submit a report or Formal Complaint that the person knows, at the time the report or Formal Complaint is submitted, to be false or frivolous. It is also a violation of this policy for any person to knowingly make a materially false statement during the course of an investigation, adjudication, or appeal under this policy. Violations of this Section are not subject to the investigation and adjudication processes in this policy; instead, they will be addressed under the Student Conduct Code in the case of students and other University policies and standards, as applicable, for other persons.

XXXVI. RETALIATION

It is a violation of this policy to engage in Retaliation. Reports and Formal Complaints of retaliation may be made in the manner specified in "Reporting Sexual Harassment," and "Formal Complaint." Any report or Formal Complaint of Retaliation will be processed under this policy in the same manner as a report or Formal Complaint of Sexual Harassment, as the case may be. The University retains discretion to consolidate a Formal Complaint of Retaliation with a Formal Complaint of Sexual Harassment for investigation and/or adjudication purposes if the two Formal Complaints share a common nexus.

XXXVII. CONFIDENTIALITY

The University will keep confidential the identity of any individual who has made a report or Formal Complaint of Sexual Harassment or Retaliation including any Complainant, the identity of any individual who has been reported to be a perpetrator of Sexual Harassment or Retaliation including any Respondent, and the identity of any witness. The University will also maintain the confidentiality of its various records generated in response to reports and Formal Complaints, including, but not limited to, information concerning Supportive Measures, notices, investigation materials, adjudication records, and appeal records. Notwithstanding the foregoing, the University may reveal the identity of any person or the contents of any record if permitted by FERPA, if necessary to carry out the University's obligations under Title IX and its implementing regulations including the conduct of any investigation, adjudication, or appeal under this policy or any subsequent judicial proceeding, or as otherwise required by law. Further, notwithstanding the University's general obligation to maintain confidentiality as specified in this policy, the parties to a report or Formal Complaint will be given access to investigation and adjudication materials as provided in this policy.

While the University will maintain confidentiality as provided in this Section, the University will not limit the ability of the parties to discuss the allegations at issue in a particular case. Parties are advised, however, that the

manner in which they communicate about, or discuss a particular case, may constitute Sexual Harassment or Retaliation in certain circumstances and be subject to discipline pursuant to the processes specified in this policy.

Note that certain types of Sexual Harassment are considered crimes for which the University must disclose crime statistics in its Annual Security Report that is provided to the campus community and available to the public. These disclosures will be made without including personally identifying information.

XXXVIII. OTHER VIOLATIONS OF THIS POLICY

Alleged violations of this policy, other than violations of the prohibitions on Sexual Harassment and Retaliation, will be subject to review under the Student Conduct Code for students, the Faculty Handbook for faculty, the Employee Handbook for covered employees, or other applicable University policies and standards.

XXXIX. SIGNATURES AND FORM OF CONSENT

For purposes of this policy, either a physical signature or digital signature will be sufficient to satisfy any obligation that a document be signed. Where this policy provides that written consent must be provided, consent in either physical or electronic form, containing a physical or digital signature, as the case may be, will suffice.

XL. DEADLINES, TIME, NOTICES, AND METHOD OF TRANSMITTAL

Where this policy specifies a period of days by which some act must be performed, the relevant time period will be calculated as follows:

- Exclude the day of the event that triggers the period;
- Count every day, including intermediate Saturdays, Sundays, and legal holidays recognized by the federal government; and
- Include the last day of the period until 5:00 p.m. central time, but if the last day is a Saturday, Sunday, or legal holiday recognized by the federal government, the period continues to run until 5:00 p.m. central time on the next day that is not a Saturday, Sunday, or legal holiday recognized by the federal government.
- All deadlines and other time periods specified in this policy are subject to modification by the University where, in the University's sole discretion, good cause exists. Good cause may include, but is not limited to, the unavailability of parties or witnesses; the complexities of a given case; extended holidays or closures; sickness of the Title IX Coordinator or Deputy Title IX Coordinator, investigator, adjudicator, or the parties; the need to consult with the University's legal counsel; unforeseen weather events; and the like.
- Any party who wishes to seek an extension of any deadline or other time period may do so by filing a request with the investigator, hearing officer, administrative officer, appeal officer, or Title IX Coordinator, as the case may be, depending on the phase of the process. Such a request must state the extension sought and explain what good cause exists for the requested extension. The University officer resolving the request for extension may, but is not required to, give the other party an opportunity to object. Whether to grant such a requested extension will be in the sole discretion of the University.
- The parties will be provided written notice of the modification of any deadline or time period specified in this policy, along with the reasons for the modification.

- Where this policy refers to notice being given to parties “simultaneously,” notice will be deemed simultaneous if it is provided in relative proximity on the same day. It is not necessary that notice be provided at exactly the same hour and minute.
- Unless otherwise specified in this policy, the default method of transmission for all notices, reports, responses, and other forms of communication specified in this policy will be emailed using University email addresses.
- A party is deemed to have received notice upon transmittal of an email to their University email address. In the event notice is provided by mail or similar method of post (e.g., FedEx, UPS, etc.), a party will be deemed to have received notice three (3) days after the notice in question is postmarked or otherwise marked as delivered by the carrier.
- Any notice inviting or requiring a party or witness to attend a meeting, interview, or hearing will be provided with sufficient time for the party to prepare for the meeting, interview, or hearing as the case may be, and will include relevant details such as the date, time, location, purpose, and participants. Unless a specific number of days is specified elsewhere in this policy, the sufficient time to be provided will be determined in the sole discretion of the University, considering all the facts and circumstances, including, but not limited to, the nature of the meeting, interview, or hearing; the nature and complexity of the allegations at issue; the schedules of relevant University officials; approaching holidays or closures; and the number and length of extensions already granted.

XLI. OTHER FORMS OF DISCRIMINATION

This policy applies only to Sexual Harassment. Complaints of other forms of sex discrimination are governed by the University’s Non-Discrimination and Equal Employment Opportunity and Anti-Discrimination policies.

XLII. EDUCATION

The University offers educational programming to a variety of groups such as: campus personnel; incoming students and new employees participating in orientation; and members of student organizations. Among other elements, such training will cover relevant definitions, procedures, and sanctions; will provide safe and positive options for bystander intervention; and will provide risk reduction information, including recognizing warning signs of abusive behavior and how to avoid potential attacks. To learn more about education resources, please contact the Title IX Coordinator.

XLIII. OUTSIDE APPOINTMENTS, DUAL APPOINTMENTS, AND DELEGATIONS

The University retains discretion to retain and appoint suitably qualified persons who are not University employees to fulfill any function of the University under this policy, including, but not limited to, the investigator, hearing officer, administrative officer, informal resolution officer, and/or appeal officer.

The University also retains discretion to appoint two or more persons to jointly fulfill the role of investigator, hearing officer, administrative officer, informal resolution officer, and/or appeal officer.

The functions assigned to a given University official under this policy, including but not limited to the functions assigned to the Title IX Coordinator, investigator, hearing officer, administrative officer, informal resolution officer, and appeal officer, may, in the University’s discretion, be delegated by such University official to any suitably qualified individual and such delegation may be recalled by the University at any time.

XLIV. TRAINING

The University will ensure that University officials acting under this policy, including but not limited to the Title IX Coordinator, investigators, hearing officers, administrative officers, informal resolution facilitators, University provided advisors, and appeal officers receive training in compliance with 34 C.F.R. § 106.45(b)(1)(iii) and any other applicable federal or state law.

XLV. RECORDKEEPING

The University will retain those records specified in 34 C.F.R. § 106.45(b)(10) for a period of seven years after which point in time they may be destroyed, or continue to be retained, in the University's sole discretion. The records specified in 34 C.F.R. § 106.45(b)(10) will be made available for inspection, and/or published, to the extent required by 34 C.F.R. § 106.45(b)(10) and consistent with any other applicable federal or state law, including FERPA.

XLVI. DEFINITIONS

Words used in this policy will have those meanings defined herein and if not defined herein will be interpreted according to their plain and ordinary meaning.

XLVII. DISCRETION IN APPLICATION

The University retains discretion to interpret and apply this policy in a manner that is not clearly unreasonable, even if the University's interpretation or application differs from the interpretation of the parties.

The University retains discretion to interpret and apply this Policy in a manner consistent with its Catholic and Jesuit identity and the teachings of the Roman Catholic Church.

Despite the University's reasonable efforts to anticipate all potential circumstances in drafting this policy, it is possible unanticipated or extraordinary circumstances may not be specifically or reasonably addressed by the express policy language, in which case the University retains discretion to respond to the unanticipated or extraordinary circumstance in a way that is not clearly unreasonable.

The provisions of this policy and the Hearing Procedures referenced in "Hearing" are not contractual in nature, whether in their own right, or as part of any other express or implied contract. Accordingly, the University retains discretion to revise this policy and the Hearing Procedures at any time, and for any reason. The University may apply policy revisions to an active case provided that doing so is not clearly unreasonable.

XLVIII. CHANGES IN THE LAW

In the event a change in controlling law conflicts with some provision of this Policy, necessitates the modification of some provision of this Policy, or mandates the inclusion of new provisions not included, the University may immediately apply the Policy in a manner consistent with such controlling law, after providing written notice to the parties of the change in controlling law, even if the Policy has yet to be formally amended to address the change in controlling law.

XLIX. STATUS PERSONS

Where an individual is both a Student and an Employee of the University, and to the extent the distinction between Student or Employee status is material for any standard, obligation, right, or process set forth in this Policy, the Title IX Coordinator will determine the individual's status for purposes of this Policy. Such determination shall be made after a fact-specific inquiry that includes consideration of relevant circumstances, including whether the

individual's primary relationship to the University is to receive an education or to work, and in what capacity the person was acting (or failing to act) with regard to the events in question.