



TITLE IX

Sexual Misconduct Adjudication Process (SMAP)

PURPOSE

To establish detailed procedures that comply with state and federal law and follow the University of the Incarnate Word Sexual Misconduct Policy.

Resources to address sexual misconduct are available at <https://my.uiw.edu/titleix>

Questions about these procedures may be sent to the Director of Title IX, Alexandria Salas at (210) 283-6977 or ansalas@uiwtx.edu

To report an incident of sexual misconduct you can go to: <https://my.uiw.edu/titleix/index.html>

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INTRODUCTION

Unlawful discrimination has no place at the University of the Incarnate Word. It violates the University's core values, including its commitment to equal opportunity and inclusion, and will not be tolerated. Sex discrimination and harassment are prohibited by the University of the Incarnate Word policy and can constitute violations of state and/or federal law. State and federal law, including Title IX of the 1972 Education Amendments, prohibits sex-based discrimination in all of the University's programs and activities, and Title VII of the 1964 Civil Rights Act, and its state counterpart, TEX. LAB. CODE ANN §§ 21.001—21.446, prohibits sex based discrimination in employment. University of the Incarnate Word policy, the Violence Against Women Act (VAWA), as amended, and other state and federal laws prohibit sexual assault, stalking and relationship violence (including dating and domestic violence).

The University of the Incarnate Word's Sexual Misconduct Policy applies to students, faculty, staff, and third parties (including visitors and community members) and this process, which applies to students, employees, and third parties, should be read in conjunction with the expectations set forth in that policy which prohibits: sexual harassment, sexual assault, sexual exploitation, stalking, relationship violence (including dating and domestic violence) and related retaliation. See www.uiw.edu/titleix.

Any incidents or concerns regarding sexual misconduct should be reported immediately, even if the person concerned about or harmed by the misconduct is unsure about pursuing a disciplinary complaint through this process. "Responsible Employees" and "Mandatory Reporters" under the Sexual Misconduct Policy are required to promptly report allegations of sexual misconduct that they observe or learn about to the Title IX Coordinator.

The University of the Incarnate Word is committed to assisting complainants of Sexual Misconduct through various support services available for students. These support services are available to students even if they choose not to file or pursue a disciplinary complaint or if the status of a respondent to the University is unclear (unenrolled student, non-employee, etc.). Students should feel assured that these support services will be available to them throughout this process and even after the conclusion of the adjudication process. Students who wish to receive confidential support services are encouraged to speak to the counselors at the University of the Incarnate Word Behavioral Health Services (Counseling) and/or to seek medical services at University of the Incarnate Word Health Services.

Students should contact the University of the Incarnate Word Police Department at (210) 829-6030 if they have concerns about their safety.

To make a report online, please visit www.uiw.edu/titleix, click on the "Report an Incident" button. Any member of the University of the Incarnate Word community can file a report or complaint of sexual misconduct online. Online reporting provides individuals the option to report anonymously if they choose. However, anonymous complainants should understand that while the University of the Incarnate Word will do its best to address anonymous complaints and reports, it may be limited in its ability to investigate and otherwise respond to or address them.

The University will always attempt to respond to sexual misconduct that it has actual knowledge about in order to stop prohibited conduct, prevent the recurrence of any conduct of concern, prevent and/or eliminate any hostile environment, and, where appropriate, address any effects on campus from such prohibited conduct. The University of the Incarnate Word is committed to addressing and working towards preventing crimes of sexual violence.

Retaliation against anyone who reports an incident, brings forward a complaint, or cooperates with an investigation of Sexual Misconduct is strictly prohibited. Any person responsible for or involved in retaliation will be subject to disciplinary action by the University.

SECTION 1: SEXUAL MISCONDUCT DEFINITIONS AND IMPORTANT PERSONS

1.1 Definitions

Consent

Consent is an informed, deliberate and voluntary decision to engage in mutually acceptable sexual activity. Consent occurs when individuals willingly, unambiguously, and knowingly agree to engage in sexual activity. Consent can be given by words or actions if those words or actions create clear, mutually understandable permission regarding the conditions of sexual activity.

Consent to one act does not constitute or imply consent to another act. Previous consent cannot imply consent to future acts. Consent cannot be assumed based on the parties' relationship status or sexual history together. Consent can be withdrawn by any person, at any time during the encounter. Consent must be knowing and voluntary.

Consent can never be given by someone who is incapacitated, someone under the legal age of consent, or someone who is mentally disabled or cognitively impaired.

Force

The use of force to cause someone to engage in sexual activity is, non-consensual contact. Force is not limited to physical violence, but also includes threats, intimidation, abuse of power, or any combination of these behaviors.

Sexual Harassment (Federal Definition)

Sexual Harassment means conduct on the basis of sex that satisfies one or more of the following:

- A school employee conditioning education benefits on participation in unwelcome sexual conduct (i.e., quid pro quo); or
- Unwelcome conduct that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the school's education program or activity; or
- Sexual assault (as defined in the Clery Act), dating violence, domestic violence, or stalking as defined in the Violence Against Women Act (VAWA).

Sexual Harassment (State Definition)

Sexual Harassment means unwelcome, sex-based verbal or physical conduct that:

- in the employment context, unreasonably interferes with a person's work performance or creates an intimidating, hostile, or offensive work environment; or
- in the education context, is sufficiently severe, persistent, or pervasive that the conduct interferes with a student's ability to participate in or benefit from educational programs or activities at a postsecondary institution of higher education.

Sexual harassment can occur between and/or among students, staff, faculty and/or third parties and can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature, such as sexual assault or acts of sexual violence.

Sexual Assault

Sexual contact or intercourse with a person without the person's consent, including sexual contact or intercourse against the person's will or in a circumstance in which the person is incapable of consenting to the contact or intercourse. Sexual assault can be committed by anyone, including an acquaintance or a stranger.

Sexual Contact

Any touching of the anus, breast, or any part of the genitals of another person with intent to arouse or gratify the sexual desire of any person. If this contact occurs with the absence of consent, it is a violation of this policy. Force is not limited to physical violence but also includes threats, intimidation, abuse of power, coercion and/or duress.

Sexual Intercourse

Sexual intercourse or penetration includes, but is not limited to penetration (oral, anal or vaginal) with any object or body part.

Sexual Exploitation

Sexual exploitation can take many forms including those noted below.

a. Photographing or Video/Audio Taping of Sexual Activity

Photographing or taping someone (via audio, video or otherwise) involved in sexual contact, or in any state of undress, without their consent constitutes sexual exploitation. The act of taking those images/recordings without consent is one form of sexual exploitation.

The act of sharing images such as photographs or video/audio of someone involved in sexual contact or in a state of undress, without their consent, constitutes an additional act of sexual exploitation that is separate from the act of taking the images/audio. This additional act of sexual exploitation can be committed by anyone in possession of the images, even if that individual was not responsible for the creation of the original images and was not engaged in the recorded sexual contact. Sharing those images or audio can be done by digitally forwarding and/or posting copies of the materials or by simply showing someone else those images without relinquishing possession.

b. Voyeurism

Voyeurism is the act of intentionally observing, spying on or listening to a person involved in sexual contact or in any state of undress, without their consent.

c. Indecent Exposure

Indecent exposure is exposing one's intimate parts, such as genitalia, groin, breast and/or buttocks to someone without their consent. This behavior is the deliberate showing of parts of the body and may include a sex act.

Stalking

Stalking means a course of conduct directed at a person that would cause a reasonable person to fear for the person's safety or to suffer substantial emotional distress.

Course of Conduct

Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.

Reasonable Person

Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.

Substantial Emotional Distress

Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

Relationship Violence (Including Dating and Domestic Violence)

Relationship violence includes both dating and domestic violence. Relationship violence can occur at any stage in a relationship, including after its termination.

Domestic Violence

Domestic violence also called family violence in Texas, is an act by a member of a family or household against another member of the family or household that is intended to result in physical harm, bodily injury, assault or sexual assault or that is a threat that reasonably places the member in fear of imminent physical harm, bodily injury, assault or sexual assault, but does not include defensive measures to protect oneself.

Dating Violence

Dating violence means abuse or violence, or a threat of abuse or violence, against a person with whom the actor has or has had a social relationship of a romantic or intimate nature.

Actual Knowledge

Actual knowledge means notice of sexual harassment or allegations of sexual harassment to the Title IX Coordinator or any official of the University who has authority to institute corrective measures on behalf of the University.

Education Program or Activity

Education program or activity means locations, events, or circumstances over which the University exercised substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by the University.

Education Program or Activity must meet the jurisdictional requirements of Title IX of occurring in the United States.

Complainant

An individual who is alleged to be the victim of conduct that could constitute sexual harassment or other prohibited conduct under this policy.

Respondent

An individual who has been alleged to be responsible for the prohibited conduct that is alleged in the complaint.

Informal Complaint

A report filed by a complainant or any other person through the UIW online reporting system (Maxient). This report is a preliminary complaint. Once received the Title IX Department will follow-up with the named complainant to determine if the department shall proceed with a Title IX investigation.

Follow-up is subject to the confidential reporting exceptions, should a confidential or anonymous report be filed then the Title IX department may be limited in their ability to investigate the complaint.

Formal Complaint

A document initiated and signed by a complainant or by the Title IX Coordinator alleging sexual harassment or other prohibited conduct under this policy against a respondent and requesting that the University investigate the allegation of sexual harassment or other prohibited conduct under this policy.

Retaliation

Retaliation is any form of disciplinary action or discrimination against an individual for raising good faith concerns about conduct or otherwise reporting behavior that may be prohibited by law or policy.

1.2 Important persons

Director of Title IX/Title IX Coordinator

The “Director of Title IX” or “Title IX Coordinator” is the person tasked with receiving complaints that fall under the Sexual Misconduct Policy. The Role of the Title IX Coordinator shall be to facilitate the procedures in this manual and ensure the smooth running and compliance with all

policies and procedures in the Sexual Misconduct Policy and the Sexual Misconduct Adjudication Process (SMAP).

Title IX Investigator

The “Title IX Investigator” or “Investigator” refers to the person that investigates a complaint of a violation of the Sexual Misconduct Policy.

Deputy Title IX Coordinators

The “Deputy Title IX Coordinators” refer to the person(s) who assist in different roles of the Title IX Investigation process. In some instances, they may take over as Investigator should there be a conflict of interest with the Title IX Investigator. Additionally, at times they may take on the role of advisor for parties during the informal process.

Advisors

“Advisors” refers to person(s) tasked with advising parties during the Investigation, Hearing, and Appeals Process. The Advisor may be a legal advisor or an internal advisor. An Advisor may be chosen by the party and if the party does not choose an advisor then an advisor shall be assigned to them by the University.

Hearing Officer

The “Hearing Officer” refers to any person(s) authorized to determine whether a party has violated the Sexual Misconduct Policy.

A Hearing Officer is a single individual that shall be trained on the hearing process and shall maintain a level of professionalism and confidentiality of the proceedings before them. Additionally, a Hearing Officer may be a non-UIW affiliated individual with whom the University has assigned to handle the Title IX hearing processes. The Hearing Officer will not be the Title IX Coordinator.

Appeal Panel

The “Appeal Panel” refers to the panel that reviews a valid appeal.

1.3 Preliminary Issues

Jurisdiction

In order to proceed with a Title IX Investigation, a formal complaint must be filed, and the following criteria must be met:

1. The incident constitutes “sexual harassment” within the definitions outlined in the definitions section, and
2. The school must have “actual knowledge” of an allegation of the incident of sexual harassment, and
3. The conduct must have occurred within the school’s own “education program or activity”, and

4. The alleged harassment must occur “in the United States.”

If any of the above criteria is not met, then the Office of Title IX must dismiss a formal complaint.

The Title IX Coordinator shall review all reports received and determine if the Title IX jurisdictional requirements have been met to investigate a complaint. Should the incident not meet the Title IX requirements, it may still violate other University policies and will be sent to the proper department to investigate that complaint.

Any student or employee may file a complaint of Sexual Misconduct through this process against a University of the Incarnate Word student, employee, or person participating in any of the University’s education programs or activities. The person filing the complaint is the Complainant. The party against whom the complaint is filed is the Respondent. In cases where the University of the Incarnate Word has exercised jurisdiction, the University will investigate the incident of Sexual Misconduct to the best of its ability.

Timing of Complaints

There is no time limit for the submission of a complaint alleging Sexual Misconduct. A complaint may be filed at any time during the semester, as long as the accused party remains enrolled at the University. A complaint received after the semester has ended or during a University break may result in a short delay in the adjudication of the complaint. The Title IX Coordinator and/or Title IX Deputy Coordinators will make every effort to try and conduct investigations during school breaks or between school years unless doing so would sacrifice witness availability or otherwise compromise the process. The University of the Incarnate Word may be limited in its ability to respond if a respondent is not enrolled or participating in an educational program or activity. The University of the Incarnate Word will make a good faith effort to conduct a fair, impartial investigation in a prompt and timely manner designed to provide all parties with resolution.

Intentional Presentation of False Information

Participants in the Sexual Misconduct Adjudication Process must present good faith, truthful and accurate information to the Title IX Investigator and/or the Title IX Coordinator. Knowingly making false statements or presenting inaccurate information is unacceptable and may result in a separate disciplinary action regarding that conduct. Please note that filing a complaint or providing information which a party or witness genuinely believes is accurate, but which is ultimately dismissed due to insufficient evidence or found to be untrue, does not constitute the intentional presentation of false information.

Focus on Sexual Misconduct in Disciplinary Matters

Under Texas law, a postsecondary educational institution may not take any disciplinary action against a party enrolled at the institution who in good faith reports to the institution being the victim of, or a witness to, an incident of sexual harassment, sexual assault, dating violence, or stalking for a violation by the student of the institution’s code of conduct occurring at or near the

time of the incident, regardless of the location at which the incident occurred or the outcome of the institution's disciplinary process regarding the incident, if any.

Right to Investigate and Decide Related Matters

The Investigation and the Decision will not be restricted to the violations alleged in the disciplinary complaint. The University of the Incarnate Word reserves the authority to pursue any additional potential violations of University Policy that have been identified through the Sexual Misconduct Adjudication Process Investigation. The Title IX Coordinator will notify the parties of the new allegations and will decide whether such allegations will be investigated by the Title IX Investigator or will be considered in another judicial process. In any case, the adjudication of any other violations of University of the Incarnate Word Policy outside of the realm of Sexual Misconduct will not delay the prompt and equitable resolution of the pending Sexual Misconduct complaint

No Retaliation

Retaliation against anyone who in good faith reports an incident of Sexual Misconduct or who in participates in this Sexual Misconduct Adjudication Process in any manner is strictly prohibited. Retaliation is also prohibited against anyone who opposes, in a reasonable manner, an act or policy believed to constitute a violation of the Sexual Misconduct Policy. Retaliation includes things such as hostility, intimidation, threats, or in any way discriminating against an individual because of the individual's complaint or participation in this Sexual Misconduct Adjudication Process. Anyone responsible for retaliation or threats of retaliation, whether that person is the accused party or another person, will be subject to disciplinary action by the University of the Incarnate Word. Retaliation should be reported promptly to the Title IX Coordinator. Retaliation by a person not affiliated with the University of the Incarnate Word may be addressed by the police

Anonymity

If a complainant requests that their name not be revealed to the respondent or asks that the University not investigate or seek action against the respondent, the Title IX Coordinator, in consultation with other administrators, will consider a number of factors in determining whether the University can honor that request. If the University determines that it can honor this request, the University's ability to respond fully to the incident, including pursuing disciplinary action against the alleged respondent may be limited. However, the University may be able to take steps to limit the effects of sexual misconduct and prevent sexual misconduct such as providing increased monitoring, supervision or security at a location where sexual misconduct occurred.

In some limited instances, a respondent may be spoken to without the complainant being identified. In other cases, issues of privacy must be balanced against the University of the Incarnate Word's need to investigate and take appropriate action. Although the University affirms the right of the complainant to decide whether they wish to be involved in any process to address sexual misconduct, individuals should understand that if the conduct at issue poses a threat to campus safety (which includes, but is not limited to, the involvement of further violence, the complainant's status as a minor, the use of weapons or potential repeat offenders), the University of the Incarnate

Word will take action regardless of whether the complainant wishes to proceed with their individual complaint.

Under these circumstances and whenever possible, the University will inform the complainant of its need to move forward prior to commencing an investigation of its intent to disclose the identity of the complainant. A complainant may receive interim measures, support and safety services regardless of the level of participation or engagement with applicable procedures or guidelines.

Once a formal complaint has been filed with the Office of Title IX, then the complainant's identity cannot be kept anonymous from the respondent and shall be disclosed to respondent in a manner consistent with appropriate federal guidelines.

Confidentiality

In some instances, the Respondent can be spoken to without the Complainant being identified and without filing or moving forward with a formal complaint. In these instances, the privacy and confidentiality of the individual raising a concern will be protected to the extent possible. In other cases, issues of confidentiality must be balanced against the University's need to investigate and to take appropriate action for the safety of the community.

The Title IX office shall maintain strict confidentiality of the proceedings. The information that is learned through the investigation process shall only be disseminated to the parties involved and those persons that are required as a part of the investigation, hearing, and appeals process.

Criminal Conduct

The University of the Incarnate Word will conduct its own investigation and adjudication of a disciplinary complaint, regardless of whether the alleged Sexual Misconduct is also being pursued through the criminal justice system. The University will comply with law enforcement requests for cooperation. At times, that cooperation may require the University to temporarily suspend its fact-finding investigation while law enforcement gathers evidence. The University will promptly resume its fact-finding investigation as soon as it is notified that doing so would not impede any law enforcement activities.

SECTION 2: REPORTING PROCEDURES

2.1 How to Report and Incident

A person who has experienced an incident of Sexual Misconduct, including sexual harassment, sexual assault, sexual exploitation, stalking, or relationship violence committed by a University of the Incarnate Word student or employee, may file a complaint online at <https://my.uiw.edu/titleix/> or with the Title IX Coordinator.

Instructions on how to report:

1. Go to: <https://my.uiw.edu/titleix/>
2. Click on “REPORT AN INCIDENT”
3. Under Reporting Forms, find the form entitled, “Title IX/Sexual Misconduct Report.”
4. Fill out the reporting form
 - Include as much information as possible. You can also include attachments and upload files to the form.
5. At the bottom of the form click “Submit Report.” Once you have submitted the report you are done.

2.2 Preliminary Meeting with the Investigator

Once a complaint has been made and reported to the Title IX office, the Title IX investigator shall contact the complainant to schedule an initial meeting. At the initial meeting with the complainant, the investigator will review the following information:

1. The investigation process, the hearing process, and the appeals process with the complainant.
2. The complainant will also be informed of their rights and responsibilities, and the rights of the respondent.
3. The investigator will have the complainant sign a non-retaliation agreement.

Once all information has been explained to the complainant, the investigator will allow the complainant one (1) week from the date of the meeting to decide whether to proceed with a formal complaint.

2.3 Decision Form

The investigator will provide the complainant with a decision form that includes four options. Those options are:

1. File a formal complaint and proceed with a formal investigation process including hearing.
2. File a formal complaint and proceed with an informal investigation process that does not include a hearing.
3. Not file a formal complaint proceed with an informal resolution process that may include informal agreement or mediation.

4. Not proceed with any formal complaint or informal resolution process and no further action will be taken.

SECTION 3: COMPLAINT PROCEDURES

3.1 Filing a Formal Complaint

A complainant shall file a formal complaint with the Title IX Office in order to proceed with a formal investigation. The formal complaint form shall be provided by the Title IX office. The formal complaint shall be in writing and state that they wish to proceed with the formal investigation process including a hearing. The formal complaint must be signed and dated by the complainant. A copy of the formal complaint form (Decision Form) will be given to the complainant and respondent during their meetings.

3.2 Notice to Parties

Notice of a Formal Complaint shall be provided to both parties in an investigation.

The written notice to the parties will include:

1. Sufficient details about the who, what, where, and how of the alleged incident.
2. A Statement of the presumption that the respondent is not responsible until a determination is made as to responsibility by the hearing officer.
3. That the parties have the right to an advisor of their choice. If they do not wish to choose one on their own, then the Title IX office will assign an advisor to the party.
4. The parties have the right to inspect and review evidence.
5. Knowingly providing false information or tampering with a witness's testimony or any evidence is not allowed and may result in sanctions.

Rights and Responsibilities

The parties shall be provided a form with their rights and responsibilities. This form shall be signed by the parties after it has been reviewed. The form shall include the following:

1. The Title IX Office at the University of the Incarnate Word will make a good faith effort to conduct a fair, impartial investigation in a timely manner designed to provide all parties with resolution.
2. Interviews will be the primary method of collecting information as part of the fact-finding investigation. It is the responsibility of the Title IX Investigator, to gather the evidence relevant to the complaint from the parties and witnesses, to the extent reasonably possible. Either party has the right to submit witnesses for interview and collect evidence to turn into the investigator.
3. Parties have the right to make a separate report to law enforcement. The University of the Incarnate Word will honor a parties' decision either to pursue a law enforcement remedy or to decline to pursue that avenue of remedy. If a party requires assistance in making a report to police, we will be able to assist them.
4. Parties are required to have an advisor with them in any formal complaint. This advisor may be chosen by the party. Each party must provide the name of their chosen advisor to the Title IX office. If the party does not wish to choose their own advisor, then they will be provided one by the Title IX Office.

5. Parties have the right to have a support person present during all interviews and proceedings. This person may not participate in the proceedings in any way. They may not be a witness in the investigation. They will only provide support and may not speak during this process.
6. The Title IX Investigator will explain the rights and responsibilities, the prohibition against retaliation, and the Sexual Misconduct Adjudication Process. Each party will be required to sign an acknowledgement of what has been explained to them.
7. If a party proceeds with a formal complaint, you will be required to decide whether you wish to pursue the formal process or informal process. If a complainant chooses not to file a formal complaint, then the parties may opt for an informal resolution or take no further action. Both parties will be required to sign an acknowledgment of that decision. Either party can choose to move forward with a formal process. If a formal process is requested, they will have the opportunity to participate or not participate in that process. However, failing to participate in the process may have an effect on the outcome of the decision.
8. Either party has the right to raise any concerns that they may have regarding a possible conflict of interest with the Title IX Investigator who has been assigned to the case. In the event the Title IX Investigator has a conflict of interest, they may recuse themselves from the investigation. Parties must raise the issue of a conflict of interest within three (3) days of learning the identity of the Title IX Investigator. Failure to raise a conflict concern within three (3) days of learning the identity of the Title IX Investigator will act as a waiver of any perceived conflict. Either party must email the Director of Title IX if you believe there is a conflict of interest with the Title IX Investigator.
9. Parties have the right to inspect and review all evidence collected during the formal investigation process. The evidence and documentation will be provided to both parties at least ten (10) business days prior to a hearing.
10. The University of the Incarnate Word will provide support services or “interim measures” for students and employees with sexual misconduct concerns, as appropriate. These support services or interim measures are available to individuals even if they choose not to file or pursue a disciplinary complaint. For more information about interim measures, please see the Sexual Misconduct Policy available on the Title IX website.
11. The Respondent to a Title IX Complaint is presumed innocent until proven responsible.
12. Both parties have a right to appeal the decision made through a formal or informal process. The appeal must be based on a procedural error, conflict of interest, or new information that was not available during the investigation process.
13. For more information about the policy and procedures that will be used in this complaint please visit the Title IX website at: www.uiw.edu/titleix.

The Rights and Responsibilities form is subject to change based on the state and federal regulations and will be updated accordingly.

Etiquette of the Parties

All parties, advisors, witnesses, and support persons shall conduct themselves with professionalism and decorum during the Investigation Process.

Profanity, disrespectful language, yelling, threats, intimidation and all other behavior deemed inappropriate will not be tolerated.

The Title IX Coordinator and the Title IX Investigator shall have discretion as to behavior by any party it deems inappropriate or unprofessional. Additionally, a party or advisor that exhibits unprofessional or disrespectful behavior may be asked to leave the interview.

Confidentiality

UIW shall keep confidential the identity of complainants, respondents, and witnesses, except as may be permitted by FERPA, or as required by law, or as necessary to carry out a Title IX proceeding.

Interim Measures

The University of the Incarnate Word will not automatically restrict a party from attending classes or participating in other University activities based on a disciplinary complaint pending in the Sexual Misconduct Adjudication Process. However, the University does reserve the right to impose interim measures at any time upon learning of an allegation of Sexual Misconduct, if the University has concerns about the safety of the University of the Incarnate Word community. Such measures may include, but are not limited to, restrictions regarding movement on campus, removal from University housing and/or removal from campus. The decision to provide interim measures is made at the discretion of the Title IX Coordinator, in consultation with the Associate Provost for Academic Support Services, if necessary. The University of the Incarnate Word will also enforce any orders that are issued by the Courts of the State of Texas.

No Contact Orders

When the Title IX Coordinator receives a complaint alleging Sexual Misconduct, a University No Contact Order may be issued barring any communication between the Complainant and Respondent. This No Contact Order may prohibit any attempt to contact or respond to any communication from the other party, either directly or indirectly (e.g. through friends, family members, or any other third party). The Title IX Coordinator, Title IX Investigator and the Associate Provost for Academic Support Services or other designee will work with the parties involved in the Sexual Misconduct Adjudication Process to help facilitate the No Contact Order between the parties, so that they may attend classes and use University facilities as appropriate. A No Contact Order may be extended after the conclusion of the Sexual Misconduct Adjudication Process at the request of either party. In cases where a demonstrated violation of this No Contact Order has been shown, the responsible party may be separated from the University of the Incarnate Word pending the final resolution of the disciplinary complaint.

Non-Retaliation Agreements

The Complainant and Respondent will be required to sign a Non-Retaliation Acknowledgement,

agreeing to refrain from any retaliatory conduct against the other party or any witnesses in the matter.

No Undue Delay

The Title IX Coordinator, Title IX Investigator, Advisors, and Hearing Officers shall make every effort to prevent undue delay of these processes.

3.3 Choosing an Advisor

Both parties are entitled to have an advisor of their choosing with them throughout the Title IX process. This advisor may or may not be a legal advisor (i.e. an attorney).

Assignment of Advisor

Should either party not be able to find an advisor then UIW shall provide without fee or charge to either party, an advisor of the University's choice, who may be, but is not required to be an attorney.

Role of the Advisor

This advisor shall be utilized to navigate the investigation process to conduct questioning, cross-examination, and closing remarks on behalf of the party and give advice to that party regarding the proceedings of a Title IX investigation, hearing, and appeals process.

Advisor Etiquette

Advisors shall always conduct themselves with professionalism and in a respectful manner. Any violation of decorum shall be cause for dismissal from the advisor role.

Should an advisor be dismissed, then a new advisor shall be appointed to the party promptly.

3.4 Informal Investigation Process

If both parties choose to opt out of a formal investigation process, the informal investigation process shall take place.

1. The parties must both opt out and that decision must be in writing.
2. The informal process will still consist of an investigatory stage in which the Title IX Investigator assigned to the complaint will gather evidence, investigate all parties and witnesses, etc. that is the same as the formal process.
3. Each party will receive an internal Title IX advisor at their requests to explain the investigation process and procedures to them and advise them during the informal process.
4. Each party may also have a single support person of their choosing that may sit in on their interview. This support person may not also be a witness, and may not speak during the interviews or meetings.
5. The parties shall be given at least ten (10) business days to file a written response regarding the investigation evidence and the investigator will consider those responses prior to completion of the investigative report.

6. Once the final investigative report is complete, that final report along with all other evidence, statements, etc. that is relevant to the case shall be provided to the hearing officer assigned to the case. The hearing officer will not be the Title IX Coordinator.
7. The informal process will not include a hearing or cross examination of witnesses.
8. The hearing officer will render a decision based on all evidence, statements, investigator's report that is submitted.
9. Either party may appeal the decision within five (5) business days from the date the notice of the decision was given. The appeal must be valid in order to make it to be reviewed by an appeal panel.

The informal investigation process contains a complaint process, an investigation process, a decision process and an optional appeals process. The Investigation shall be done in the same way that the formal investigation process happens. The difference in the informal investigation process will be that no hearing takes place and no questioning of witnesses or cross-examination shall occur. This process shall call for the hearing officer to make a decision solely based on the evidence collected by the investigator and submitted by the parties.

3.5 Informal Resolution Process

If the complainant does not wish to file a formal complaint but wishes to discuss a possible resolution of reported incident, then the parties may agree to discuss and resolve the informal complaint with an informal resolution through informal agreement or mediation.

The Informal Resolution process shall take place outside of a formal complaint. This resolution process shall not inhibit the right of the complainant to file a formal complaint, if a resolution cannot be made between the parties.

Should the parties come to a resolution and all terms of the agreement be fulfilled then the complainant cannot attempt to file a formal complaint. If the terms of the informal resolution agreement have not been fulfilled by both parties, then the complainant may be able to file a formal complaint.

SECTION 4: INVESTIGATION PROCEDURES

4.1 The Title IX Investigator

Conflict with the Investigator

Either party has the right to raise any concerns he/she may have regarding a possible conflict of interest with the Title IX Investigator who has been assigned to the matter. In the event that the Title IX Investigator has a conflict of interest, she may recuse herself from the investigation. Parties must raise the issue of a conflict of interest within three (3) business days of learning the identity of the Title IX Investigator. Failure to raise a conflict concern within three (3) business days of learning the identity of the Title IX Investigator will act as a waiver of any perceived conflict.

Utilizing Deputy Coordinators

If a conflict of interest with the Title IX Investigator occurs, then a Deputy Coordinator may step in the investigator role.

4.2 Collecting Evidence

The burden of proof and gathering of evidence is the responsibility of the University and shall be conducted by the person who is investigating the formal complaint. This may include UIW's Title IX Coordinator, the Title IX Investigator, or the Title IX Deputy Coordinators, etc.

Both parties (with their advisors) have the right to gather, provide, and present relevant evidence during the investigation process. Additionally, both parties have the right to inspect and review any evidence that is gathered and presented by either party. All evidence shall be provided to each party at least ten (10) business days prior to any formal hearings.

The evidence shall be provided in electronic format or hard copy. Should the University be unable to copy or digitize a piece of evidence (i.e. physical evidence), then a photo of that evidence will be taken and provided to each party.

Interviews

Interviews shall be conducted by the Title IX Investigator assigned to the case. Interviews of witnesses will be conducted one-on-one with the Title IX investigator. These interviews shall be used to gather information and evidence that will be included in the Title IX Investigator's report.

Document Review

The Title IX Investigator assigned to investigate will make a good faith effort to obtain any of the documents or other materials deemed relevant to the investigation. The Investigator shall document if there are issues with obtaining relevant documents. The Investigator shall review any documents obtained and include what documents they reviewed in their investigator's report.

Support Persons

Parties involved in the Sexual Misconduct Adjudication Process as Complainants or Respondents may be more comfortable navigating the process with the help of a support person. A support person is someone whom the student trusts to provide advice and support during the process. A support person can be any person the student feels comfortable confiding in and need not be affiliated with the University of the Incarnate Word (e.g., a friend, a family member, a person from a support or advocacy agency, attorney, etc.). A support person may accompany the party to any part of the adjudication process, including any meetings with the Title IX Deputy Coordinators, and/or Title IX Coordinator. The support person may NOT participate in the process in any way and, as such, cannot be a witness to the allegations in the complaint. Attorneys may serve as support persons, with the same rules applying. A support person must agree to sign a Non-Retaliation Acknowledgement form prior to being present for any meeting. Failure to sign a Non-Retaliation Acknowledgement will result in the support person being excluded from the interview.

Party Interviews

The Title IX Investigator assigned will interview the Complainant and the Respondent separately. This meeting is an opportunity for the participants to discuss his/her recollection of the event in question, voice any concerns and to work with the Investigator to determine what information may be helpful in the investigation of the allegations. Interviews will be the primary method of collecting information as part of the investigation process. Parties may also discuss the impact that this experience has had on them. The Investigator may interview the parties more than once, as necessary.

Both parties shall have their advisor present for any interviews conducted with the Title IX Investigator. This is to protect the interest of each party and shall allow the advisor to advise the party as necessary during this process.

The parties may each have a support person that accompanies him/her to all meetings with the Title IX Investigator, but that support person may not participate in the conversation. Prior to sitting in on any interviews, the support person will be required to sign a non-retaliation agreement, agreeing to refrain from any retaliatory conduct against the opposing party or any witnesses in the matter. Failure to sign a Non-Retaliation Agreement will result in the support person being excluded from the interview.

Witness Interviews

The Complainant and Respondent have the right to identify any individuals who may be witnesses to the conduct alleged in the complaint of Sexual Misconduct. The parties should be aware that it is possible for both the Respondent and Complainant to list the same people to speak as witnesses on their behalf. Witnesses should only be encouraged to cooperate and to speak the truth. Witnesses should not be intimidated, threatened or improperly influenced in any way by either party or through others. Any attempt to threaten, intimidate or to otherwise improperly influence the testimony of a witness may result in a separate disciplinary action by the University of the Incarnate Word. The Title IX Investigator will attempt to contact and interview any witness

identified by the parties that the Title IX Office deems to be relevant to the resolution of the disciplinary complaint.

The Title IX Investigator may also interview any other persons which they find to be potentially relevant to this matter. Witnesses may not bring support persons to their interviews. Prior to being interviewed, a witness will be required to sign a Non-retaliation Agreement, agreeing to refrain from any retaliatory conduct against the parties or any witnesses in the matter. The Title IX Investigator will make their best efforts to interview relevant witnesses who are no longer on campus.

Medical Records

Medical and similar privileged records are not available unless the party (or legal guardian) gives written consent.

4.3 Investigator's Report

Preliminary Report

Once the investigation has been completed, the Title IX Investigator will evaluate the information obtained during this process. The Investigator will prepare a report summarizing and analyzing the evidence and relevant facts that was received during the investigation. They will note any supporting documentation and evidence.

The Investigator will send a preliminary report to the parties and their advisor's, if any. The parties must be allowed ten (10) business days to respond in writing to the evidence, and the Investigator must consider the written response prior to completing the final report.

Ability for Parties to Respond

The parties shall be given at least ten (10) business days to file a written response regarding the investigation evidence and the Title IX Investigator shall consider those responses prior to completion of the final investigative report.

Final report

The Investigator's final report along with all evidence collected must be provided to both parties at least ten (10) business days prior to any formal live hearing. This report shall be provided in either electronic or hard copy format.

4.4 Making the Evidence Available

Inspection of Evidence

All parties and their advisors will be given equal access to inspect and review all evidence gathered during the investigation that is directly related to the allegations raised in the formal complaint, including evidence upon which the University does not intend to rely in reaching a decision and incriminating as well as exonerative evidence, regardless of source.

Copies of Evidence

The University will provide a copy of all evidence at the hearing to both parties. Each party will have equal access to refer to the evidence or use it in questioning and cross-examination.

Altering Evidence

Neither party may alter any evidence. Permission must be granted by the Title IX Coordinator if either party wishes to enhance, zoom, make a poster size copy, or alter any evidence at least five (5) business days prior to a live hearing.

- Request to Alter Evidence

All requests for altering or emphasizing must be done in writing and signed by the party and their advisor. All requests must be reasonable. Should the Title IX Coordinator deem the request unreasonable then the request shall be denied.

- Response from the Title IX Coordinator to Request

The Title IX Coordinator shall respond to requests made within two (2) business days from the time that the request is received.

SECTION 5: HEARING PROCEDURES

5.1 Notice of Hearing Date

After the investigation process has been completed, the notice of a live hearing date shall be sent to both parties with at least ten (10) days' notice.

The Notice shall include:

1. The Date, Time, and Location of the hearing.
2. The Name of the Hearing Officer
3. The list of witnesses (other than the parties) permitted to testify
4. A copy of the Investigator's Final Report
5. A copy of all evidence collected during the investigation process

5.2 Hearing Decorum

All parties, advisors, witnesses, and support persons shall conduct themselves with professionalism and decorum during the live hearing.

Profanity, disrespectful language, yelling, threats, intimidation and all other behavior deemed inappropriate will not be tolerated.

The Hearing officer shall have discretion as to behavior by any party it deems inappropriate or unprofessional. Additionally, a party or advisor that exhibits unprofessional or disrespectful behavior may be asked to leave the live hearing. This may result in a pause of the hearing proceedings until the parties can return or a new advisor can be found for the party.

5.3 Order of the Hearing

1. Testimony of the investigator
2. Statement and Questioning of the Complainant
3. Cross-Examination of the Complainant
4. Statement and Questioning of the Respondent
5. Cross Examination of the Respondent
6. Questioning of Witnesses
7. Closing Statement by Complainant
8. Closing Statement by Respondent

5.4 Hearing Officer's Role

A hearing officer will be assigned to the individual case. The hearing officer will render a decision based on all evidence, statement's, investigator's reports, etc. that are submitted during the hearing. This decision shall be made using the preponderance of evidence standard.

The Hearing Officer shall also make ruling on the relevance of evidence and shall utilize the test for relevance in making these determinations.

Conflicts of Interest

Either party has the right to raise any concerns they may have regarding a possible conflict of interest with the Hearing Officer who has been assigned to the matter. If the Hearing Officer has a conflict of interest, he/she may recuse himself/herself from the investigation. Parties must raise the issue of a conflict of interest within three (3) days of learning the identity of the Hearing Officer. A new Hearing Officer will then be assigned in the event of a conflict of interest.

5.5 Questioning & Cross-Examination

At the hearing, each party shall be given the opportunity for relevant questions and cross-examination to be conducted by the party's advisor. Questioning may be done of the other party and any witnesses and may include challenging credibility.

All questioning, including cross-examination, at the live hearing must be conducted directly, orally, and in real time by the party's advisor of choice and never by the complainant or respondent personally.

If a party or witness does not submit to cross-examination at the live hearing, the hearing officer must not rely on any statement of that party or witness in reaching a decision regarding responsibility.

However, the hearing officer may utilize other witnesses, evidence, etc. that was subject to cross examination in their deliberation.

Additionally, the hearing officer cannot draw an inference regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.

5.6 Timing of Questioning

Questioning of a witness or party shall be limited to one (1) hour and thirty (30) minutes per side. Once the cross-examining party has completed their questioning, then the party that is directing the witness shall be given an additional 15 minutes for re-direct questioning. Once the re-direct questioning is complete then the next party shall be called, and the same process shall take place.

The parties (through their advisors) may agree prior to the hearing as to the order of the additional witnesses other than the Complainant and Respondent.

The Hearing Officer shall be able to ask any additional relevant questions that they have during the hearing.

5.7 Number of Witnesses

The parties may only have witnesses that are relevant to presentation of evidence in the hearing. All witnesses will not sit in on the hearing and will either be outside the hearing room or on standby in the event of a virtual hearing. No witness will be allowed to hear the testimony of any of the other witnesses. Only the Complainant and the Respondent, along with their advisors may sit in on the entire hearing.

Any witnesses not listed in the Investigator's final report must be listed and submitted to the Title IX Coordinator at least ten (10) business days prior to a live hearing. This shall allow the Title IX Coordinator time to notify the other party of additional witnesses and allow them to prepare for questioning.

Should the additional witnesses not provide relevant testimony to the allegation, but be character witnesses, then the Title IX Coordinator shall have the authority to limit the number of character witnesses.

5.8 Exclusion of Testimony

A party or witness who refuses to submit to live questioning from the other party's advisor must have their testimony excluded.

Questioning of sexual history is generally not permitted (see 5.14 Sexual History Rule).

5.9 Conducting Live Hearings

The Hearing Officer shall oversee conducting the live hearing. The live hearing may take place in-person or by videoconference (I.e. ZOOM, Microsoft Teams, Skype, etc.).

During an in-person hearing, generally, the Complainant and Respondent and their advisors may be present throughout the entire hearing. Live hearings may be conducted with all parties physically present in the same geographic location or, at the school's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other.

Either party may request that a hearing be held with the parties in separate rooms with technology enabling the parties and the decision-maker to see and hear witnesses.

The University will create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection and review.

Any witnesses, not including the parties, must not be inside the hearing room unless they are being questioned or cross-examined.

Witnesses additionally, should not discuss the case with each other in the hallway or outside the hearing room. No witnesses should communicate with each other during the live hearing.

5.10 Conducting Hearings via Videoconference (i.e. Zoom, Skype, Google Teams, Etc.)

For a videoconference hearing, the Title IX Coordinator shall ensure that all parties and witnesses are able to access the videoconferencing technology.

The parties and their advisors may be present throughout the entirety of the videoconference hearing.

Any witnesses, excluding the parties, may not be present during the entire hearing. Those witnesses will be asked to remain on standby or in breakout/waiting rooms until it is their time for questioning.

5.11 Transcripts/Recordings of Hearings

All hearings shall be recorded with video and audio. The Title IX Coordinator shall prepare the accommodations for the hearing and along with IT make sure that all equipment is in good working order. The entire hearing process including but not limited to questioning, cross-examination, re-direct, relevance decisions, and closing statements shall be recorded. Review of the recordings may be provided upon request in writing by either party.

5.12 Relevant Questions

Only relevant cross-examination and other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a cross-examination or other question, the hearing officer must first determine whether the question is relevant and explain any decision to exclude a question as not relevant. This explanation must be given before proceeding and must be recorded or transcribed for the records.

5.13 The Test for Relevance

Evidence is relevant if: 1) it has any tendency to make a fact more or less probable than it would be without the evidence; and 2) the fact is of consequence in determining the action.

5.14 Sexual History Rule

In a case of Sexual Misconduct, the past sexual history of the Complainant and/or the Respondent or either party's sexual history with others will NOT be used in determining whether the Sexual Misconduct occurred. Prior consensual activity between the two parties will not be determinative of the issue of consent in the pending disciplinary complaint. Consent to one sexual act does not constitute consent for another sexual act.

Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove:

1. that someone other than the respondent committed the conduct alleged by the complainant, or
2. 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.

The Hearing Officer shall review all questions during cross-examination to determine if they are relevant before a party being questioned may be asked about sexual history.

5.15 Respondent's Presumption of Innocence

The Respondent shall be presumed innocent until proven responsible.

5.16 Admissible and Inadmissible Evidence

Only relevant evidence shall be admissible in the live hearing. Relevant evidence may be inculpatory or exculpatory. Relevance of the evidence shall be decided on by the Hearing Officer.

Inculpatory evidence is evidence tending to support the proposition that the respondent committed the alleged violation.

Exculpatory evidence is evidence tending to support the proposition that the respondent did not commit the alleged violation.

Medical records of a party shall generally not be admitted in the hearing process, unless signed off on by the party to whom the records pertain.

Sexual History of a party shall generally not be admissible (See 5.14 Sexual History Rule).

5.17 Pausing a Hearing

A hearing may be paused in certain instances by the Hearing Officer. These may include decorum issues with a party or an advisor. In addition to the decorum policy, a hearing may be paused by the Hearing Officer for any of the following reasons:

1. Intentionally False Testimony

If it is found through the evidence that a party or witness intentionally provided false testimony, then the Hearing Officer may pause the hearing. The Hearing Officer will then determine if they need to bring that party or witness back in for additional questioning regarding the false testimony.

2. Tampering with a Witness

If it is found that either party is attempting to tamper with a witness or has tampered with a witness in any way, then the Hearing Officer may pause the proceedings.

3. Tampering with Evidence

If it is found that either party or witness or other person affiliated with the parties or witnesses has tampered with any evidence, then the Hearing Officer shall have discretion to pause the hearing proceedings.

SECTION 6: DECISION PROCEDURES

6.1 Burden of Proof

The University of the Incarnate Word has elected to use the preponderance of the evidence standard of proof in all Title IX investigations.

The standard is met when the evidence indicates that it is more likely than not that the alleged conduct has occurred.

In a Title IX formal investigation, the hearing officer shall return a decision in favor of the complainant if it is shown that a specific allegation of sexual misconduct was more likely than not to have occurred. If this burden is not met, then a decision in favor of respondent shall be rendered.

6.2 How Does the Hearing Officer Decide

1. After a hearing, the Hearing Officer must deliberate and consider all the admissible testimony and admissible evidence.
2. The Hearing Officer must evaluate for the weight and credibility of the testimony and evidence.
3. The Hearing officer must resolve the disputed issues of fact under the preponderance of evidence standard.
4. Using the facts as found, the hearing officer must apply the policy's definitions to those facts to determine whether the Sexual Misconduct Policy has been violated.

6.3 Decisions Rendered

After the Hearing Officer has deliberated and reviewed all evidence presented during the live hearing, they shall render a decision of either:

1. Responsible: Finding that it is more likely than not that the respondent committed the act that they have been accused of, or
2. Not Responsible: Finding that the preponderance of evidence burden has not been met and there is not enough evidence to render that it is more likely than not that the respondent committed the act of which they have been accused.

6.4 Notice of Decision

Following the hearing the Hearing Officer must issue a written decision notice to the parties at the same time which must include:

1. Identification of the allegations that potentially constitute sexual harassment;
2. A description of the procedural steps taken after receiving the formal complaint through the final decision, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
3. Findings of fact supporting the decision;
4. Conclusions and application of this policy to the facts;
5. A statement and rationale for the result of each allegation including: a decision regarding responsibility, any disciplinary sanctions the University will impose on the respondent, and

whether remedies designed to restore or preserve equal access to the University's education program or activity will be provided by the University to the complainant; and

6. The University's policy and permissible grounds for the complainant and respondent to appeal.

Note: This Notice of Decision also applies in an informal process where the Decision-Maker must review the evidence and determine if a policy violation occurred.

SECTION 7: APPEALS PROCEDURES

7.1 Appeals

The University will offer both parties the option to appeal a decision regarding responsibility and/or dismissal of a formal complaint or any allegations therein, for the following reasons:

Procedural Error

Procedural irregularity that occurred during the investigation that may have affected the outcome of the matter.

New Evidence

New evidence that was not reasonably available at the time the decision regarding responsibility or dismissal was made

Conflict of Interest

The Title IX Coordinator, Title IX Investigator, Hearing Officer or Decision-Maker had a conflict of interest or bias that affected the outcome of the matter.

7.2 Third Party Appeals

Third-party persons cannot file appeals on behalf of the party.

7.3 Notice of Appeals

A notice of appeal shall be sent to both parties after the decision has been rendered. The notice shall clearly lay out the right of either party to appeal. The notice shall include the three options that parties may submit for an appeal, which include: 1) Procedural Error, 2) New Evidence, and 3) Conflict of Interest.

7.4 Submission of Appeal

Either party has five (5) business days from the date that a decision was rendered by the hearing officer to submit an appeal. The appeal must be in writing and must clearly state the grounds under which the appeal has been filed. The explanation must support the appeal that was raised.

The appeal must be delivered to the Title IX Coordinator, Alexandria Salas via email at ansalas@uiwtx.edu no later than the 5th business day by 5:00 p.m. Central Time. Appeals that do not comply with these requirements will not be considered.

The opposing party will be notified if an appeal has been filed. In some situations, both parties may file an appeal. In this situation, the Appellate Panel will consider and review both appeals together.

7.5 Valid Appeal

An appeal permits the challenge of a dismissal or determination on certain limited grounds (listed in Section 7.1 of the SMAP).

The appeal is not an opportunity to argue that the initial decision was wrong. The appeal is not a new fact-finding process.

7.6 Dismissing an Appeal

Upon receiving the appeal, the Title IX Coordinator shall review the appeal and determine whether it meets the proper criteria for filing an appeal. An appeal shall be dismissed for the following reasons:

1. If it is filed after the deadline set in this policy.
2. If the appealing party does not articulate one of the three grounds for the appeal.

7.7 Timeline of Appeal

The appeal shall be reviewed and attended to in a prompt manner and shall take no more than two (2) weeks from the date the appeal was filed to be ruled on.

7.8 Appeals Panel

The appeal will be considered by an impartial, trained, three-person Appellate Panel. This Panel will consist of three administrators, staff or faculty members from within the University of the Incarnate Word. These panelists have been specially trained in the adjudication of Sexual Misconduct. The decision regarding the composition of the Appellate Panel will be made at the discretion of the Title IX Coordinator. In considering the appeal, the Appellate Panel will be given the appeal, the Investigation Report, and the Hearing Officer's Decision to review.

7.9 Appeals Decision Rendered

When an Appeals decision has been rendered. Both parties and their advisors shall be notified in writing via email of the decision. This decision shall state:

1. Whether the hearing panel denied or granted an appeal.
 - In the event of an appeal being denied:
 - i. The decision is made final.
 - In the event of an appeal being granted:
 - i. The decision is changed by the appeals panel; or
 - ii. The decision is vacated, and the appeal panel sends the matter back for a new investigation or hearing as appropriate (This depends on the nature of the error found by the appeal panel).
2. The rationale for the hearing panel's decision.

7.10 Decision Final

The decision in a case becomes final:

1. If an appeal was not filed, on the expiration date set for filing; or,
2. If an appeal was filed, on the date the University provides the parties with the written decision of an appeal.

SECTION 8: SANCTIONS

No party will be found in violation of the Sexual Misconduct Policy without information showing that it is more likely than not that a policy violation occurred, and any sanctions will be proportionate to the severity of the violation.

8.1 Potential Sanctions

Potential Sanctions for Students

1. Transcript Notation
2. Counseling
3. Remedial Training
4. Non-Academic Probation
5. Non-Academic Suspension
6. Removal from Educational Program or Activity
7. Dismissal from the University Degree Program
8. Campus Housing Probation
9. Expulsion from Campus Housing
10. Other Campus Housing Sanctions
11. Other Student Conduct Sanctions

Potential Sanctions for Employees

1. Employment File Notation
2. Administrative Suspension
3. Removal from Educational Program or Activity
4. Suspension of duties
5. Remedial Training
6. Employment Probation
7. Termination of Employment
8. Other Employee Handbook Sanctions

Potential Sanctions for Faculty

1. Employment File Notation
2. Administrative Suspension
3. Removal from Educational Program or Activity
4. Suspension of Duties
5. Remedial Training
6. Employment Probation
7. Termination of Employment
8. Other Faculty Handbook Sanctions

8.2 Hearing Officer Recommendation

If a hearing officer makes the determination that the respondent has been found responsible for a violation of the Sexual Misconduct Policy, then the Hearing officer will continue with a sanction recommendation.

That sanction recommendation will be made after the decision notice has been given to all parties. The Respondent has the right to review the recommendation of the hearing officer prior to it being submitted to the controlling party that will decide if the sanction recommendation is suitable for the violation.

8.3 Sanction Decision Confirmation

Sanctioning Students

For students, the person(s) who will have final decision-making authority over proper sanctions will be:

- Dean of Campus Life
- Director of Student Advocacy and Accountability

Sanctioning Employees

For employees, the person(s) who will have final decision-making authority over proper sanctions will be:

- Associate Vice President of Human Resources
- Director of Human Resources

Sanctioning Faculty

For faculty, the person(s) who will have final decision-making authority over proper sanctions will be:

- Provost
- Vice Provost

Sanctioning shall be conducted subject to other policies and procedures of the University of the Incarnate Word. Sanctioning shall not be carried out by the Title IX office, but by the corresponding decision-making authority for the sanctions. The Title IX office shall obtain the records of official sanctions from the governing authority and maintain that record with the Title IX records.

SECTION 9: RECORDS

9.1 Transcript Notation & Academic Status

Transcript Notations, Transcript Holds, and Academic Status

The notation “Disciplinary Charges Pending” will be placed on a student’s transcript at the start of a Title IX investigation. This notation may be removed or changed as appropriate following the final resolution of a disciplinary complaint. If a student withdraws from the University while a disciplinary complaint is pending, a permanent notation will be placed on a student’s transcript stating, “Student Withdrew with Disciplinary Charges Pending.” A student who leaves while a disciplinary complaint is pending is not eligible to be issued a transcript by the University until a final decision is made. Additionally, a student who leaves while a disciplinary complaint is pending is not eligible to return to the University. A student cannot receive a degree while there is a pending, unresolved disciplinary complaint against them.

Refusal or failure by a student to meet and cooperate with the Title IX department regarding this matter or to sign the Non-Retaliation Acknowledgment, as determined by the Title IX Coordinator may result in either (1) an automatic suspension from the University, and/or (2) the adjudication of the disciplinary complaint without input from the student.

On request by another college or university, the University of Incarnate Word shall provide to the requesting college or university information relating to a decision by the University that a student enrolled at the University violated the institution's code of conduct by committing sexual harassment, sexual assault, dating violence, or stalking.

Employee Notations

An employee or faculty member who leaves while a disciplinary complaint is pending is not eligible to return to the University.

Refusal or failure by an employee or faculty member to meet and cooperate with the Title IX department regarding this matter or to sign the Non-Retaliation Acknowledgment, as determined by the Title IX Coordinator may result in either (1) an automatic suspension from the University; and/or (2) the adjudication of the disciplinary complaint without input from the employee or faculty member; and/or (3) other disciplinary action, including termination.

On request by another college or University, the University of Incarnate Word shall provide to the requesting college or University information relating to a decision by the University that an employee or faculty member of the University violated the institution's code of conduct by committing sexual harassment, sexual assault, dating violence, or stalking.

9.2 Retention Policy

The University shall maintain records of every Title IX sexual harassment investigation and decisions of responsibility, including informal resolutions. The University shall keep records of responses to every allegation of sexual harassment even if no formal complaint was filed, and any

response, including supportive measures offered and implemented. The University shall document the facts upon which it was determined that they were “not deliberately indifferent” to the allegations of sexual harassment.

All evidence, correspondence and recordings shall become a part of the case records. Electronic case records shall be maintained in the Title IX Office’s online system Maxient. Any hard copy files shall be maintained in a filing cabinet in the Title IX Office. All recordings or transcripts shall be maintained in the Title IX Office.

- Complaint records shall be retained for seven (7) years from the date that the complaint was made.
- Informal Resolution records shall be kept seven (7) years from the date that complaint was resolved.
- Investigation, hearing and appeals records shall be kept seven (7) years from the date that the case decision is final.
- Records of materials used to train Title IX coordinators, investigators, decision-makers, and any other persons shall also be kept seven (7) years from the implementation date of the training.

Additionally, the University shall maintain all materials used to train Title IX Coordinators, investigators, decision-makers and any person who facilitates an informal resolution process and post such materials on the school’s website.

EFFECTIVE DATE OF PROCEDURES

Under Federal Guidelines implemented and released in June 2020, this Sexual Misconduct Adjudication Processes Manual (SMAP) shall become effective August 14, 2020. Any Complaints filed before August 14, 2020 shall follow the Sexual Misconduct Policy and procedures in effect from December 2019.