

# **DORDT UNIVERSITY**

## **Procedures for Handling Formal Complaints Against Dordt Employees Pursuant to the Other Sexual Misconduct Policy**

The Office of Vice President for Student Success and Dean of Students has been charged with implementing the following procedures for employees pursuant to the Other Sexual Misconduct Policy. The Policy must be read in conjunction with the University's Title IX Sexual Harassment Policy, as conduct that falls under the latter policy cannot be processed under these procedures.

Dordt students, faculty, staff, other Dordt appointees, or third parties who believe they are directly affected by the conduct of a Dordt employee that could constitute other sexual misconduct (collectively "Complainants") may: request information or advice, including whether certain conduct may violate the Policy; explore the availability of supportive measures, with or without the filing of a formal complaint; file a formal complaint; or seek informal resolution. These four options are described below. Complainants are encouraged to bring their concerns to the Title IX Coordinator, or the Executive Director of Human Resources, but may, if they choose, contact another University officer, who must refer the matter as appropriate.

The Title IX Coordinator and their team are available to support individuals who make disclosures under this Policy, including with the provision of supportive measures as appropriate. As set forth below, supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the party against whom allegations are brought (the "Respondent"; collectively, the "parties") before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the University's education and work programs or activities without unreasonably burdening the other party. Consistent with University policy, supportive measures may include counseling, extensions of deadlines or other adjustments, modifications of work schedules, campus escort services, restrictions on contact between the parties, changes in work locations, leaves of absence, increased security, and monitoring of certain areas of the campus, and other similar measures. Any supportive measures provided to the Complainant, or the Respondent will be maintained as confidential, to the extent that maintaining such confidentiality would not impair the ability to provide the supportive measures.

### **I. Requests for Support, Information, or Advice**

Anyone seeking support, information, or advice can expect to learn about resources available at the University and elsewhere that provide counseling and support. They also will be advised about the steps involved in pursuing an informal resolution or filing a formal complaint. The Title IX Coordinator has information about any companion policies or procedures that may apply at the University. In addition, Title IX Coordinator may discuss with Initiating Parties whether any supportive measures are appropriate at this stage.

## **II. Requests for Informal Resolution**

Initiating Parties may make a request, either orally or in writing, for informal resolution to the Title IX Coordinator. The request should identify the alleged Respondent (if known) and describe the allegations with specificity. The request requires, as applicable, the approval of the Title IX Coordinator.

Upon determining that informal resolution is appropriate, and in instances when the Initiating Party makes the request to the Title IX Coordinator, the Title IX Coordinator will assign the informal resolution to an Investigator. The Title IX Coordinator or designee, or the Investigator will consult further with the person initiating the request, inform the person who is the subject of the allegations, and gather additional relevant information as necessary from the parties and others, as indicated. The Title IX Coordinator also may put in place any appropriate supportive measures. The Title IX Coordinator, their designee, or the Investigator will attempt to aid the parties in finding a mutually acceptable resolution.

When the allegations, if true, might constitute criminal conduct, the party against whom they are brought is hereby advised to seek legal counsel before making any written or oral statements. Those facing allegations may wish to obtain legal advice about how this process could affect any criminal case in which they are or may become involved.

A matter will be deemed satisfactorily resolved when both parties expressly agree, in writing, to an outcome that is also acceptable to the Title IX Coordinator. At any point prior to such an express agreement, the Initiating Party may withdraw the request for informal resolution and initiate a formal complaint under these Procedures.

Ordinarily, the informal resolution process will be concluded within two to three weeks of the date of the request.

## **III. Procedures for Formal Complaints**

### **A. Initiating a Formal Complaint**

An Initiating Party may file a formal complaint alleging a violation of the Policy. A concern of other sexual misconduct may be raised with the Executive Director of Human Resources, but a formal complaint must be filed with the Title IX Coordinator in person, by mail, by electronic mail, or by any additional method identified by the Title IX Coordinator, regardless of the identity of the Respondent. The Title IX Coordinator will inform the Respondent that a complaint has been received, and, if indicated, the Title IX Coordinator will put in place any appropriate supportive measures.

A formal complaint must be a document or electronic submission that contains the physical or digital signature of the Complainant or a third party filing on behalf of a potential Complainant (Reporter), or otherwise indicates that the Complainant or Reporter is the person filing the formal complaint. The Reporter is not a complainant, but a person serving as a Reporter on

behalf of the university may, for the purposes of these Procedures, serve as a party to the complaint in the absence of a complainant.

A formal complaint must allege other sexual misconduct against a prospective Respondent and request that the University investigate the allegation(s). The formal complaint should state the name of the prospective Respondent (if known) and describe with reasonable specificity the incident(s) of alleged other sexual misconduct, including the date and place of such incident(s). The complaint must be in the Complainant's or Reporter's own words, and may not be authored by others, including family members, advisors, or attorneys. Attached to the complaint should be a list of any sources of information (for example, witnesses, correspondence, records, and the like) that the Complainant or Reporter believes may be relevant to the investigation. A complaint should not be delayed if such sources of information are unknown or unavailable.

## **B. Timeframe for Filing a Formal Complaint**

The University encourages formal complaints to be filed as soon as reasonably possible following an alleged Policy violation because the University's ability to gather adequate information may be limited where a significant length of time has elapsed between an incident and the filing of a complaint. Further, the University's ability to complete any disciplinary processes may be limited with respect to Respondents who are no longer employed by the University. Either circumstance might provide discretionary grounds for the dismissal of a formal complaint, as described in Section III.I.ii below.

## **C. Initial Review**

Once a formal complaint is received by the Title IX Coordinator, the Title IX Coordinator will assign the case to an Investigator for an initial review, which will include efforts to gather a more complete understanding of the allegations, as well as any related conduct that may implicate the Policy, and consideration of grounds for dismissal of the complaint, as described in Section III.I.ii below. The University may designate an additional individual to work jointly with the Investigator (collectively, the "Investigative Team"). The Title IX Coordinator, investigators, university designees, appellate panelists, and any person who facilitates an informal resolution process, will have appropriate training.

Any individual designated as the Title IX Coordinator, investigator, University designee, appellate panelist, or any person designated to facilitate an informal resolution process will not have a conflict of interest or bias for or against complainants or respondents generally or an individual Complainant or Respondent in a case to which they are assigned.

At the initial review stage, based on the information gathered, the Investigative Team will determine if the formal complaint shall proceed to investigation or if a dismissal is warranted. The Investigative Team will convey this determination in writing to: the Complainant (and/or the Reporter, if there is one) and the Title IX Coordinator. The Title IX Coordinator or designee will implement any appropriate supportive measures to be put in place by the University pending the completion of the case (or revise as necessary any measures already in place).

At the initial review stage or subsequently, the Investigative Team may generally consolidate investigations of allegations under this Policy that are factually related to allegations under the Title IX Sexual Harassment Policy and investigate them using the Procedures for Handling Formal Complaints Against Employees Pursuant to the Title IX Sexual Harassment Policy.

Ordinarily, the initial review will be concluded within one week of the date the formal complaint was received.

## **D. Personal Advisors**

Both the Complainant and the Respondent may bring a personal advisor of their choice to any meeting or other proceeding that is part of the investigation, including initial review. The University will not limit the choice or presence of a personal advisor for either party. During interviews, personal advisors may not speak for their advisees, although they may ask to suspend the interviews briefly if they feel their advisees would benefit from a short break.

When a formal complaint involves allegations that, if true, also might constitute criminal conduct, Respondents are advised to seek legal counsel before making any written or oral statements. The investigation process is not a legal proceeding, but Respondents might wish to obtain legal advice about how this process could affect any criminal case in which they are or may become involved.

## **E. Investigation**

Following the decision to begin an investigation, the Investigative Team will notify the Respondent in writing of the allegations and will provide a copy of the Policy and these procedures. The Respondent will have one week in which to submit a written statement in response to the allegations. This statement must be in the Respondent's own words; Respondents may not submit statements authored by others, including family members, advisors, or attorneys. Attached to the statement should be a list of all sources of information (for example, witnesses, correspondence, records, and the like) that the Respondent believes may be relevant to the investigation.

The Investigative Team will request individual interviews with the Complainant (or the Reporter serving as a party to the complaint, as described in Section III.A above, if applicable) and the Respondent, and, as appropriate, with other witnesses, which may include those identified by the parties as well as relevant officers of the University or others. When identifying potential witnesses, the parties should understand that the purpose of interviews is to gather and assess relevant information about the incident(s) at issue in the formal complaint, not to solicit general information about a party's character.

If, in the course of an investigation, the Investigative Team decides to investigate allegations not included in the written notice to the parties described herein, the Investigative Team will provide notice of the additional allegations to the parties whose identities are known.

These Procedures presume that the Respondent is not responsible for an alleged Policy violation until a final determination regarding responsibility is made.

After the collection of additional information is complete but prior to the conclusion of the investigation, the Investigative Team will request individual follow-up interviews with the Complainant (or the Reporter, if applicable) and the Respondent to give each the opportunity to respond to the additional information.

## **F. Conclusion of the Investigation and Issuance of Final Report**

At the conclusion of the investigation, the Investigative Team will make findings of fact, applying a preponderance of the evidence standard, and determine based on those findings of fact whether there was a violation of the Policy.

The Investigative Team will provide the Complainant (or the Reporter, if applicable) and the Respondent with a written draft of the findings of fact and analysis and will give both parties five business days to submit a written response to the draft. The Title IX Coordinator will be provided with the draft investigative report for informational purposes. The Investigative Team will consider any written responses from the parties before finalizing the report.

The investigation will be completed, and the final report provided to the Complainant (or the Reporter, if applicable), the Respondent, and the Title IX Coordinator, ordinarily within 75 business days of receipt of the formal complaint. The imposition of disciplinary sanctions will be considered separately by the appropriate officials at the university, consistent with the Dordt Staff or Faculty Handbook. The University may impose a range of sanctions on employees found to have violated the Policy, ranging from an admonition, or warning up to, and including, termination.

The Investigative Team may impose reasonable timeframes to enable the timely completion of a proceeding. Timeframes for all phases of a proceeding apply to all parties equally. There may be circumstances requiring longer timeframes. Timeframes may be extended, for example, in the interest of the integrity and completeness of the initial review and investigation, to accommodate witness availability, or to comply with requests by or not to prejudice investigations or processes of external law enforcement, or for other legitimate reasons, including the complexity of the investigation and the severity or extent of alleged misconduct. The Investigative Team will notify the parties of any extensions of timeframes.

## **G. Evidence**

In gathering and weighing evidence, the Investigative Team will consider both whether a reasonable person considering all the circumstances would find the conduct unwelcome and, when applicable, the environment hostile and whether the complainant viewed them as such. The following types of information may be helpful in making that determination, while avoiding prejudgment of the facts at issue: an objective evaluation of all relevant evidence – including both inculpatory (tending to support that the alleged conduct occurred) and exculpatory (not tending to support that the alleged conduct occurred) evidence; statements by any witnesses to

the alleged incident; information about the relative credibility of the parties and witnesses, so long as credibility determinations are not based on a person's status as a complainant, respondent, or witness; the detail, consistency, and plausibility of each person's account; the absence of corroborating information where it should logically exist; information that the Respondent has been found to have committed sexual misconduct or harassment; information that the Complainant has been found to have made false allegations against others; information about the parties' reaction or behavior after the alleged incident; and information about any actions the parties took immediately following the incident, including reporting the matter to others.

## **H. Confidentiality**

The Title IX Coordinator, the Appellate Panel, personal advisors, and others at the University involved in or aware of the formal complaint will take reasonable steps to protect the privacy of all involved. Once a complaint is filed, the Complainant or Reporter, the Respondent, and any witnesses will be notified of the potential for compromising the integrity of the investigation by disclosing information about the case and the expectation that they therefore keep such information – including any documents they may receive or review – confidential. They also will be notified that sharing such information might compromise the investigation or may be construed as retaliatory. Retaliation of any kind is a separate violation of the Policy and may lead to an additional complaint and consequences.

The parties remain free to share their own experiences, though to avoid the possibility of compromising the investigation, it is generally advisable to limit the number of people in whom they confide.

## **I. Special Circumstances**

### ***i. Request for Anonymity***

Complainants who want to file a formal complaint cannot remain anonymous or prevent their identity from being disclosed to the Respondent (via the written notice of allegations).

### ***ii. Dismissal***

*Mandatory Dismissal of a formal complaint:* If the conduct alleged in the formal complaint would, even if true, not constitute other sexual misconduct as defined in the Policy, then the Investigative Team will dismiss the formal complaint with regard to that conduct for purposes of other sexual misconduct under the Policy. Such a dismissal does not preclude action under other University policies.

*Discretionary Dismissal of a formal complaint:* The Investigative Team may, after having consulted with the Title IX Coordinator, dismiss the formal complaint or any allegations therein, if at any time during the investigation:

1. the Complainant notifies the Investigative Team in writing that the Complainant would like to withdraw the formal complaint or any allegations therein;
2. the Respondent is no longer employed by the University; or
3. specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

The Title IX Coordinator will promptly send written notice of the dismissal and reason(s) therefor to the Complainant, the Reporter, or the parties, as applicable.

Within one week of the decision to dismiss a case, the Complainant or Respondent may appeal the dismissal under the process and on the bases set forth in Section IV below.

In cases where the Title IX Coordinator concludes that the alleged conduct, while not a violation of the Policy, might implicate other University conduct policies, the Title IX Coordinator may refer the formal complaint to the appropriate University official.

### ***iii. Request for Informal Resolution After a Complaint has Been Filed***

Once a formal complaint has been opened for investigation and before the final report has been provided to the parties, a party may request informal resolution as an alternative to formal resolution of the complaint, but that disposition requires agreement of the Complainant and the Respondent and the approval of the Title IX Coordinator.

If such a request is approved, the timeframes will be stayed, and the Title IX Coordinator will ordinarily assign the informal resolution to an Investigator, other than the Investigator who has been assigned to the Investigative Team for the case; or another University officer trained to facilitate an informal resolution process; who will take such steps as they deem appropriate to assist in reaching a resolution.

The Investigator, or other University officer facilitating the informal resolution process, will: (1) provide the parties with a written notice disclosing the allegations, the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the investigative process with respect to the formal complaint, and any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared; and (2) obtain the parties' voluntary, written consent to the informal resolution process.

The parties will ordinarily have up to two weeks from receipt of the request to reach a written informal resolution, unless extended by written agreement of the Complainant and the Respondent with the approval of the Title IX Coordinator. If the parties cannot reach an informal resolution, then the investigation will resume, in accordance with the formal complaint procedures.

#### **IV. Appeal**

Both the Respondent and the Complainant may appeal the dismissal of a formal complaint or any allegations therein, or the Investigative Team's findings or determination regarding responsibility, based on the following grounds:

1. A procedural irregularity that affected the outcome of the decision;
2. The appellant has new evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, and that could affect the outcome of the decision;
3. The University Title IX Coordinator, or Investigative Team, had a conflict of interest or bias for or against complainants or respondents generally or the individual Complainant or Respondent that affected the outcome of the matter; or
4. On the record as a whole, no reasonable Investigative Team could have reached the same determination regarding responsibility.

Disagreement with the Investigative Team's reason(s) for a dismissal or the findings or determination regarding responsibility, is not, by itself, a ground for appeal.

Appeals of the Investigative Team's dismissal or findings or determination regarding responsibility must be received by the Chief of Staff within one week of the date of the notice of dismissal or the determination and must be in writing and no more than 2,500 words. The Chief of Staff will assign the appeal to a panel drawn from a pool of trained faculty and administrators. The appeal will be shared with the non-appealing party. The non-appealing party may submit a response to the appeal within one week of receiving the appeal, and the response must be no more than 2,500 words. The response will be shared with the appealing party. The appealing party may submit a reply of no more than 1,000 words within 2 business days. The non-appealing party will have access to the other party's reply, but no further responses will be permitted. All appeals will be based solely on the written record. Ordinarily, appeals will be decided within three weeks and the parties, and the Title IX Coordinator promptly will be informed of the outcome in writing.