

# **DORDT UNIVERSITY**

## **Procedures for Handling Formal Complaints Against Students Pursuant to the Title IX Sexual Harassment Policy**

The Office of Vice President for Student Success and Dean of Students has been charged with implementing the following procedures for students pursuant to the Title IX Sexual Harassment Policy, with respect to investigations. The Title IX Coordinator has been charged with implementing the following procedures for students pursuant to the Policy, with respect to hearings.

Dordt students, faculty, staff, other Dordt appointees, or third parties who believe they are directly affected by the conduct of a Dordt student that could constitute sexual harassment (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 after a formal complaint is filed. These four options are described below. Complainants are encouraged to bring their concerns to the Title IX Coordinator, or staff in Student Services, but may, if they choose, contact another University employee, 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 programs or activities without unreasonably burdening the other party. Consistent with University policy, supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, restrictions on contact between the parties, changes in work or housing 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**

Complainants 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 filing a formal complaint or seeking informal resolution after a complaint is filed. In addition, the Title IX Coordinator may discuss with Complainants whether any supportive measures are appropriate at this stage.

## **II. Procedures for Formal Complaints**

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

Complainants may file a formal complaint alleging a violation of the Policy. A concern of harassment may be raised with the Title IX Coordinator, 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 University Title IX Coordinator, regardless of the identity of the Respondent. (If the Respondent is not a student, see **Processing of Complaints Against Staff, Faculty, Other Dordt Appointees, or Third Parties** below). The University Title IX Coordinator will inform the Complainant and 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 Complainant's physical or digital signature, or otherwise indicates that the Complainant is the person filing the formal complaint. The formal complaint instead may be signed by the Title IX Coordinator, but in that case, the Title IX Coordinator is not a complainant or otherwise a party to the complaint.

A formal complaint must allege sexual harassment against an alleged harasser and request that the University investigate the allegation(s). At the time of filing a formal complaint, a Complainant must be participating in or attempting to participate in the education program or activity of the University. The formal complaint should state the name of the alleged harasser (if known) and describe with reasonable specificity the incident(s) of alleged harassment, including the date and place of such incident(s). The complaint must be in the Complainant'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 believes may be relevant to the investigation. A complaint should not be delayed if such sources of information are unknown or unavailable.

Whether or not a formal complaint is filed with the Title IX Coordinator, any person may file a complaint of discrimination with the U.S. Equal Employment Opportunity Commission, the U.S. Department of Education Office for Civil Rights, or any other state or federal agency having jurisdiction.

### **B. Processing of Formal Complaints Against Staff, Faculty, Other Dordt Appointees, or Third Parties**

These Procedures cover formal complaints against students. With respect to allegations against a staff member, faculty member, other Dordt appointee, or third party, the Title IX Coordinator will promptly coordinate with appropriate administrators.

### **C. 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 have graduated from the University. Either circumstance might provide discretionary grounds for the dismissal of a formal complaint, as described in Section II.J.ii below.

### **D. Initial Review**

Once a formal complaint is received by the Title IX Coordinator, the parties will be notified in writing of the allegations and will be provided a copy of the Policy and these Procedures. 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 II.J.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, hearing panelists, decision-makers, appellate panelists, and any person who facilitates an informal resolution process, will have appropriate training.

Any individual designated as a Title IX Coordinator, investigator, university designee, hearing panelist, decision-maker, 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, the Respondent and the Title IX Coordinator. The Title IX Coordinator or designee will implement any appropriate supportive measures to be put in place 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 the Other Sexual Misconduct Policy that are factually related to allegations under the Title IX Sexual Harassment Policy and investigate them using these procedures.

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

## **E. 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, or hearing. 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. The party's personal advisors will also conduct cross-examination at the live hearing, as described in Section II.G below.

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 and hearing process are not legal proceedings, 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.

## **F. Investigation**

Following the decision to begin an investigation, 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 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.

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.

Prior to the conclusion of the investigation, the Investigative Team will provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including evidence upon which the Investigative Team does not intend to rely in making findings of fact, and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party has the opportunity to respond to the evidence prior to conclusion of the investigation. Prior to completion of the investigative report, the Investigative Team will send to each party and the party's advisor (i.e., personal advisor), if any, the evidence subject to inspection and review in an

electronic format or a hard copy, and the parties will have up to 10 business days to submit a written response, which the Investigative Team will consider prior to completion of the investigative report.

At least 10 business days prior to a hearing described in Section II.G below:

\* The Investigative Team will provide the Complainant and the Respondent, and their advisors, if any, with the investigative report, in an electronic format or hard copy, which will include recommended findings of fact on a preponderance of the evidence, and will give both parties five business days to submit a written response; and

\* The Title IX Coordinator will be provided with the investigative report for informational purposes.

## **G. Hearing**

The University Title IX Coordinator will assign a trained Decision-maker for the hearing, typically an external attorney, which may include, e.g., arbitrators and retired judges.

The Decision-maker shall determine the conduct of the live hearing, including without limitation rules of decorum and reasonable time limitations for the hearing. Formal rules of evidence will not apply.

At the live hearing, the Decision-maker will permit each party's personal advisor, to ask the other party and any witnesses relevant questions and follow-up questions, including those challenging credibility. Such cross-examination at the live hearing must be conducted directly, orally, and in real time by the party's personal advisor and never by a party personally.

If a party does not have an advisor present at the live hearing, the Title IX Coordinator must provide to that party an advisor of the University's choice, to conduct cross-examination on behalf of that party.

In general, documents that have not been submitted during the investigation and included in the investigative report may not be presented to the Decision-maker prior to or at the hearing, although the Decision-maker may make an exception if the documents contain new information that was not reasonably available at the time of the investigation and that the Decision-maker deems to be highly relevant to an accurate and fair determination of the outcome.

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 that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

The Decision-maker cannot draw an inference about the determination 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.

Live hearings may, but need not, be conducted with all parties physically present in the same geographic location. At the request of either party, in circumstances in which both parties are to appear at the hearing in person, the Title IX Coordinator must provide for the live hearing to occur with the parties located in separate rooms with technology enabling the Decision-maker and parties to simultaneously see and hear the party or the witness answering questions.

At the Decision-maker'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. The Title IX Coordinator must create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection and review.

The Title IX Coordinator must make all evidence gathered by the Investigative Team as described in Section II.F above available at the hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.

The Decision-maker will issue a determination regarding responsibility, applying a preponderance of the evidence standard. The determination regarding responsibility will include a description of the procedural steps taken; findings of fact supporting the determination regarding responsibility; conclusions regarding the application of the Policy to the facts, as well as application of the Other Sexual Misconduct Policy to the facts, as appropriate, such as for allegations consolidated as described in Section II.D above; a statement of, and rationale for, the result as to each allegation, including any disciplinary sanctions the University may impose on the Respondent if applicable, and whether remedies designed to restore or preserve equal access to the University's education program or activity will be provided to the Complainant; and the procedures and permissible bases for the parties to appeal. The Title IX Coordinator or designee are responsible for effective implementation of any remedies.

The initial review, investigation, hearing, and determination regarding responsibility, including the outcome of any remedies process, will be completed and the final determination regarding responsibility provided to the Complainant, the Respondent, and the Title IX Coordinator, ordinarily within 90 business days of receipt of the formal complaint. The Investigative Team or the Title IX Coordinator, as applicable, 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, investigation, hearing, and any remedies process, 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 or the Title IX Coordinator, as applicable, will notify the parties of any extensions of timeframes.

## **H. Evidence**

In gathering and weighing evidence, the Investigative Team and the Decision-maker will note that whether conduct is unwelcome is subjective, that is, based on whether the person subject to the conduct viewed it as unwelcome. However, in making determinations as to whether consent was communicated by the person subject to the conduct, and as to the elements of severity, pervasiveness, objective offensiveness, and denial of equal access, consideration should be given not only to the subjective perspective of the person subject to the conduct, but also to the objective view of a reasonable person, based on the totality of the circumstances. 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.

## **I. Confidentiality**

The Title IX Coordinator, the Decision-maker, 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, 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 university policy and may lead to an additional complaint and consequences.

The parties remain free to share their own experiences, other than information that they have learned solely through the investigatory process. The parties are not restricted in their ability to discuss the allegations under investigation, except in a manner that constitutes retaliation, though to avoid the possibility of compromising the investigation, it is generally advisable to limit the number of people in whom they confide.

## **J. 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 sexual harassment as defined in the Policy, did not occur in the University's education program or activity as defined in the Policy, or did not occur against a person in the United States, then the Investigative Team must dismiss the formal complaint with regard to that conduct for purposes of sexual harassment under the Policy. Such a dismissal does not preclude action under other University policies.

*Discretionary Dismissal of a formal complaint:* The Investigative Team, Decision-maker or Title IX Coordinator may dismiss the formal complaint or any allegations therein, if at any time during the investigation or hearing, respectively:

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

The above grounds are the only grounds for the mandatory or discretionary dismissal of a formal complaint. The Title IX Coordinator will promptly send written notice of the dismissal and reason(s) therefor simultaneously to the Complainant and the Respondent.

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 III below.

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

### ***iii. Request for Informal Resolution***

Once a formal complaint has been opened for investigation and before the determination regarding responsibility 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 with 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 or hearing 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 or hearing will resume, in accordance with the formal complaint procedures.

### **III. Appeal**

Both the Respondent and the Complainant may appeal the dismissal of a formal complaint or any allegations therein, or the Decision-maker's 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 Title IX Coordinator, Investigative Team, or Decision-maker 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 Decision-maker could have reached the same determination regarding responsibility.

Disagreement with the reason(s) for a dismissal by either the Investigative Team or the Title IX Coordinator, or the Decision-maker's findings or determination regarding responsibility, is not, by itself, a ground for appeal.

Appeals of a dismissal or the Decision-maker's 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.

#### **IV. Discipline**

The administration of discipline in cases involving students is subject to the Student Handbook Policy; thus, as appropriate, following any appeal of the determination regarding responsibility but before finalizing the determination, the Decision-maker will provide the determination regarding responsibility to the Title IX Coordinator, so that they may separately consider the imposition of discipline through their own processes and notify the parties as appropriate. The University may impose a range of sanctions on students found to have violated the Policy, ranging from an admonition, or warning up to and including expulsion or dismissal.