

Policy on  
**Title IX Sexual Harassment  
& Complaint Resolution  
Process**

Effective August 14, 2022

## **Table of Contents**

<b>POLICY STATEMENT</b>	1
<b>TITLE IX COORDINATOR</b>	1
<b>JURISDICTION</b>	2
<b>DEFINITIONS</b>	2
Prohibited Title IX Sexual Harassment	2
Other Related Definitions	4
<b>SUPPORTIVE MEASURES</b>	5
<b>COMPLAINT RESOLUTION PROCESS FOR COMPLAINTS MADE UNDER THIS POLICY</b>	6
Title IX Sexual Harassment Reporting Options	6
Response to a Report	6
Filing of a Formal Complaint	6
Consolidation of Formal Complaints	7
Informal Resolution	7
Dismissal of a Formal Complaint	8
Investigation	9
Hearing	11
Appeal	14
Potential Sanctions Following a Finding of a Policy Violation	15
Presumption of Non-Responsibility	16
Party's Advisor of Choice	17
Treatment Records and Other Privileged Information	17
Standard of Evidence	18

## **I. POLICY STATEMENT**

It is the policy of the Michigan School of Psychology (“School” or “MSP”) to comply with Title IX of the Education Amendments of 1972 and its implementing regulations, which prohibits discrimination on the basis of sex in the School’s education programs or activities.

This policy applies to Sexual Harassment as defined in Title IX of the Education Amendments of 1972 and its implementing regulations (see 34 C.F.R. § 106 et seq.). Accordingly, the MSP prohibits Title IX Sexual Harassment further defined below that occurs within its education programs or activities (defined below). Title IX Sexual Harassment includes Quid Pro Quo Sexual Harassment, Hostile Environment Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence, and Stalking as defined below.

Conduct falling outside of the purview of this policy may be addressed under the MSP Academic Catalog.

## **II. TITLE IX COORDINATOR**

The Title IX Coordinator at MSP shall oversee implementation and enforcement of this policy on Title IX Sexual Harassment (“Title IX Policy”).

Reports or complaints made under the Title IX Policy and inquiries about the policy and procedures may be made to the Coordinator, or in their absence, the Deputy Title IX Coordinator:

Tami Jacobs, Vice President of Operations  
Title IX Coordinator  
[titleixcoordinator@msp.edu](mailto:titleixcoordinator@msp.edu)  
248.476.1122, ext. 122

Amanda Ming, Director of Human Resources & Institutional Effectiveness  
Deputy Title IX Coordinator  
[aming@msp.edu](mailto:aming@msp.edu)  
248.476.1122, ext. 119

Candi Wilson, Director of Communications & Educational Technology  
Deputy Title IX Coordinator  
[cwilson@msp.edu](mailto:cwilson@msp.edu)  
248.476.1122, ext. 129

### **III. JURISDICTION**

This policy applies to Title IX Sexual Harassment as defined below that occurs in MSP's education programs or activities and that is committed by any student, faculty member, staff member, or third-party affiliate who has a formal (including contractual) relationship with MSP. As defined by the U.S. Department of Education, "education programs or activities" include locations, events, or circumstances in the United States in which MSP exercised substantial control over both the Respondent (the person accused of violating the policy) and the context in which the alleged violation occurred (including any building owned or controlled by a student organization that is officially recognized by MSP).

Misconduct occurring outside of the jurisdiction of this policy may be addressed by MSP's Academic Catalog. Individuals impacted by any form of sexual misconduct, irrespective of whether it falls under this policy, may contact the Title IX Coordinator to receive support, resources, and information.

Pursuant to guidance from the U.S. Department of Education, this policy applies to Title IX Sexual Harassment alleged to have occurred on or after August 14, 2020. Allegations of conduct occurring prior to this date will be subject to MSP's policy in place at the time of the alleged conduct.

Jurisdictional assessments are made by the Title IX Coordinator in consultation with appropriate school officials and/or legal counsel.

### **IV. DEFINITIONS**

#### **A. Prohibited Title IX Sexual Harassment**

Title IX Sexual Harassment is conduct on the basis of sex that is Quid Pro Quo Sexual Harassment, Hostile Environment Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence, or Stalking, as defined in 34 CFR 106.30(a) and reproduced herein:

- i. **Quid Pro Quo Sexual Harassment:** Conduct on the basis of sex when an employee of MSP conditions the provision of an aid, benefit, or service of MSP on an individual's participation in unwelcome sexual conduct.
- ii. **Hostile Environment Sexual Harassment:** Conduct on the basis of sex that is unwelcome and determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person access to MSP's education programs or activities.
- iii. **Sexual Assault<sup>1</sup>,** which includes the sex offenses of Rape, Sodomy, Sexual Assault with an Object, Fondling, Incest, and Statutory Rape:

---

<sup>1</sup> As defined in 20 U.S.C. 1092(f)(6)(A)(v).

- a. **“Rape”** is the carnal knowledge of a person, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity. There is “carnal knowledge” if there is the slightest penetration of the vagina or penis by the sexual organ of the other person. Attempted Rape is included.
  - b. **“Sodomy”** is oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity.
  - c. **“Sexual Assault with an Object”** is using an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity. An “object” or “instrument” is anything used by the offender other than the offender’s genitalia.
  - d. **“Fondling”** is the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity.
  - e. **“Incest”** is sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by Michigan law.
  - f. **“Statutory Rape”** is sexual intercourse with a person who is under the statutory age of consent as defined by Michigan law.
- iv. **“Domestic Violence”**<sup>2</sup> is felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of Michigan, or by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of Michigan.
- v. **“Dating Violence”**<sup>3</sup> is violence committed by a person:
- (A) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and

---

<sup>2</sup> As defined in 34 U.S.C. 12291(a)(8).

<sup>3</sup> As defined in 34 U.S.C. 12291(a)(10).

(B) Where the existence of such a relationship will be determined based on a consideration of the following factors:

- The length of the relationship;
  - The type of relationship; and
  - The frequency of interaction between the persons involved in the relationship.
- vi. **“Stalking”**<sup>4</sup> is engaging in a course of conduct directed at a specific person that would cause a reasonable person to:
- Fear for their safety or the safety of others; or
  - Suffer substantial emotional distress
- vii. **“Retaliation”**: Intimidation, threats, coercion, or discrimination against any individual for the purpose of interfering with any right or privilege secured by Title IX and its implementing regulations, or because an individual has, in good faith, opposed any practices forbidden under this Policy or made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this Policy or the Title IX Sexual Harassment Procedures. This includes action taken against a bystander who intervened to stop or attempted to stop Title IX Sexual Harassment. Action is generally deemed retaliatory if it would deter a reasonable person in the same circumstances from opposing practices prohibited by this Policy.

MSP retains discretion to consolidate a report or Formal Complaint of Retaliation with a report or Formal Complaint of Title IX Sexual Harassment for investigation and/or adjudication purposes if the two complaints share a common nexus.

## **B. Other Related Definitions**

- i. **“Complainant”**: the party who has alleged Title IX Sexual Harassment or to whom Title IX Sexual Harassment was directed.
- ii. **“Consent”**: words or actions that a reasonable person in the perspective of the Respondent would understand as agreement to engage in the sexual conduct at issue. A person who is incapacitated is not capable of giving consent.

---

<sup>4</sup> As defined in 34 U.S.C. 12291(a)(30).

- iii. **“Education Programs or Activities”**: Locations, events, or circumstances in the United States in which MSP exercised substantial control over both the Respondent (the person accused of violating the policy) and the context in which the alleged violation occurred (including any building owned or controlled by a student organization that is officially recognized by MSP).
- iv. **“False Reports or Allegations”**: a report, complaint, or information alleging conduct prohibited under this Policy that the person knows, at the time the report, complaint, or information is submitted, to be false or frivolous. If an individual is alleged to have provided a false report, complaint, or information to an Investigator and/or school official, such allegation will be investigated and addressed accordingly under the MSP Academic Catalog or other MSP policies, as applicable.
- v. **“Incapacitation”**: a state where one cannot make a rational, reasonable decision to engage in sexual activity because they lack the ability to understand the fact, nature, or extent of the act (e.g., to understand the "who, what, when, where, why or how" of their sexual interaction), and/or are physically helpless.
- vi. **“Respondent”**: the party who has been reported to be the alleged perpetrator of conduct that could constitute Title IX Sexual Harassment.
- vii. **“Third Party Reporter” or “Witness”**: An individual who reports conduct that could constitute Title IX Sexual Harassment occurring between or directed towards individuals other than themselves.

## **V. SUPPORTIVE MEASURES**

Supportive Measures are non-disciplinary, non-punitive individualized services offered, as appropriate, and reasonably available, and without fee or charge, that are designed to restore or preserve equal access to MSP’s education programs or activities without unreasonably burdening another party, including measures designed to protect the safety of all parties implicated by a report or MSP’s education environment, or to deter Title IX Sexual Harassment. Supportive measures may include: counseling, extensions of academic or other deadlines, course-related adjustments, modifications to work or class schedules, campus escort services, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of campus, other changes to academic, living, dining, transportation, and working situations, honoring an order of protection or no contact order entered by a State civil or criminal court, and other similar measures. Supportive Measures may also include mutual restrictions on contact between the parties implicated by a report.

## **VI. COMPLAINT RESOLUTION PROCESS FOR COMPLAINTS MADE UNDER THIS POLICY**

### **A. Title IX Sexual Harassment Reporting Options**

Complaints made under this Title IX Policy may be made to:

Tami Jacobs, Vice President of Operations  
Title IX Coordinator  
[titleixcoordinator@msp.edu](mailto:titleixcoordinator@msp.edu)  
248.476.1122, ext. 122

Reports made to the School are evaluated under MSP's Title IX Policy; it is not a legal or criminal matter. Individuals have the right to choose whether or not to report the incident to the School, law enforcement, or both, and have the right to choose whether to engage with the School once the School receives a report.

Anonymous reports may be made although MSP's ability to address Title IX Sexual Harassment reported by anonymous sources may be significantly limited.

There is no time limit for reporting an incident of Title IX Sexual Harassment. However, in order for MSP to proceed to an investigation, at the time of filing a signed Formal Complaint, a Complainant must be participating in or attempting to participate in MSP's education programs or activities. The School encourages reports to be made as soon as possible after the incident.

### **B. Response to a Report**

Upon receipt of a report, the Title IX Coordinator will contact the person who may have been impacted by the reported concern. Outreach from the Title IX Coordinator will generally include information about: medical and confidential counseling and support resources; options for filing a Formal Complaint and/or reporting the incident to law enforcement; how to request a protective order or no-contact directive; how to request Supportive Measures with or without filing a Formal Complaint; how to preserve evidence; and where to access more information. The outreach will also include an invitation to meet with or provide additional information to the Title IX Coordinator.

The Title IX Coordinator may, in their discretion, reopen a case in the future as appropriate and if additional information becomes available. The closure of a case at the preliminary assessment stage does not prevent the Title IX Coordinator from making non-punitive, educational outreach to those involved.

### **C. Filing of a Formal Complaint**

A Complainant may file a Formal Complaint with the Title IX Coordinator requesting that



the School investigate and adjudicate a report of Title IX Sexual Harassment in accordance with the provisions of this section (Section VI). At the time the Complainant submits a Formal Complaint, the Complainant must be participating in, or attempting to participate in, one or more of the School's education programs or activities.

The Formal Complaint must be in writing. No person may submit a Formal Complaint on the Complainant's behalf.

A Complainant may submit a Formal Complaint with the Title IX Coordinator in person, by regular mail, or by e-mail using the contact information in Section VI.A. At minimum, the Formal Complaint must provide information that the Complainant believes to be sexual harassment as defined in this Policy against a Respondent, and request that the School investigate the allegation(s) of sexual harassment.

In cases where an individual reporting Title IX Sexual Harassment requests anonymity or does not wish to file a Formal Complaint, the School will attempt to honor that request but, in some cases, the Title IX Coordinator may determine that the School needs to proceed with an investigation and will thereby sign a Formal Complaint.

#### **D. Consolidation of Formal Complaints**

The School may consolidate the investigation of Formal Complaints as to allegations of Title IX Sexual Harassment against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one party against the other party, where the allegations of Title IX Sexual Harassment arise out of the same facts or circumstances.

A Formal Complaint of Title IX Retaliation, as defined above, may be consolidated with a Formal Complaint of Title IX Sexual Harassment.

#### **E. Informal Resolution**

At any time after the parties are provided written notice of the Formal Complaint, and before the completion of any appeal specified in IV.I, the parties may voluntarily consent, with the Title IX Coordinator's approval, to engage in mediation, facilitated resolution, restorative justice or other form of dispute resolution, the goal of which is to enter into a final resolution resolving the allegations raised in the Formal Complaint by agreement of the parties.

An informal resolution may result in the parties and the School agreeing upon a resolution that involves, if the respondent accepts responsibility for the alleged conduct, disciplining the respondent, up to and including appropriate sanctions as outlined in the Student Code of Conduct.

The specific manner of any informal resolution process will be determined by the parties

and the Title IX Coordinator, in consultation together.

Prior to commencing the informal resolution process agreed upon, the Title IX Coordinator will transmit a written notice to the parties that:

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

After receiving the written notice specified in this paragraph, each party must voluntarily provide written consent to the Title IX Coordinator, before the informal resolution may commence. During the pendency of the informal resolution process, the investigation and adjudication process is placed on hold and all related deadlines are suspended. If the parties reach a resolution through the informal resolution process, and the Title IX Coordinator agrees that the resolution is not clearly unreasonable, the Title IX Coordinator will memorialize the terms of the agreed resolution and present the written resolution to the parties for their signature. Once both parties and the Title IX Coordinator sign the resolution, the resolution is final, and the Formal Complaint resolved and will not be subject to further investigation, adjudication, remediation, or discipline by the School, except as otherwise provided in the resolution itself.

Informal resolution pursuant to this Section is not subject to appeal. A party may withdraw their consent to participate in informal resolution at any time before a resolution has been finalized. Absent extension by the Title IX Coordinator, any informal resolution process must be completed within twenty-one (21) days. If an informal resolution process does not result in a resolution within twenty-one (21) days, and absent an extension, the informal resolution process will be deemed terminated, and the Formal Complaint will be resolved pursuant to the investigation and adjudication procedure. The Title IX Coordinator may adjust any time periods or deadlines in the investigation and/or adjudication process that were suspended due to the informal resolution.

Informal resolution will not be permitted if the Respondent is a non-student employee accused of perpetrating Title IX Sexual Harassment against a student.

## **F. Dismissal of a Formal Complaint**

If the conduct alleged in the Formal Complaint would not constitute a violation of this policy even if proved, if it did not occur in MSP's education programs or activities, or did

not occur against a person in the United States, the Title IX Coordinator must dismiss the Formal Complaint with regard to that conduct under this policy. Such a dismissal does not preclude action under other MSP policies.

In the event the Title IX Coordinator determines the Formal Complaint must be dismissed pursuant to this Section, the Title IX Coordinator will provide written notice of dismissal, including the reasons for the dismissal, to the parties and advise them of their right to appeal pursuant to the appeal procedures detailed below in Section I. Appeal. The Title IX Coordinator or may refer the subject matter of the Formal Complaint, as dismissed, to other School officials, as appropriate.

The Title IX Coordinator may dismiss the formal complaint or any allegations therein, if at any time during the investigation or hearing: the Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations therein; the Respondent is no longer enrolled or employed by the School; or specific circumstances prevent the School from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

The dismissal of a Formal Complaint or allegations therein does not prevent the Title IX Coordinator from making non-punitive, educational outreach to those involved.

## **G. Investigation**

If the conduct in the Complainant's Formal Complaint alleges Title IX Sexual Harassment, or if the Title IX Coordinator has signed a Formal Complaint, and the parties have not elected informal resolution, the Formal Complaint will proceed with a formal investigation and hearing under these procedures.

### *i. Notice of Formal Complaint*

Within seven (7) days of the Title IX Coordinator receiving a Formal Complaint, the Title IX Coordinator will transmit a written notice to the Complainant and Respondent that includes:

- A physical copy of this Policy or a hyperlink to this Policy;
- Sufficient details about the allegations known at the time so that the parties may prepare for an initial interview with the investigator, to include the identities of the parties involved in the incident (if known), the conduct allegedly constituting Title IX Sexual Harassment, and the date and location of the alleged incident (if known);
- A statement that the Respondent is presumed not responsible for the alleged Title IX Sexual Harassment and that a determination of responsibility will not be made until the conclusion of the adjudication and any appeal;
- Notifying the Complainant and Respondent of their right to be accompanied by an advisor of their choice, as specified in Section VI.L. below;
- Notifying the Complainant and Respondent of their right to inspect and review

- evidence as specified below;
- Notifying the Complainant and Respondent of the School's prohibition on retaliation and false statements specified in this Policy;
  - Information about resources that are available on campus and in the community.

If, in the course of an investigation, the School decides to investigate additional allegations about the Complainant or Respondent that arise that were not included in the initial notice, the Title IX Coordinator will provide notice of the additional allegations to the parties whose identities are known pursuant to the requirements above.

## *ii. Investigation Process*

After the written notice of Formal Complaint is issued to the parties, an investigator selected by the Title IX Coordinator will undertake an investigation to gather evidence relevant to the allegations, including inculpatory and exculpatory evidence. The burden of gathering evidence sufficient to reach a determination in the adjudication lies with the School and not with the parties. The investigation will culminate in a written investigation report, detailed below, that will be submitted to the hearing officer during the hearing process. Although the length of each investigation may vary depending on the totality of the circumstances, the School will strive to complete each investigation as promptly as possible.

During the investigation, the Complainant will have the opportunity to describe their allegations and present supporting evidence to the investigator. The Respondent will have the opportunity to hear the allegations, respond to them, and present supporting evidence to the investigator(s).

The Complainant and the Respondent will have an equal opportunity to present names of potential witnesses and to propose questions the investigator might ask the other party or witnesses. Complainants and Respondents may identify potential factual and/or expert witnesses but may not present character witnesses. The investigator will take the witness lists provided by the Complainant and Respondent into consideration when identifying the witnesses they will interview and what questions they might ask each witness, but these decisions are solely within the investigator's discretion. The investigator retains discretion to limit the number of witness interviews the investigator conducts if the investigator finds that testimony would be unreasonably cumulative, if the witnesses are offered solely as character references and do not have information relevant to the allegations at issue, or if the witnesses are offered to render testimony that is categorically irrelevant, such as testimony concerning sexual history of the Complainant. The investigator may also choose to interview other witnesses not identified by the parties. The investigator will not restrict the ability of the parties to gather and present relevant evidence on their own.

Generally, the investigator will meet with each party and each witness separately and may hold multiple meetings with a party to obtain all necessary information. The parties may submit additional materials or information to the investigator at any time before the

conclusion of the investigation. In all cases, both the Complainant and Respondent will have equal opportunities to share information and have their information considered.

Parties and witnesses whose participation is invited or expected at any interview or other meeting as part of the investigation will receive written notice of the date, time, location, participants, and purpose of all such investigative interviews or other meetings, with sufficient time for the party to prepare to participate.

The parties will be periodically updated on the status of the investigation. In cases where there is a simultaneous law enforcement investigation, the School may need to temporarily delay its investigation while law enforcement gathers evidence. However, the School will generally proceed with its investigation and resolution of a Formal Complaint during any law enforcement investigation.

#### a. Opportunity to Inspect and Review Evidence

At the conclusion of the evidence-gathering phase of the investigation but prior to the completion of the investigation report, the investigator 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 the Formal Complaint. This includes evidence which the School may choose *not* to rely on in reaching a determination regarding responsibility and inculpatory or exculpatory evidence, whether obtained from a party or other source.

The investigator will send this evidence, in either electronic or hard copy form, to each party and each party's advisor, if any. The parties may each submit to the investigator a written response including comments, feedback, or any other information they deem relevant within ten (10) calendar days after the evidence is made available for their review. The Title IX Coordinator may, in their discretion, extend the time limit for the written response. The investigator will consider the written responses prior to completing the investigation report. The parties and their advisors are permitted to review the evidence solely for the purposes of this grievance process and may not photograph or disseminate the evidence.

#### b. Investigative Report

After the period for the parties to provide any written response to the evidence has expired, the investigator will create a written investigative report that fairly summarizes the relevant evidence collected (both inculpatory and exculpatory). The Title IX Coordinator will provide a copy of the investigative report to each party and each party's advisor, if any, in either electronic or hard copy form.

## **H. Hearing**

The purpose of the hearing is for the Hearing Officer to permit each party's advisor to ask

the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. The Hearing Officer may also ask relevant questions and follow-up questions, including those challenging credibility, of each party and witness. Such questioning at the hearing must be conducted directly, orally, and in real time by the party's advisor and never by a party personally. Following the hearing, the Hearing Officer shall, using a preponderance of the evidence standard, determine whether it is more likely than not that a policy violation or violations occurred.

*i. Hearing Officer/Decision-Maker*

Upon completion of the investigation, the Title IX Coordinator will promptly appoint a Hearing Officer, who cannot be the same person as the Title IX Coordinator or investigator, who will oversee the hearing process and render a determination of responsibility for the allegations in the Formal Complaint, at the conclusion of the hearing process. The Title IX Coordinator will see that the Hearing Officer is provided a copy of the investigative report and a copy of all evidence transmitted to the parties by the investigator.

*ii. Hearing Notice and Response to the Investigation Report*

After the Hearing Officer is appointed by the Title IX Coordinator, the Title IX Coordinator will promptly transmit written notice to the parties notifying the parties of the Hearing Officer's appointment; setting a date for the pre-hearing conference; setting a date and time for the hearing; providing a copy of the School's Hearing Procedures; and the final investigative report. The Hearing shall be scheduled at least ten (10) calendar days from the date of transmittal of the written notice specified in this Section.

*iii. Pre-Hearing Conference*

At the Hearing Officer's discretion, a pre-hearing conference may be conducted, simultaneously with all parties and their advisors present, or separately with each individual party. During the pre-hearing conference, the hearing officer will discuss the hearing procedures and rules with the parties; address matters raised in the parties' written responses to the investigation report, as the hearing officer deems appropriate; discuss the witnesses the parties would like to request to appear at the hearing; and discuss or resolve any other matters that the hearing officer determines should be resolved before the hearing.

*iv. Participation*

Parties and witnesses will be asked to attend the hearing. In the event that a party or witness does not appear at or answer questions at the hearing, the Hearing Officer will rely on relevant evidence available through the investigation and at the hearing in making a determination of responsibility. The Hearing Officer may not draw any inference solely from a party's or witness's absence from the hearing or refusal to submit to cross-examination or answer other questions.

*v. Format of Hearing*

The Hearing Officer shall facilitate the hearing and set the hearing procedures and rules. The hearing will be conducted live, with simultaneous and contemporaneous participation by the parties and their advisors. At the School's discretion, the live hearing may be conducted in-person or virtually, with technology enabling all participants to participate simultaneously and contemporaneously.

At the request of either party, the live hearing may occur with the parties located in separate rooms with technology enabling the Hearing Officer and parties to simultaneously see and hear the party or the witness answering questions.

If a party does not have an advisor present at the hearing, the School will provide an advisor of the School's choice to ask questions prepared by the party on the party's behalf. The parties will not be permitted to question the other party or any witness directly.

Except as otherwise permitted by the Hearing Officer, the hearing will be closed to all persons except the Hearing Officer, the parties, their advisors, the Title IX Coordinator, and other necessary School personnel. Witnesses will only be present during their testimony.

An audio or audiovisual recording or transcript will be made of the live hearing, and the recording or transcript will be made available to the parties for inspection and review upon request.

*vi. Relevancy of Questions*

Only relevant cross-examination and other questions may be asked of a party or witness. The Hearing Officer will determine the relevancy of all questions asked during the hearing. Before a Complainant, Respondent, or witness answers a question by a party's advisor, the decision Hearing Officer must first determine whether the question is relevant and explain any decision to exclude a question as not relevant. Parties and advisors may not challenge these determinations during the hearing. The Hearing Officer must permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility.

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.

*vii. Written Decision*

After the hearing is complete, the Hearing Officer will objectively evaluate all relevant

evidence collected during the investigation and hearing, including both inculpatory and exculpatory evidence, and ensure that any credibility determinations made are not based on a person's status as a Complainant, Respondent, or witness.

In the event the Hearing Officer determines that the Respondent is responsible for violating this Policy, the Hearing Officer will, prior to issuing a written decision, consult with the appropriate School personnel with disciplinary authority over the Respondent, and the Title IX Coordinator, if appropriate, on the appropriate sanction determination.

After reaching a determination and consulting with the appropriate MSP administrator and/or Title IX Coordinator, if appropriate, the Hearing Officer will issue a written determination regarding responsibility applying the preponderance of the evidence standard within fifteen (15) calendar days of the hearing.

The written determination will be provided to the parties simultaneously and will include:

- Identification of the allegations potentially constituting Title IX Sexual Harassment, and, if applicable, other MSP policy violations;
- A description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- Findings of fact supporting the determination;
- Conclusions regarding the application of MSP's Title IX Sexual Harassment policy to the facts;
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions imposed on the Respondent, if applicable, and whether remedies designed to restore or preserve equal access to MSP's education program or activity will be provided by the School to the Complainant;
- The procedures and permissible bases for the Complainant and Respondent to appeal.

The determination regarding responsibility becomes final either on the date that the appeal reviewer provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

The Title IX Coordinator is responsible for effective implementation of any sanctions and/or remedies.

## **I. Appeal**

Either party may appeal the dismissal of a Formal Complaint or any allegations therein or the determination regarding responsibility. The only bases for appeal are as follows:



- Procedural irregularity that affected the outcome of the matter;
- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter;
- The Title IX Coordinator, investigator(s), or decision-maker(s) 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
- The sanction is disproportionate with the violation.

A party must file an appeal within ten (10) calendar days of the date the dismissal or written determination is issued.

The appeal must be submitted in writing to the Title IX Coordinator who shall assign an appropriate appeal reviewer.

The appeal is not a rehearing of the case; it is a written statement specifically stating the grounds for the appeal and any supporting information. If either party submits an appeal, the other party will be notified in writing that the appeal has been filed, provided with a copy of the appeal, and given ten (10) calendar days to submit a written response. The appeal reviewer may, in their discretion, adjust the time limit for the appeal and/or response.

The appeal is solely conducted via written statements. Neither the Respondent nor the Complainant will be allowed to request an in-person meeting with the appeal reviewer. In an extraordinary circumstance, the appeal reviewer may request an in-person meeting with the Complainant and the Respondent. Should the appeal reviewer request a meeting with one party, a meeting will also be requested with the other party.

The appeal reviewer may consult with appropriate School personnel and/or the Title IX Coordinator, as needed and appropriate.

In the event sanctions were imposed, implementation of the sanctions will be placed on hold pending resolution of an appeal.

The written decision on an appeal will be issued simultaneously to the parties as expeditiously as possible, usually within ten (10) calendar days after final receipt of the last written submission of information, though the timeline may be extended for good cause. The written decision of the appeal is final.

## **J. Potential Sanctions Following a Finding of a Policy Violation**

When a final determination is made that an individual has violated this policy, as determined by the Complaint Resolution Process in Section III, the appropriate sanctions are determined based on several factors, including the severity of the conduct and any

prior policy violations.

Sanctions and corrective actions can include, but are not limited to:

***Student***

- Verbal warning
- Written warning
- Disciplinary hold on academic and/or financial records
- Educational or Clinical Training Development Plan
- Required counseling or coaching
- Required training or education
- Campus access restrictions
- No trespass order issued
- No-contact directive (with respect to an individual)
- Revocation of offer (employment or admissions)
- Revocation of degree
- Disciplinary suspension
- Dismissal

***Employee/Student Employee***

- Loss of privileges
- Loss of title and/or honors
- Loss of oversight, teaching or supervisory responsibility
- Probation
- Demotion
- Loss of pay increase
- Decrease in pay
- Revocation of offer (employment or admissions)
- Suspension with pay
- Suspension without pay
- Termination of employment
- Termination of contract (for contractors)

The School may assign other sanctions as appropriate in each particular situation. Sanctions and corrective actions will be imposed in accordance with relevant MSP policies and/or procedures that may be developed over time, or contracts. In addition to imposing sanctions, the School may take steps to remediate the effects of a violation on the impacted parties and others.

**K. Presumption of Non-Responsibility**

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

## **L. Party's Advisor of Choice**

From the point a Formal Complaint is made, and until an investigation, adjudication, and appeal are complete, the Complainant and Respondent will have the right to be accompanied by an advisor of their choice to all meetings, interviews, and hearings that are part of the investigation, adjudication, and appeal process. The advisor may be, but is not required to be, an attorney.

Except for the questioning of witnesses during the live hearing, the advisor will play a passive role and is not permitted to communicate on behalf of a party, insist that communication flow through the advisor, or communicate with the School about the matter. In the event a party's advisor of choice engages in material violation of the parameters specified in this Section, the School may preclude the advisor from further participation, in which case the party may select a new advisor of their choice.

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

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

The School is not required to provide a party with an advisor in any circumstance except where the party does not have an advisor present at the live hearing and requests that the School provide an advisor.

## **M. Treatment Records and Other Privileged Information**

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

- A party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the School obtains that party's voluntary, written consent to do so for the complaint resolution process under this section; or
- Information or records protected from disclosure by any other legally-recognized privilege, such as the attorney client privilege; unless the School has obtained the party's voluntary, written consent to do so for the purposes of complaint resolution process under this section.

## **N. Standard of Evidence**

The School uses the preponderance of the evidence standard. This means that the hearing process determines whether it is more likely than not that a violation of the policy occurred.