MERCER UNIVERSITY - SEXUAL MISCONDUCT (TITLE IX) POLICY & PROCEDURES

INTRODUCTION
Mercer University is committed to providing a workplace and educational environment, as well as other benefits, programs, and activities, that are free from sexual harassment. To ensure compliance with federal and state civil rights laws and regulations, and to affirm its commitment to promoting the goals of fairness and equity in all aspects of the educational and employment programs or activities, Mercer University has developed internal policy and procedures that provide a prompt, fair, and impartial process. This policy applies to all University students and employees, visitors, and individuals doing business with the University.¹

All members of the University community are expected to conduct themselves in a manner that does not negatively affect an individual’s school or work experience or the overall school environment, whether on University premises or at any off-campus location.

TITLE IX COORDINATOR
The University’s Title IX Coordinator oversees implementation of Mercer University’s Sexual Misconduct policy. The Title IX Coordinator has the primary responsibility for coordinating Mercer University’s efforts related to the intake, investigation, resolution, and implementation of supportive measures to stop, remediate, and prevent sexual harassment misconduct, and retaliation prohibited under this policy.

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The Title IX Coordinator (and all employees associated with Title IX) act with independence and authority free from bias and conflicts of interest. The Title IX Coordinator oversees all resolutions under this policy and these procedures. Employees associated with Title IX are vetted and trained to ensure they are not biased for or against any party in a specific case, or for or against Complainants and/or Respondents, generally.

The Title IX Coordinator reports directly to the Vice President for Audit and Compliance. To raise a concern involving bias or conflict of interest by the Title IX Coordinator, or to report misconduct or discrimination by the Title IX Coordinator, contact the Vice President for Audit and Compliance, James Calhoun at Calhoun_J@mercer.edu. Concerns of bias or a potential conflict of interest by any other employee associated with Title IX should be reported with the Title IX Coordinator.

Individuals also have the right to file an external grievance with:

Office for Civil Rights  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, D.C.  20202-1100  
Customer Service Hotline #: (800) 421-3481  
Email: OCR@ed.gov  
Web: http://www.ed.gov/ocr

¹ This Policy is not intended to infringe or restrict rights guaranteed by the United States Constitution including free speech under the First Amendment.
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Glossary

- **Advisor**: A person chosen by a party or appointed by the institution to accompany the party to meetings related to the resolution process, to advise the party on that process, and to conduct cross-examination for the party at the hearing, if applicable.

- **Complainant**: An individual who is alleged to be the victim of conduct that could constitute sexual harassment.

- **Complaint (also Formal Complaint)**: A written document filed/signed by a Complainant or signed by the Title IX Coordinator alleging sexual harassment against a Respondent and requesting that Mercer University investigate the allegation.

- **Confidential Resource**: An employee who is not a mandatory reporter of notice of sexual harassment.

- **Day**: A business day when Mercer University is in normal operation.

- **Decision-makers**: The hearing board in the Formal Grievance Process.

- **Education program or activity**: Locations, events, or circumstances where Mercer University exercises substantial control over both the Respondent and the context in which the sexual harassment occurs and also includes any building owned or controlled by a student organization that is officially recognized by Mercer University.

- **Final Determination**: A conclusion utilizing the standard of proof that the alleged conduct occurred and whether it did or did not violate policy.

- **Finding/Finding of Fact**: A conclusion by the preponderance of the evidence standard of proof that the conduct did or did not occur as alleged.

- **Formal Grievance Process**: A method of formal resolution designated by Mercer University to address conduct that falls within the policies included below, and which complies with the requirements of 34 CFR Part 106.45.

- **Investigator**: Person or persons charged by Mercer University with gathering facts about an alleged violation of this Policy, assessing relevance and credibility, synthesizing the evidence, and compiling this information into an investigation report.

- **Mandated Reporter**: An employee of Mercer University who is obligated by policy to share knowledge, notice, and/or reports of sexual harassment with the Title IX Coordinator.

- **Notice**: An employee, student, or third-party has informed the Title IX Coordinator of the alleged occurrence of harassing, discriminatory, and/or retaliatory conduct.

- **Parties**: The Complainant(s) and Respondent(s), collectively.

- **Remedies**: The post-finding actions directed to the Complainant and/or the community as mechanisms to address safety, prevent recurrence, and restore access to Mercer University’s educational program.

- **Respondent**: An individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.
• **Resolution:** The result of an informal or Formal Grievance Process.

• **Sanction:** A consequence imposed by Mercer University on a Respondent who is found to have violated this policy.

• **Sexual Harassment:** The umbrella category including the offenses of sexual harassment, sexual assault, stalking, and dating violence and domestic violence.

**Jurisdiction of Mercer University**

This policy applies to the education program and activities of Mercer University, to conduct that takes place on the campus or on property owned or controlled by Mercer University, at university-sponsored events, or in buildings owned or controlled by university recognized student organizations. The Respondent must be a member of the Mercer University community in order for this policy to apply.

This policy may also be applicable to the effects of off-campus sexual misconduct that effectively deprive someone of access to Mercer University’s educational program or work experience. Mercer University may also extend jurisdiction to off-campus and/or to online conduct when the Title IX Coordinator determines that the conduct affects a substantial university interest.

Regardless of location, Mercer University will address notice and/or complaints to determine whether the conduct occurred in the context of its employment or educational program or activity and/or has continuing effects on campus or in an off-campus sponsored program or activity. A substantial university interest includes:

a. Any action that constitutes a criminal offense as defined by law. This includes, but is not limited to, single or repeat violations of any local, state, or federal law;

b. Any situation in which it is determined that the Respondent poses an immediate threat to the physical health or safety of any student or other individual;

c. Any situation that significantly impacts upon the rights, property, or achievements of oneself or others or significantly breaches the peace and/or causes social disorder; and/or

d. Any situation that is detrimental to the educational interests or mission of Mercer University.

If the Respondent is unknown or is not a member of the Mercer University community, the Title IX Coordinator will provide the Complainant appropriate resources and support options and/or, when criminal conduct is alleged, assist in law enforcement if the individual would like to file a police report. When the Respondent is enrolled in or employed by another institution, the Title IX Coordinator may assist the Complainant with that institution, as it may be possible to allege violations through that institution’s policies. Similarly, the Title IX Coordinator may assist a student or employee Complainant who experiences sexual harassment in an externship, study abroad program, or another environment.

In addition, Mercer University may take other actions as appropriate to protect the Complainant against third parties, such as barring individuals from Mercer University property and/or events. All vendors serving Mercer University through third-party contracts are subject to these policies and procedures.

**Mandated Reporting**

All Mercer University employees (faculty, staff, student employees, and administrators) are expected to immediately report actual or suspected sexual harassment to the Title IX Coordinator. Employees must also promptly share all details of behaviors under this policy that they observe or have knowledge of,
even if not directly reported to them. Failure of a Mandated Reporter to report an incident of sexual harassment of which they become aware is a violation of Mercer University policy and can be subject to disciplinary action for failure to comply.

Clinical staff at Mercer University Counseling & Psychological Services on all campuses and the Mercer University Minister are confidential reporters only when acting in the capacity of their role as a counselor.

**Notice or Complaints of Sexual Harassment**

Notice or complaints of sexual harassment may be made by filing complaint or giving notice to the Title IX Coordinator. Such a report may be made at any time by using the email address listed for the Title IX Coordinator.

All allegations are acted upon promptly by Mercer University once it has received notice. Typically, Complaints can take 60-90 business days to resolve. Exceptions and extenuating circumstances can cause a resolution to take longer, but the university will avoid all undue delays within its control. Any time the general timeframes for resolution outlined in procedures will be delayed, the university will provide written notice to the parties of the delay, the cause of a delay, and an estimate of the anticipated additional time that will be needed as a result of the delay.

Every effort will be made by Mercer University to preserve the privacy of reports. Privacy means that information related to a complaint will only be shared with a limited number of Mercer University employees who need to know in order to assist in the assessment, investigation, and resolution of the report. The privacy of student education records will be protected in accordance with the Family Educational Rights and Privacy Act (FERPA), as outlined in Mercer University’s FERPA policy. The privacy of employee records will be protected in accordance with Human Resources practices and policies. Mercer University reserves the right to designate which university officials have a legitimate educational interest in being informed about incidents that fall within this policy.

There is no time limitation on providing notice or complaints to the Title IX Coordinator. However, if the Respondent is no longer subject to the Mercer University’s jurisdiction and/or significant time has passed, the ability to investigate, respond, and provide remedies may be more limited or impossible. Acting is significantly impacted by the passage of time and is at the discretion of the Title IX Coordinator, who may document allegations for future reference, offer supportive measures and/or remedies, and/or engage in informal or formal action, as appropriate.

**Supportive Measures**

Supportive measures are non-disciplinary, non-punitive individualized services offered by Mercer University as appropriate, as reasonably available, without fees to restore or preserve access to Mercer University’s employment or education program or activity, including measures designed to protect the safety of all parties or the environment, and/or deter sexual harassment, and/or retaliation.

Mercer University will offer and implement appropriate and reasonable supportive measures to the parties. Mercer University will maintain the privacy of the supportive measures, provided that privacy does not impair the university’s ability to provide the supportive measures.

These actions may include, but are not limited to:

- Referral to counseling, medical, and/or other healthcare services
- Visa and immigration assistance
- Student financial aid counseling
- Altering campus housing assignment(s)
- Altering work arrangements for employees
• Safety planning
• Providing campus safety escorts
• Providing transportation accommodations
• Implementing contact limitations (no contact orders) between the parties
• Academic support, extensions of deadlines, or other course/program-related adjustments
• Trespass from campus
• Class schedule modifications, withdrawals, or leaves of absence
• Increased security and monitoring of certain areas of the campus
• Any other actions deemed appropriate by the Title IX Coordinator

**Emergency Removal**

Mercer University may act to remove a Respondent entirely or partially from its education program, employment or activities on an emergency interim basis when an individualized safety and risk analysis has determined that an immediate threat to the physical health or safety of any other individual justifies removal.

In all cases in which an emergency removal is imposed, the Respondent will be given notice of the action and the option to request to meet with the Title IX Coordinator, in conjunction with the Dean of Students or AVP of Human Resources, prior to such action/removal being imposed, or as soon thereafter as reasonably possible, to show cause why the action/removal should not be implemented or should be modified. This meeting is not a hearing on the merits of the allegation(s), but rather is an administrative process intended to determine solely whether the emergency removal is appropriate. A Respondent may be accompanied by an Advisor of their choice at a meeting to show cause as to why the removal is not warranted. The Respondent will be given access to a written summary of the basis for the emergency removal prior to the meeting to allow for adequate preparation.

Mercer University has sole discretion under this policy to implement or stay an emergency removal and to determine the conditions and duration. Violation of an emergency removal under this policy will be grounds for discipline, which may include expulsion or termination.

Mercer University will implement the least restrictive emergency actions possible in light of the circumstances and safety concerns.

**Right to an Advisor/Advisor Role**

The parties may each have an Advisor of their choice present with them for all meetings and interviews within the resolution process, if they so choose. Advisors are expected to reasonably adjust their schedule to allow them to attend meetings or proceedings when scheduled and without unreasonable delay. The parties may select whoever they wish to serve as their Advisor as long as the Advisor is eligible and available. The Advisor may be a friend, family member, advocate, attorney, or any other individual a party chooses to advise, support, and/or consult with them throughout the process.

Parties also have the right to choose not to have an Advisor in the initial stages of the resolution process; however, the Department of Education regulations permit cross-examination during the hearing, and must be conducted by the parties’ Advisors. The parties are not permitted to directly cross-examine each other or any witnesses. If a party does not have an Advisor for a hearing, Mercer University will appoint a trained Advisor for the limited purpose of conducting any cross-examination. Mercer University cannot guarantee equal Advisory rights, meaning that if one party selects an Advisor who is an attorney, but the other party does not or cannot afford an attorney, the university is not obligated to provide an attorney.

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2 “Available” means the party cannot insist on an Advisor who simply doesn’t have inclination, time, or availability. Also, the Advisor cannot have institutionally conflicting roles.
A party may reject this appointment and choose their own Advisor, but they may not proceed without an Advisor. If the party’s Advisor will not conduct cross-examination, Mercer University will appoint an Advisor who will do so, regardless of the participation or non-participation of the advised party in the hearing itself.

All Advisors are subject to Mercer University policies and procedures. Advisors are expected to advise their advisees without disrupting proceedings. Advisors should not address university officials in a meeting or interview. The Advisor may not make a presentation or represent their advisee during any meeting or proceeding and may not speak on behalf of the advisee except during a hearing proceeding, during cross-examination. Mercer University is not obligated to communicate with or through Advisors, and will only communicate directly with the parties throughout the process. The parties are expected to ask and respond to questions on their own behalf throughout the investigation phase of the resolution process. The Advisor may consult with their advisee during any resolution process meeting or interview.

Parties may share information directly with their Advisors, but Advisors are expected to maintain the privacy of the records. These records may not be shared with third parties, disclosed publicly, or used for purposes not explicitly authorized by the Mercer University.

Any Advisor who oversteps their role as defined by this policy will be warned only once. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the meeting will stop and appropriate measures will be implemented. Subsequently, the Title IX Coordinator will determine how to address the Advisor’s non-compliance and future role. Mercer University may seek to restrict the role of any Advisor who does not respect the sensitive nature of the process or who fails to abide by the Mercer University’s privacy expectations.

The parties are expected to inform the Title IX Coordinator of the identity of their Advisor at least two (2) business days before the date of their first meeting with Investigators (or as soon as possible if a more expeditious meeting is necessary or desired). The parties are expected to provide immediate notice to Mercer University if they change Advisors at any time.

**Assistance**

A complete list of services and resources is maintained on the Mercer University Title IX website: [https://titleix.mercer.edu/](https://titleix.mercer.edu/)

The following resources are also available to the parties:

- National Sexual Assault Hotline (800) 656-4673
- National Domestic Violence Hotline (800) 799-7233
- Georgia Crisis & Access Line (800) 715-4225
- Financial Planning Assistance, AVP of Financial Planning (478) 301-2226
- Immigration and Visa Assistance, Director of International Programs (678) 547-6151
- FACE ([http://www.facecampusequality.org](http://www.facecampusequality.org))
- SAVE ([http://www.saveservices.org](http://www.saveservices.org))

**Online Harassment and Misconduct**

The policies of the Mercer University are written and interpreted broadly to include online and cyber manifestations of any of the prohibited conduct in this policy, when those behaviors or conduct occur in or have an effect on Mercer University’s education program and activities, work experience or use of the university’s networks, technology, or equipment.
Members of the Mercer University community should refrain from online misconduct, such as feeding anonymous gossip sites, sharing inappropriate content via Snaps or other social media, unwelcome sexting, revenge porn, breaches of privacy, or otherwise using the ease of transmission and/or anonymity of the Internet or other technology to harm another member of the university community.

**Federal Timely Warning Obligations**

Parties reporting sexual assault, domestic violence, dating violence, and/or stalking should be aware that under the Clery Act\(^3\), Mercer University must issue timely warnings for incidents reported to them that pose a serious or continuing threat of bodily harm or danger to members of the campus community. Mercer University will ensure that a Complainant’s name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger.

**Federal Statistical Reporting Obligations**

Certain campus officials have a duty to report the following for federal statistical reporting purposes of the Clery Act:

a) All “primary crimes,” which include homicide, sexual assault, robbery, aggravated assault, burglary, motor vehicle theft, and arson;
b) Hate crimes, which include any bias-motivated primary crime as well as any bias motivated larceny or theft, simple assault, intimidation, or destruction/damage/vandalism of property;
c) VAWA-based crimes,\(^4\) which include sexual assault, domestic violence, dating violence, and stalking; and
d) Arrests and referrals for disciplinary action for weapons-related law violations, liquor-related law violations, and drug abuse-related law violations.

All personally identifiable information is kept private, but statistical information must be shared regarding the type of incident and its general location (on or off-campus or in the surrounding area, but no addresses are given) for publication in the Annual Security Report and daily campus crime log.

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\(^4\) VAWA is the Violence Against Women Act, enacted in 1994 codified in part at 42 U.S.C. sections 13701 through 14040.
Sexual Harassment and Offenses Under Sexual Harassment

Sexual Harassment, as an umbrella category, includes the offenses of sexual harassment, sexual assault, domestic violence, dating violence, and stalking.

Sexual Harassment is defined as conduct on the basis of sex that satisfies one or more of the following:

1. **Quid Pro Quo:***
   a) an employee of Mercer University,
   b) conditions the provision of an aid, benefit, or services of Mercer University,
   c) on an individual’s participation in unwelcome sexual conduct; and/or

2. **Sexual Harassment:**
   a) unwelcome conduct,
   b) determined by a reasonable person,
   c) to be so severe, and
   d) pervasive, and,
   e) objectively offensive,
   f) that it effectively denies a person equal access to the university’s educational, or employment program or activity.

Sexual harassment can occur regardless of the relationship, job title or respective sex, sexual orientation and/or gender of the parties.

3. **Sexual Assault** is defined as: any sexual act directed at another person that occurs without consent and/or by force.
   a) **Non-Consensual Sexual Intercourse**
      a) Any anal, oral or vaginal penetration,
      b) however slight,
      c) of any part of one person’s body with any part of another person’s body or an object,
      d) that is without consent and/or by force.
   b) **Non-Consensual Sexual Contact (Fondling)**
      a) The touching of the private body parts of another person (buttocks, groin, breasts, etc.),
      b) for the purpose of sexual gratification,
      c) forcibly,
      d) and/or against that person’s will (non-consensually),
      e) Or when Complainant is incapable of giving consent because of age or mental or physically incapacity.

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5 The Department of Education declined to require that quid pro quo harassment be severe and pervasive. Abuse of authority in the form of even a single instance of quid pro quo harassment (including where the conduct is not “pervasive”) is inherently offensive and serious enough to jeopardize equal educational access.

6 Unwelcomeness is subjective and determined by the Complainant. Severity, pervasiveness, and objective offensiveness are evaluated based on the totality of the circumstances from the perspective of a reasonable person in the same or similar circumstances (“in the shoes of the Complainant”), including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

7 Pursuant to the Department of Education guidance, “although Title IX does not prohibit discrimination on the basis of sexual orientation, sexual harassment directed at gay or lesbian students that is sufficiently serious to limit or deny a student’s ability to participate in or benefit from the school’s program constitutes sexual harassment prohibited by Title IX” “…[G]ender-based harassment, which may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex-stereotyping, but not involving conduct of a sexual nature, is also a form of sex discrimination to which a school must respond.
4. **Dating Violence**, defined as:
   a) violence,
   b) on the basis of sex,
   c) committed by a person,
   d) who is in or has been in a social relationship of a romantic or intimate nature with the Complainant.
   
   i. The existence of such a relationship shall be determined based on the Complainant’s statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition—
   
   ii. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
   
   iii. Dating violence does not include acts covered under the definition of domestic violence.

5. **Domestic Violence**, defined as:
   a) violence,
   b) on the basis of sex,
   c) committed by a current or former spouse or intimate partner of the Complainant,
   d) by a person with whom the Complainant shares a child in common, or
   e) by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or
   f) by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of Georgia, or
   g) by any other person against an adult or youth Complainant who is protected from that person’s acts under the domestic or family violence laws of Georgia.

6. **Stalking**, defined as:
   a) engaging in a course of conduct,
   b) on the basis of sex,
   c) directed at a specific person, that
   
   i. would cause a reasonable person to fear for the person’s safety, or
   
   ii. the safety of others; or
   
   iii. suffer substantial emotional distress.

   For the purposes of this definition—
   
   (i) Course of conduct means two or more acts, including, but not limited to, acts in which the Respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person’s property.
   
   (ii) Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.
   
   (iii) Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

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8 To categorize an incident as Domestic Violence, the relationship between the Respondent and the Complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.
As used in the offenses above, the following definitions and understandings apply:

**Force:** The use of physical violence and/or physical imposition to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent.

**Coercion:** The unreasonable pressure for sexual activity. When someone makes clear that they do not want to engage in certain sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

**Consent** is:
- knowing, and
- voluntary, and
- clear permission,
- by word or action,
- to engage in sexual activity.

Individuals may experience the same interaction in different ways and it is the responsibility of each party to determine that the other has consented before engaging in the activity. If consent is not clearly provided prior to engaging in the activity, consent may be ratified by word or action at some point during the interaction, but clear communication from the outset is strongly encouraged.

For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Reasonable reciprocation may be implied.

Consent can also be withdrawn once given, as long as the withdrawal is reasonably and clearly communicated. If consent is withdrawn, that sexual activity should cease.

Consent to some sexual contact (such as kissing) cannot be presumed to be consent for other sexual activity (such as intercourse). A current or previous intimate relationship does not constitute consent.

The existence of consent is based on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

**Incapacitation:** A state in which an individual cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the “who, what, when, where, why, or how” of their sexual interaction). A person cannot consent if they are unable to understand what is happening or is disoriented, helpless, asleep, or unconscious, for any reason, including by alcohol or other drugs.

That the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated may be raised as a defense. “Should have known” is an objective, reasonable person standard which assumes that a reasonable person is both sober and exercising sound judgment.

Incapacitation is determined through consideration of all relevant indicators of an individual’s state and is not synonymous with intoxication, impairment, blackout, and/or being drunk.

7. **Retaliation**

Retaliation is defined as any adverse action taken in response to an individual who has filed a report, testified, assisted, or participated in any manner in an investigation or proceeding under any Mercer University Policy. Retaliation includes intimidation, threats, harassment, or any type of adverse action taken against an individual in the attempt to deter them from addressing, reporting, or testifying on
adverse conduct. This includes action taken against a bystander who intervened to stop or attempt to stop sexual harassment.

Acts of alleged retaliation should be reported immediately to the Title IX Coordinator and will be promptly reported to the Dean of Students or Human Resources for investigation by either Student Conduct or Human Resources. For more information on Retaliation, see Student Code of Conduct and/or Employee Handbooks.

**False Allegations and Evidence**

Conclusively and deliberately false and/or malicious accusations under this policy, as opposed to allegations which, even if erroneous, are made in good faith, are a serious offense and will be subject to appropriate disciplinary action.

Additionally, witnesses and parties knowingly providing false evidence, tampering with or destroying evidence after being directed to preserve such evidence, or deliberately misleading an official who is conducting an investigation can be subject to discipline.

**Amnesty**

Mercer University encourages the reporting of sexual misconduct and crimes by Complainants and witnesses. It is in the best interests of the Mercer University community that Complainants choose to report, that witnesses come forward to share what they know, and that all parties be forthcoming during the process.

To encourage reporting and participation in the process, Mercer University may offer parties and witnesses amnesty from minor policy violations – such as underage consumption of alcohol or the use of illicit drugs – related to the incident.
PROCEDURE FOR ALLEGATIONS OF SEXUAL HARASSMENT

Notice or Complaint Assessment

Upon receipt of a complaint or notice to the Title IX Coordinator of an alleged violation of policy, Mercer University shall initiate a prompt initial assessment to determine the next steps the university needs to take.

If a Complainant does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a formal complaint to be pursued, they may make such a request to the Title IX Coordinator, who will evaluate that request in light of the duty to ensure the safety of the campus and to comply with state or federal law. The Title IX Coordinator’s decision should be based on results of the violence risk assessment that show a compelling risk to health and/or safety that requires Mercer University to pursue formal action to protect the community. A compelling risk to health and/or safety may result from evidence of patterns of misconduct, predatory conduct, threats, abuse of minors, use of weapons, and/or violence. Mercer University may be compelled to act on alleged employee misconduct irrespective of a Complainant’s wishes. The Title IX Coordinator must also consider the effect that non-participation by the Complainant may have on the availability of evidence and the university’s ability to proceed fairly and effectively. When the Title IX Coordinator executes the written complaint, they do not become the Complainant. The Complainant is the individual who is alleged to be the victim of conduct that could constitute a violation of this policy.

Response to Notice or Complaint

1) Offering Supportive Measures; and/or
   • The Title IX Coordinator works with the Complainant to identify their requests and then seeks to facilitate implementation.
2) An Informal Resolution Process; or
   • The Title IX Coordinator assesses whether the Complaint is suitable for Informal Resolution.
3) A Formal Investigation and Grievance Process (investigation and hearing)
   • The Title IX Coordinator determines if the alleged misconduct falls within the scope of Title IX:
     o If it does, the Title IX Coordinator will initiate the Formal Investigation and Grievance Process, directing an investigation
     o If it does not, the Title IX Coordinator will “dismiss” that aspect of the Complaint, determine which policies may apply, if any, and will refer the matter accordingly.

The investigation and grievance process will determine whether or not the policy has been violated. If so, Mercer University will promptly implement effective remedies designed to ensure that it is not deliberately indifferent to sexual harassment, a potential recurrence, or the effects.

Dismissal (Mandatory and Discretionary)*

Mercer University must dismiss a formal complaint or any allegations therein if, at any time during the investigation or hearing, it is determined that:

1) The conduct alleged in the formal complaint would not constitute sexual harassment as defined in the Policy hereinabove, even if proved; and/or

* These dismissal requirements are mandated by the 2020 Title IX Regulations, 34 CFR Part 106.45.
2) The conduct did not occur in an educational program or activity controlled by the Mercer University (including buildings or property controlled by recognized student organizations), and/or the university does not have control of the Respondent; and/or

3) The conduct did not occur against a person in the United States; and/or

4) At the time of filing a formal complaint, a Complainant is not participating in or attempting to participate in the education program or activity of Mercer University.

Mercer University may dismiss a formal complaint or any allegations therein if, at any time during the investigation or hearing:

1) A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations therein; or

2) The Respondent is no longer enrolled in or employed by Mercer University; or

3) Specific circumstances prevent the university from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

Upon any dismissal, Mercer University will promptly send written notice of the dismissal and the rationale for doing so to the parties.

Counterclaims

Mercer University is obligated to ensure that the grievance process is not abused for retaliatory purposes. Mercer University permits the filing of counterclaims but uses an initial assessment, described above, to assess whether the allegations in the counterclaim are made in good faith. Counterclaims made with retaliatory intent will not be permitted. When counterclaims are not made in good faith, they will be considered retaliatory and may constitute a violation of this policy.

Informal Resolution Processes

In order to initiate an Informal Resolution, a Complainant needs to submit a Formal Complaint, as defined above. If a Respondent wishes to initiate Informal Resolution, they may make a written request to the Title IX Coordinator.

It is not necessary to pursue Informal Resolution first in order to pursue a Formal Investigation and Grievance Process, and any party participating in Informal Resolution can stop the process at any time.

Prior to implementing Informal Resolution, Mercer University will provide the parties with written notice of the reported misconduct and any sanctions or measures that may result from participating in such a process.

Mercer University will obtain voluntary, written confirmation that all parties wish to resolve the matter through Informal Resolution before proceeding and will not pressure the parties to participate in Informal Resolution.

Informal Resolution can include two different approaches:

- **Mutual** - When the parties agree to resolve the matter;
- **Responsibility** - When the Respondent accepts responsibility for violating policy, and desires to accept a sanction and end the resolution process.

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10 Informal Resolution may not be used in allegations made by a student against an employee.
1) Mutual Informal Resolution

Mutual Informal Resolution is an informal process by which a mutually agreed upon resolution of an allegation is reached. All parties must consent.

The Title IX Coordinator may look to the following factors to assess whether a Mutual Informal Resolution is appropriate:

- The parties’ amenability to the resolution;
- Likelihood of potential resolution, considering any power dynamics between the parties;
- The parties’ motivation to participate;
- Civility of the parties;
- Cleared violence risk assessment/ongoing risk analysis;
- Disciplinary history;
- Whether an emergency removal is needed;
- Complaint complexity;
- Emotional investment/intelligence of the parties;
- Rationality of the parties;
- Goals of the parties.

The ultimate determination of whether Mutual Informal Resolution is available or successful is to be made by the Title IX Coordinator. The Title IX Coordinator maintains records of any resolution that is reached, and failure to abide by the resolution agreement may result in appropriate responsive/disciplinary actions. Results of Complaints resolved by Mutual Informal Resolution are not appealable.

2) Responsibility Informal Resolution (Respondent Accepts Responsibility for Alleged Violations)

The Respondent may accept responsibility for all or part of the alleged policy violations at any point during the resolution process. If the Respondent indicates an intent to accept responsibility for all of the alleged misconduct, any formal process will be paused, and the Title IX Coordinator will determine whether Responsibility Informal Resolution can be used. If Responsibility Informal Resolution is applicable, the Title IX Coordinator will determine whether all parties and Mercer University are able to agree on responsibility, sanctions, and/or remedies. If so, the Title IX Coordinator may implement the accepted finding that the Respondent is in violation of Mercer University policy and implement agreed-upon sanctions and/or remedies, in coordination with other appropriate administrator(s), as necessary.

This result is not subject to appeal once all parties indicate their written assent to all terms of resolution. When a resolution is accomplished, the appropriate sanction or responsive actions are promptly implemented in order to effectively stop the sexual harassment, prevent its recurrence, and remedy the effects of the discriminatory conduct, both on the Complainant and the community.
Formal Grievance Process

Notice of Investigation and Allegations

The Title IX Coordinator will provide written notice of the investigation and allegations (the “NOIA”) to the Respondent upon commencement of the Formal Grievance Process. The NOIA is also copied to the Complainant, who is given advance notice of when the NOIA will be delivered to the Respondent.

The NOIA will include:

- A meaningful summary of all allegations,
- The identity of the involved parties,
- The precise misconduct being alleged,
- The date and location of the alleged incident(s),
- The specific policies implicated,
- The university policy on applicable procedures,
- A statement of the potential sanctions/responsive actions that could result,
- A statement that the university presumes the Respondent is not responsible for the reported misconduct unless and until the evidence supports a different determination,
- A statement that determinations of responsibility are made at the conclusion of the process and that the parties will be given an opportunity to inspect and review all directly related and/or relevant evidence obtained during the review and comment period,
- The university policy prohibiting knowingly making false statements, including knowingly submitting false information,
- The university policy with information about the privacy of the process,
- The university policy on retaliation,
- The university policy containing information about the need for each party to have an Advisor of their choosing and suggestions for ways to identify an Advisor,
- The university policy providing details on how a party may request disability accommodations during the process,
- The name(s) of the Investigator(s) and the university policy providing details on how to address any conflicts of interest, and
- An instruction to preserve any evidence that is directly related to the allegations.

The NOIA will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address(es) of the parties as indicated in official Mercer University records, or emailed to the parties’ university-issued email. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered. The NOIA may be amended during the investigation process with any additional or dismissed allegations.

Investigation Process

All investigations are thorough, reliable, impartial, prompt, and fair. Investigations involve interviews with all relevant parties and witnesses; obtaining available, relevant evidence; and identifying sources of expert information, as necessary. All parties have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence and expert witnesses, and to fully review and respond to all evidence on the record.

The Title IX Coordinator will assign two (2) Investigators and the Investigators will commence a thorough, reliable, and impartial investigation by identifying issues and developing a strategic investigation plan. The Investigators, in their discretion, will provide a party or witness with notice of the date, time, and location of any interviews or meetings. The Investigators will interview all available, relevant witnesses and conduct follow-up interviews as necessary, including, allowing each party the opportunity to suggest relevant witnesses and questions they wish the Investigators to ask of the other
party and witnesses. The answers provided shall be incorporated into the Investigation Report.

Upon completion of the investigation, the Investigators will write a comprehensive Draft Investigation report fully summarizing the investigation, all witness interviews, and addressing all relevant evidence. The Investigators gather, assess, and synthesize evidence, but make no conclusions, engage in no policy analysis, and render no recommendations as part of their report.

At the conclusion of the Draft Investigation Report, the Investigators will provide the parties a secured electronic or hard copy of the draft Investigation Report, as well as an opportunity to inspect and review all of the evidence obtained as part of the investigation that is directly related to the reported misconduct. The Parties will have a ten (10) business day review and comment period so that each party may meaningfully respond, in writing, to the evidence. The parties may elect to waive the full ten days. The parties may also indicate, in writing, that they do not wish to provide further or additional information.

At the completion of the review and comment period, the Investigators will incorporate the parties’ written responses into the report, including any additional relevant evidence, make any necessary revisions, and finalize the report. The Final Investigation Report will then be shared with the parties through secure electronic transmission or hard copy at least ten (10) business days prior to a hearing.

**Investigation Timeline**

Investigations are completed expeditiously, though some investigations may take weeks or even months, depending on the nature, extent, and complexity of the allegations, availability of witnesses, police involvement, etc. Mercer University will make a good faith effort to complete investigations as promptly as circumstances permit and will communicate regularly with the parties to update them on the progress and timing of the investigation.

**Delays in the Investigation Process**

Mercer University may undertake a short delay in its investigation if circumstances require. Such circumstances include, but are not limited to: a request from law enforcement or prosecutors to temporarily delay the investigation, the need for assistance, the absence of parties and/or witnesses, and/or accommodations for disabilities or health conditions. Mercer University will communicate in writing the anticipated duration of the delay and reason to the parties.

**Witnesses in the Investigation**

Witnesses who are employees of Mercer University are expected to cooperate with and participate in the university’s investigation and resolution process. Failure of such witnesses to cooperate with and/or participate in the process constitutes a violation of policy and may warrant discipline.

If the Investigator(s) determine that timeliness or efficiency dictate a need for remote interviewing, they may conduct interviews remotely. If deemed appropriate by the Investigator(s), Witnesses may provide written statements in lieu of interviews or choose to respond to written questions. However, if a Witness submits a written statement but does not intend to be and is not present for cross examination at a hearing, their written statement may not be used as evidence.

**Recording of Interviews**

No unauthorized audio or video recording of any kind is permitted during investigation meetings. If Mercer University audio or video record interviews, all involved parties will be made aware of the audio and/or video recording.

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11 The Investigators may also share their report with the Title IX Coordinator for review and revision.
Hearing Referral and Pre-Hearing Steps

Once the final Investigation Report is shared with the parties, the Title IX Coordinator will refer the matter for a hearing. The hearing cannot be less than ten (10) business days from the conclusion of the investigation.

Upon referral, the Assistant Vice President (AVP) for Student Affairs or Assistant Vice President (AVP) for Human Resources will select appropriate Decision-makers depending on whether the Respondent is an employee or a student. Mercer University will designate a five-member panel, at the discretion of the AVP for Student Affairs or the AVP for Human Resources. One of the five members will be appointed as Chair.

The AVP of Student Affairs or Human Resources will give the Decision-makers a list of the names of all parties, witnesses, and Advisors. The Decision-makers will not have had any previous involvement with the investigation. Any Decision-maker who cannot make an objective determination must recuse themselves from the proceedings when notified of the identity of the parties, witnesses, and Advisors in advance of the hearing. As needed, the AVP of Student Affairs of Human Resources may update the list.

The AVP of Student Affairs or the AVP of Human Resources, after any necessary consultation with the parties, Investigators and/or the Decision Makers, will provide the names of individuals who will be participating in the hearing. If any changes or additions have been made to the pertinent documentary evidence and/or the Final Investigation Report, it will be provided to the parties at least ten (10) business days prior to the hearing.

Joint Hearings

In hearings involving more than one Respondent or in which two (2) or more Complainants have accused the same individual of substantially similar conduct, the default procedure will be to hear the allegations jointly.

However, the Title IX Coordinator may permit the investigation and/or hearings pertinent to each Respondent to be conducted separately if there is a compelling reason to do so. In joint hearings, separate determinations of responsibility will be made for each Respondent with respect to each alleged policy violation.

Notice of Hearing

No less than ten (10) business days prior to the hearing, the AVP of Student Affairs or AVP of Human Resources will send a Notice of Hearing to the parties. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

The Notice of Hearing will contain:

- A description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable procedures, and a statement of the potential sanctions/responsive actions that could result.
- The time, date, and location of the hearing and a reminder that attendance supersedes all other campus activities.
- Any technology that will be used to facilitate the hearing.
- Information about the option for the live hearing to occur with the parties located in separate

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12 Participants at the hearing may include the Decision-makers, the AVP of Student Affairs or Human Resources and any designee(s), the Coordinator of Student Conduct, the Investigators, Advisors to the parties, witnesses, the Title IX Coordinator, and anyone providing authorized accommodations or assistive services.
rooms using technology. Such a request must be raised at least five (5) business days prior to the hearing.

- A list of all those who will attend the hearing, along with an invitation to object to any Decision-maker on the basis of demonstrated bias. Any objection must be raised at least five (5) days prior to the hearing. Decision-makers will only be removed if the AVP of Student Affairs or Human Resources concludes that their bias or conflict of interest precludes an impartial hearing of the allegation(s).
- Information on how the hearing will be recorded and on access to the recording for the parties after the hearing.
- A statement that if any party or witness does not appear at the scheduled hearing, the party’s or witness’s testimony and any statements given prior to the hearing will not be considered by the Decision-maker(s).
- Notification that the parties may have the assistance of an Advisor of their choosing at the hearing and will be required to have one present for any cross-examination questions they may desire to ask. The party must notify the AVP or Student Affairs or Human Resources if they do not have an Advisor and the university will appoint one. Each party must have an Advisor present. There are no exceptions.
- A copy of additional materials, if any, provided to the Decision-makers about the matter or investigation that were not previously provided.
- An invitation to each party to submit an impact statement prior to the hearing.
- An invitation to contact Student Affairs or Human Resources to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing, at least five (5) business days prior to the hearing.

Hearings for possible violations that occur near or after the end of an academic term (assuming the Respondent is still subject to this Policy) and are unable to be resolved prior to the end of term will typically be held immediately after the end of the term or during the summer, as needed, to meet the resolution timeline followed by Mercer University and remain within the 60-90 business day goal for resolution.

Alternative Hearing Participation Options

If there are special circumstances in which a party or parties cannot attend the hearing in person, the party should request alternative arrangements from the AVP of Student Affairs or Human Resources at least five (5) business days prior to the hearing. The AVP of Student Affairs or Human Resources will review the special circumstances surrounding the request and has ultimate discretion over how the hearing will be conducted.

Mercer University can arrange to use technology to allow remote testimony without compromising the fairness of the hearing. Remote options may also be needed for witnesses who cannot appear in person. Any witness who cannot attend in person should notify the university at least five (5) business days prior to the hearing so that appropriate arrangements can be made.

Hearing Procedures

The hearing, recording, witness and party logistics, curation of documents, separation of the parties, and other required elements of the hearing process will be managed by the AVP of Student Affairs or Human Resources, or their designee(s).  

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13 This may include, but is not limited to, overseeing the logistics of rooms for various parties/witnesses as they wait; flow of parties/witnesses in and out of the hearing space; ensuring recording and/or virtual conferencing technology is working as intended; copying and distributing materials to participants, ensuring necessary breaks, addressing hearing concerns and questions, etc.
The Decision-makers will have the authority to hear and make determinations on all allegations of sexual harassment. The Chair will allow witnesses who have relevant information to appear at portions of the hearing in order to respond to specific questions from the Decision-makers and the parties and the witnesses will then be excused.

Investigators may testify and be subject to questioning by the Decision-makers and the parties (through their Advisors). Neither the parties nor the Decision-makers should ask the Investigators their opinions. Investigators may be present during the entire hearing process, but not during deliberations.

**Testimony and Questioning**

Once the Investigator(s) testimony is complete, the parties and witnesses may provide relevant information in turn, beginning with the Complainant, and then in the order determined by the Chair. The parties/witnesses will submit to questioning by the Decision-makers and then by the parties through their Advisors ("cross-examination"). All witnesses and parties will respond to questions on their own behalf.

Any witness scheduled to participate in the hearing must have been first interviewed by the Investigators, or have proffered a written statement or answered written questions.

Relevant evidence that was not known to the parties prior to the issuance of the Final Investigative Report shall be admissible during the hearing but the Decision-makers in conjunction with the AVP of Student Affairs or Human Resources, will determine how the evidence will be introduced. The admissibility of any evidence known which were not submitted during the investigation, shall be determined by the Decision-makers, taking into consideration the obligation to provide both parties an equal opportunity to present and respond to witnesses and other evidence.

Advisors, who will remain seated during questioning, shall provide proposed cross-examination questions (either orally or in writing), and the proceeding will pause to allow the Chair to consider the relevancy of the question(s) and if the question(s) is permitted, disallowed, or rephrased. The Chair will then state their decision on the question for the record and advise the party/witness to whom the question was directed, accordingly. The Chair will explain any decision to exclude a question as not relevant, or to reframe it for relevance. The Chair will limit or disallow questions on the basis that they are irrelevant, unduly repetitious, or abusive. The Chair has final say on all questions and determinations of relevance. The Chair may ask Advisors to frame why a question is or is not relevant from their perspective but will not entertain argument from the Advisors once the Chair has ruled on a question.

Where a party or a witness is unavailable, unable, or unwilling to participate in the hearing, including being subject to cross-examination, the Decision-makers shall not rely on statements of that party or witness in reaching a determination regarding responsibility. The Decision-maker(s) may not draw any inference solely from a party’s or witness’s absence from the hearing or refusal to answer cross-examination.

Questions and/or evidence about the Complainant’s sexual predisposition or prior sexual behavior will be deemed irrelevant and not considered, unless such questions and evidence are offered to prove that someone other than the Respondent committed the conduct or are being offered to prove consent.

**Recording Hearings**

Hearings (but not deliberations) are recorded by Mercer University for purposes of review in the event of an appeal. The parties may not record the proceedings and no other unauthorized recordings are permitted. The Decision-makers, the parties, their Advisors, and appropriate administrators of Mercer University will be permitted to listen to the recording in a controlled environment determined by the Title IX Coordinator and/or the AVP of Student Affairs or Human Resources. No person will be given or be allowed to make a copy of the recording without permission.
Deliberation and Standard of Proof

The Decision-makers will deliberate in closed session to determine whether the Respondent is responsible or not responsible for the policy violation(s) in question. A simple majority vote is required to determine the finding. The determination shall be based on the preponderance of the evidence; whether it is more likely than not that the Respondent violated the Policy as alleged.

The Chair will then prepare a written deliberation statement\(^{14}\) and deliver it to the AVP of Student Affairs or Human Resources.

Notice of Outcome

Using the deliberation statement, the AVP of Student Affairs or Human Resources will prepare a Notice of Outcome\(^ {15}\). The AVP of Student Affairs or Human Resources will provide the Notice of Outcome to the parties within seven (7) business days of receiving the Decision-makers’ deliberation statement. Notification will be made in writing and may be delivered in person, mailed to the local or permanent address of the parties as indicated in official Mercer University records, or emailed to the parties’ university-issued email. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

Sanctions

If a decision of responsibility is reached, the Decision-makers may then consider the previously submitted party impact statements and prior pertinent conduct history in determining appropriate sanctions. Additional factors considered when determining a sanction/responsive action may include, but are not limited to:

- The nature, severity of, and circumstances surrounding the violation(s),
- History of the Respondent’s prior conduct,
- Mercer University’s prior response to similar conduct,
- Mercer University’s need to bring an end to the sexual harassment, prevent the future recurrence of sexual harassment, and remedy the effects of the sexual harassment on the Complainant and the community,
- The impact on the parties,
- Any other information deemed relevant by the Decision-maker(s)

The sanctions will be implemented as soon as is feasible, either upon the outcome of any appeal or the expiration of the window to appeal without an appeal being requested.

The sanctions described in this policy are not exclusive of, and may be in addition to, other actions taken or sanctions imposed by external authorities.

Student Sanctions

- **Warning:** A formal statement that the conduct was unacceptable and a warning that further violation of any Mercer University policy, procedure, or directive will result in more severe

\(^{14}\) The deliberation statement will consider factors, such as, the evidence used in support of its determination, the evidence disregarded, credibility assessments, etc.

\(^{15}\) The Notice of Outcome shall include the allegations, procedural steps taken through the investigation and process, the findings of facts supporting the determination, the determination of responsibility, and the evidence relied upon and rationale for any sanction, notification of the right to appeal.
sanctions/responsive actions.

- **Required Training or Participation:** A mandate to meet with and engage in either university-sponsored or external counseling to better comprehend the misconduct and its effects or to required participation in sensitivity training, sexual misconduct training, volunteering, community service, etc.

- **Probation:** A written reprimand for violation of institutional policy. Terms of the probation will be articulated and may include denial of specified social privileges, exclusion from co-curricular activities, exclusion from designated areas of campus, no-contact orders, and/or other measures deemed appropriate.

- **Suspension:** Termination of student status for a definite period of time not to exceed two years and/or until specific criteria are met.

- **Expulsion:** Permanent termination of student status and revocation of rights to be on campus for any reason or to attend Mercer University-sponsored events.

- **Withholding Diploma:** Mercer University may withhold a student’s diploma for a specified period of time and/or deny a student participation in commencement activities as a sanction if the student is found responsible for an alleged violation.

- **Revocation of Degree:** Mercer University reserves the right to revoke a degree previously awarded from the university for violations of Mercer University policies, procedures, or directives in obtaining the degree, or for other serious violations committed by a student prior to graduation.

- **Organizational Sanctions:** Deactivation, loss of recognition, loss of some or all privileges for a specified period of time.

- **Other Actions:** In addition to or in place of the above sanctions, Mercer University may assign any other sanctions as deemed appropriate.

**Employee Sanctions**

- **Warning – Verbal or Written**
- **Performance Improvement/Management Process**
- **Required Counseling**
- **Required Training or Education**
- **Probation**
- **Suspension**
- **Termination**
- **Other Actions:** In addition to or in place of the above sanctions, Mercer University may assign any other sanctions as deemed appropriate.

**Appeals**

Both the Complainant and the Respondent have the right to request an appeal (“Request for Appeal”), and all requests must be submitted in writing to the Dean of Students or Executive Vice President for Administration and Finance within seven (7) days of the delivery of the Notice of Outcome.

**Grounds for Appeal**

Appeals are limited to the following grounds:

(A) Procedural irregularity that affected the outcome of the matter;

(B) 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; and
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 specific Complainant or Respondent that affected the outcome of the matter.

**Process for Appeals**

**Step One: Initial Review of the Appeal**

The Dean of Students or Executive Vice President for Administration and Finance conducts an initial review of the appeal request. This initial review is not a review of the merits of the appeal, but solely a determination as to whether the request meets the grounds and is timely filed.

If the Request for Appeal does not meet the grounds in this Policy, that request will be denied and the parties and their Advisors will be notified in writing of the denial and the rationale.

If any of the grounds in the Request for Appeal meet the grounds in this Policy, then the Dean of Students or EVP for Administration and Finance will notify the other party(ies) and their Advisors, the Title IX Coordinator, any additional individuals named in the appeal. The non-appealing party (if any) will be provided one last opportunity to raise a ground for appeal at this time within three (3) days of this notification.

Neither party may submit any new requests for appeal after this time period. The Dean of Students or EVP for Administration and Finance will collect any additional information needed.

**Step Two: Appeal Review**

The Dean of Students or Executive Vice President for Administration and Finance conducts the appeal review. This appeal review will primarily entail a review of the file and prior proceedings, but can entail contacting either party, witnesses, hearing board members, or investigators for additional information in which to evaluate the merits of the appeal. Requests for additional information will be made and answered in writing, with both parties provided the opportunity to read and respond to any additionally received information before a decision is made.

**Step Three: Notice of Appeal Outcome**

A Notice of Appeal Outcome will be sent to all parties simultaneously including the decision on each approved ground and rationale for each decision. The Notice of Appeal Outcome will specify the finding on each ground for appeal, any specific instructions for remand or reconsideration, any sanctions that may result which Mercer University is permitted to share according to state or federal law, and the rationale supporting the essential findings to the extent the university is permitted to share under state or federal law.

Notification will be made in writing and may be delivered in person, mailed to the local or permanent address of the parties as indicated in official institutional records, or emailed to the parties’ university-issued email. Once mailed, emailed and/or received in-person, notice will be presumptively delivered.

All decisions will apply the preponderance of the evidence standard. Any sanctions imposed as a result of the hearing are stayed during the appeal process.

**Appeal Guidelines**

- Decisions on appeal are to be deferential to the original decision, making changes to the finding only when there is clear error and to the sanction(s)/responsive action(s) only if there is a compelling justification to do so.
- Appeals are not intended to provide for a full rehearing (de novo) of the allegation(s). In most cases, appeals are confined to a review of the written documentation or record of the original
hearing and pertinent documentation regarding the specific grounds for appeal.

- An appeal is not an opportunity for Appeal Decision-makers to substitute their judgment for that of the original Decision-makers merely because they disagree with the finding and/or sanction(s).
- The Dean of Students or EVP for Administration and Finance may consult with the Title IX Coordinator on questions of procedure or rationale, for clarification, if needed.
- Appeals granted based on new evidence should normally be remanded to the original Investigator(s) and/or Decision-makers for reconsideration.
- Once an appeal is decided, the outcome is final: further appeals are not permitted, even if a decision or sanction is changed on remand (except in the case of a new hearing).
- In rare cases where a procedural or substantive error cannot be cured by the original Decision-makers (as in cases of bias), the appeal may order a new hearing with a new Decision-makers.
- In cases in which the appeal results in reinstatement to Mercer University or resumption of privileges, all reasonable attempts will be made to restore the Respondent to their prior status, recognizing that some opportunities lost may be irreparable in the short term.

**Disabilities Accommodations**

Mercer University is committed to providing reasonable accommodations and support to qualified students, employees, or others with disabilities to ensure equal access to the university’s resolution process. Students needing such accommodations should contact Katie Johnson, Director of Access and Accommodations or employees should contact Human Resources.

**Retention of Records**

Mercer University will create and maintain for a period of seven (7) years records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment, including the basis for its conclusion that its response was not deliberately indifferent.

**Revision of this Policy and Procedures**

This Policy and procedures supersede any previous policy(ies) addressing sexual harassment and will be reviewed and updated as needed. Mercer University reserves the right to make changes to this document as necessary, and once those changes are posted online, they are in effect.

During the resolution process, the Title IX Coordinator may make minor modifications to procedures that do not materially jeopardize the fairness owed to any party. The Title IX Coordinator may also vary procedures materially with notice (on the institutional website, with the appropriate effective date identified) upon determining that changes to law or regulation require policy or procedural alterations not reflected in this Policy and procedures.

If government laws or regulations change – or court decisions alter – the requirements in a way that impacts this document, this document will be construed to comply with the most recent government regulations or holdings.

This Policy and procedures are effective August 14, 2020.

Mercer University’s Sexual Misconduct Policy contains some information from:
ATIXA 2020 ONE POLICY, TWO PROCEDURES MODEL
USE AND ADAPTATION OF THIS MODEL WITH CITATION TO ATIXA IS PERMITTED
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