



# **SEXUAL MISCONDUCT POLICY**

*October 1, 2022*

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## INTRODUCTION AND OVERVIEW

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First Institute (the “Institute”) is committed to protecting the safety, health, and well-being of its students, employees, and all people who come into contact with the Institute community. In support of this commitment, and as required by Title IX of the Education Amendments of 1972 (“Title IX”) and other applicable federal and state laws, the Institute has created this policy that prohibits Sexual Misconduct, as well as Retaliation against an individual for making a good faith report of Sexual Misconduct under this policy. As discussed in more detail below, in this policy the term “Sexual Misconduct” includes “Title IX Sexual Harassment” and “Institute Sexual Harassment.”<sup>1</sup>

This policy applies to the Institute’s Crystal Lake and Libertyville campuses. This policy also informs the campus community of the Institute’s procedures for reporting incidents of Sexual Misconduct, and for the investigation and remediation of such reports. The Institute will take prompt and equitable action to address allegations of Sexual Misconduct, to prevent its recurrence, and to remediate its effects.<sup>2</sup> The Institute also conducts prevention, awareness, and training programs for students and employees to facilitate the goals of this policy.

This policy supersedes all prior policies and guidance relating to the topics discussed herein. It applies to all members of the Institute community, including students, faculty, staff, visitors, guests, applicants for admission or employment, contractors, vendors, and others engaged in business with the Institute (collectively referred to as “Covered Parties”). The protections in this policy apply regardless of race, color, ethnicity, national origin, religion, creed, age, disability, sex, gender identity or expression, sexual orientation, familial status, pregnancy, predisposing genetic characteristics, military status, domestic violence victim status, or criminal conviction.

Like the Institute’s Annual Security Report, this policy is designed to comply with Title IX and the Jeanne Clery Disclosure of Campus Security policy and Campus Crime Statistics Act (the “Clery Act”), and the implementing regulations and guidance issued in connection with such laws. This policy also is designed to comply with applicable state laws and standards. The definitions of key terms used in this policy are included in the final section titled “Glossary of Terms.”

This policy, as it may be amended from time to time, is available on the Institute’s website at <https://www.firstinstitute.edu/title-ix/>. Notice of the Policy’s availability is distributed to all prospective students and employees prior to enrollment or employment, as applicable. In addition, the policy is distributed annually to all current students and employees and is featured in the Institute’s training and outreach efforts relating to sex-based discrimination and Sexual Misconduct.

### **Sexual Misconduct, Title IX Sexual Harassment, and Institute Sexual Harassment**

As noted above, “Sexual Misconduct,” as that term is used in this policy, is comprised of “Title IX Sexual Harassment” and “Institute Sexual Harassment.”

- **Title IX Sexual Harassment.** Title IX Sexual Harassment is a particular form of Sexual Misconduct defined in regulations published by the U.S. Department of Education under Title IX. These regulations, which took effect August 14, 2020, require institutions to use specific definitions and processes when addressing alleged misconduct that constitutes Title IX Sexual Harassment. These regulations also

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<sup>1</sup> Each of these terms is defined in the Glossary to this policy.

<sup>2</sup> The Institute also will respond promptly and equitably to reports of sex-based discrimination that do not include an allegation of Sexual Misconduct in accordance with the grievance policies and procedures articulated in the Student Handbook and Employee Handbook, as applicable.

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make clear that alleged misconduct falling outside of the specific definition of Title IX Sexual Harassment is not covered by the Title IX regulations and should not be treated as such.

- **Institute Sexual Harassment.** Institute Sexual Harassment is Sexual Misconduct that does not fall within the definition of Title IX Sexual Harassment, but still constitutes Sexual Misconduct under the Institute’s policies. Institute Sexual Harassment includes Sexual Misconduct that does not meet Title IX’s jurisdictional requirements, as well as Sexual Misconduct that is outside of the specific definition of Title IX Sexual Harassment, but is prohibited under the Institute policy.

When responding to a report or Formal Complaint of Sexual Misconduct, the specific policies and procedures the Institute follows will depend on whether the alleged misconduct constitutes Title IX Sexual Harassment or Institute Sexual Harassment. Any alleged Sexual Misconduct will be treated as Title IX Sexual Harassment unless and until a determination is made by the Institute that it does not qualify as Title IX Sexual Harassment. If the Institute determines that the alleged Sexual Misconduct does not constitute Title IX Sexual Harassment, but does qualify as Institute Sexual Harassment, from that point forward it will be treated as Institute Sexual Harassment, and will be addressed pursuant to the policies and procedures set forth in Part Three of this policy.

If an alleged incident of Sexual Misconduct includes a combination of Title IX Sexual Harassment and Institute Sexual Harassment, the Institute may follow the policies and procedures that apply to Title IX Sexual Harassment for purposes of investigating and resolving the entire incident.

### The Institute’s Title IX Coordinator

The Institute’s designated Title IX Coordinator is responsible for administering this policy and ensuring that the campus community is educated regarding the various obligations detailed herein. In fulfilling their role, the Title IX Coordinator oversees the Institute’s management of reports and complaints that involve allegations of Sexual Misconduct, monitor outcomes of policy and training efforts, identify and address any patterns, and assess effects on the campus climate. In addition, the Title IX Coordinator carries out training for students and employees, assist individuals who have experienced Sexual Misconduct, including on an emergency basis, oversee the provision of accommodations and interim measures, and carry out monitoring and advising activities. Contact information for the Institute’s Title IX Coordinator is set out below:

Title IX Coordinator	
<b>Name</b>	<b>Lisa Raap</b>
<b>Title</b>	Title IX Coordinator / Associate Executive Director
<b>Street 1</b>	790 McHenry Avenue
<b>Street 2</b>	Crystal Lake
<b>State</b>	Illinois
<b>Zip</b>	60014
<b>Phone</b>	815-459-3500 x306
<b>Email</b>	<a href="mailto:lraap@firstinstitute.edu">lraap@firstinstitute.edu</a>

Individuals may contact a Title IX Coordinator for a number of purposes, including to:

- Ask questions regarding the information or procedures set out in this policy.
- Ask questions about Title IX or the related regulations of the U.S. Department of Education.
- File a Formal Complaint or otherwise make a report of alleged Sexual Misconduct or Retaliation.
- Seek information or training about students’ rights and courses of action available to resolve reports or complaints that involve potential sex discrimination, including Sexual Misconduct.
- Notify the Institute of an incident or other issue that may raise potential concerns under this policy.

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- Obtain information about available resources (including confidential resources) and support services relating to Sexual Misconduct.

Questions about Title IX or the related regulations of the U.S. Department of Education also may be referred to the Department of Education’s Office for Civil Rights at 400 Maryland Avenue, SW, Washington DC 20202 or (800) 421-3481.

### **The Institute’s Campus Security**

Contact information for the Institute’s campus security is set out below:

<b>The Institute’s Campus Security</b>	
<b>Name</b>	Lisa Raap
<b>Street</b>	790 McHenry Avenue
<b>City/State</b>	Crystal Lake, IL
<b>Phone</b>	815.459.3500 X 306
<b>Email</b>	<a href="mailto:lraap@firstinstitute.edu">lraap@firstinstitute.edu</a>

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## **PART ONE: POLICIES RELATING TO ALL SEXUAL MISCONDUCT**

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### **Prohibition against Sexual Misconduct and Retaliation**

As required by Title IX and other applicable federal and state laws, the Institute strictly and expressly prohibits Sexual Misconduct in any educational, extracurricular, athletic, or other program or activity that it operates. This prohibition extends to all aspects of the Institute's operations, including admission and employment, and applies to Sexual Misconduct committed by or against members of the Institute community.

The Institute also strictly and expressly prohibits Retaliation. Reports of Retaliation will be investigated, and such conduct may result in disciplinary action independent of the sanction(s) or interim remedies imposed in response to allegations of Sexual Misconduct.

Covered Parties are encouraged to report any acts of Sexual Misconduct or Retaliation that violate this policy to the Institute's Title IX Coordinator (reporting options and obligations are discussed in more detail below).

### **Emergency and Medical Assistance for Individuals who have Experienced Sexual Misconduct**

If any Covered Party believes that he or she has experienced Sexual Misconduct, it is important to (1) to locate a place of safety and (2) to obtain any necessary medical treatment. In instances involving physical assault or injury, the Institute strongly encourages the individual to obtain a medical examination immediately to determine the extent of any injuries and to ensure the preservation of evidence.<sup>3</sup> It is important to understand that time is a critical factor for evidence collection and preservation, and that preserving evidence may be necessary to prove that a form of Sexual Misconduct occurred, or to obtain a protection order.

Below is a brief list of emergency and medical assistance providers within a reasonable distance of the Institute that provide a medical forensic examination at no charge. If any individual requires assistance obtaining emergency and medical assistance, the Institute's Title IX Coordinator can assist. In addition, the Institute's Title IX Coordinator can provide information for additional resources, as well as information regarding rights and options for moving forward.

#### **Emergency and Medical Providers**

<b>Crystal Lake Campus -</b>	<b>Northwestern Medicine 10400 Haligus Road Huntley, IL 60142 (224) 654-0000</b>
<b>Libertyville Campus -</b>	<b>Advocate Condell Medical Center 825 S Milwaukee Avenue Libertyville, IL 60048 (847) 362-2900</b>
<b>Aurora Campus -</b>	<b>Northwestern Medicine 2635 Church Road Aurora, IL 60502 (331) 716-6353</b>

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<sup>3</sup> A hospital, with the individual's permission, will collect physical evidence by conducting a medical examination. Hospitals are required by law to preserve such evidence for a minimum period of time. Consenting to an examination does not obligate the individual to pursue criminal charges.

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**Information for sexual assault crisis centers is set forth below:**

Care Center  
404 Minnie Street  
Crystal Lake, IL 60014  
(815) 671-4004

**Reporting Incidents of Sexual Misconduct to the Institute**

Any person may report Sexual Misconduct (or any other form of sex discrimination) to the Institute, without regard to whether the person reporting is the person alleged to be the victim. The Institute encourages individuals to report Sexual Misconduct of the Institute's Title IX Coordinator.<sup>4</sup> There is no time limit for reporting Sexual Misconduct to the Institute under this policy. However, individuals are encouraged to report alleged Sexual Misconduct as soon as possible in order to maximize the Institute's ability to obtain evidence and to conduct a timely, thorough, impartial, and reliable investigation. Reports may be made in person, by mail, by telephone, or by electronic mail, using the contact information below, or by any other means that results in a Title IX Coordinator receiving the person's verbal or written report. Such a report may be made at any time, including during non-business hours. Contact information for the Institute's Title IX Coordinator is located above in the "Introduction and Overview" section of this document.

In addition to the above, upon being notified of an alleged violation of this policy, the Institute will provide a Complainant, if known, who reports an alleged sexual assault will be provided with a concise notification or rights and options including:

- (1) the Complainant's right to report or not report the alleged incident to the Institute, law enforcement, or both, including information about the Complainant's right to privacy and which reporting methods are confidential;
- (2) the contact information for the Institute's Title IX coordinator, confidential advisors, a community-based sexual assault crisis center, campus law enforcement, and local law enforcement;
- (3) the Complainant's right to request and receive assistance from campus authorities in notifying law enforcement;
- (4) the Complainant's ability to request interim protective measures and accommodations, including without limitation changes to academic, living, dining, working, and transportation situations, obtaining and enforcing a campus issued order of protection or no contact order, if such protective measures and accommodations are reasonably available, and an order of protection or no contact order in State court;
- (5) the Institute's ability to provide assistance, upon the survivor's request, in accessing and navigating campus and local health and mental health services, counseling, and advocacy services; and
- (6) a summary of the Institute's complaint resolution procedures.

**Legal Confidentiality and Privacy of Reports Made to the Institute**

There is an important distinction between "Legal Confidentiality" and "Privacy." Legal Confidentiality may only be offered by an individual who is not required by law to report known incidents of sexual assault or other crimes to institution officials (*e.g.*, licensed mental health counselors, medical providers, or pastoral counselors). In contrast, an individual who is required by policy or law to report incidents of Sexual Misconduct can only offer Privacy, meaning that they will not disclose information learned from a reporting

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<sup>4</sup> Though encouraged to do so, Covered Parties are not required to report incidents of Sexual Misconduct to the Institute.



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individual or bystander any more than is necessary to comply with legal and policy obligations. Information reported to Institute employees will be treated as Private will be relayed only as necessary for the Institute to investigate and, if applicable, seek a resolution. Individuals wishing to speak with a Institute employee who is able to offer Legal Confidentiality may contact the following individual(s):

Legal Confidential Resource	
<b>Name</b>	Care Center
<b>Street</b>	404 Minnie Street
<b>City/State</b>	Crystal Lake, IL 60014
<b>Phone</b>	(815) 671-4004

Prior to making a report, individuals seeking Legal Confidentiality are encouraged to verify with any individual who answers one of the external resource numbers listed below that he or she can indeed offer Legal Confidentiality.

### Reporting Sexual Misconduct to Law Enforcement

Subsequent to securing safety and medical care, the Institute also encourages any individual who believes that he or she has experienced potentially criminal Sexual Misconduct to report the incident to law enforcement.<sup>5</sup> As indicated in the chart above, emergencies may be reported to local law enforcement in person or via telephone at 911. Non-emergencies may be reported to local law enforcement in person or via telephone using the contact information below. If any individual requires assistance notifying local law enforcement, the Institute's Title IX Coordinator will assist.

#### Crystal Lake Campus

**Crystal Lake Police Department**  
100 W Woodstock St,  
Crystal Lake, IL 60014  
(815)-459-2020 or 911

#### Libertyville Campus

**Libertyville Police Department**  
200 E Cook Ave # 2,  
Libertyville, IL 60048  
(847) 362-8310 or 911

#### Aurora Campus

**Aurora Police Department**  
1200 E Indian Trail Rd  
Aurora, IL 60505  
(630) 256-5000 or 911

### Anonymous Reporting of Sexual Misconduct

The Institute recognizes that under certain circumstances individuals who believe that they have experienced or witnessed Sexual Misconduct may wish to make an anonymous report. If the Institute receives a report of Sexual Misconduct from an anonymous source, the Institute will respond to the report of Sexual Misconduct as if the individual who experienced the Sexual Misconduct made the initial report (assuming the individual is identified). However, due to the nature of the anonymous reports, the Institute's ability to take responsive action may be limited.

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<sup>5</sup> Though encouraged to do so, Covered Parties are not required to report incidents of Sexual Misconduct to law enforcement.

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## **Amnesty for Individuals Reporting Sexual Harassment Involving Violations of Alcohol or Drug Policies**

The health and safety of every student at the Institute is of utmost importance. The Institute recognizes that students who have been drinking or using drugs (whether such use is voluntary or involuntary) at the time that violence, including but not limited to Sexual Misconduct, occurs may be hesitant to report such incidents due to fear of potential consequences for their own conduct. The Institute strongly encourages students to report Sexual Misconduct to Institute officials. A Covered Party acting in good faith who discloses any incident of Sexual Misconduct to the Institute's officials or law enforcement will not be subject to action for violations of the Institute's alcohol or drug use policies occurring at or near the time of the commission of the Sexual Misconduct.

### **Employee Obligations upon Receiving a Report of Sexual Misconduct**

At the first report of Sexual Misconduct to any Institute employee, the employee must inform the individual reporting the Sexual Misconduct that he or she has the right (1) to report the incident to the Institute's Title IX Coordinator; (2) to make a report to campus security, local law enforcement, or state police, or to choose not to report; (3) to be protected by Institute from Retaliation for reporting an incident; and (4) to receive assistance and resources from Institute. The employee then must promptly report the incident to the Institute's Title IX Coordinator, unless the employee is recognized by Institute as a Legal Confidential reporting option.

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## **PART TWO: POLICIES RELATING TO TITLE IX SEXUAL HARASSMENT**

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### **Responding to and Resolving Reports of Title IX Sexual Harassment**

When the Institute receives a report of Sexual Misconduct, the Institute will take appropriate steps to respond to the reported conduct and to resolve the matter promptly and equitably. <sup>6</sup> As noted in the Introduction and Overview, alleged Sexual Misconduct will be treated as Title IX Sexual Harassment under Part Two of this policy unless and until a determination is made by the Institute that it does not qualify as Title IX Sexual Harassment. If the Institute determines that the alleged Sexual Misconduct does not constitute Title IX Sexual Harassment, but does qualify as Institute Sexual Harassment, from that point forward it will be treated as Institute Sexual Harassment, and will be addressed pursuant to the policies and procedures set forth in Part Three of this policy. Procedural determinations made by the Institute are discussed in more detail below.

The Institute will seek to complete the investigation and adjudication of a reported incident of Sexual Misconduct within 120 calendar days after the Investigators' first interview of the Complainant. This time frame may be extended for Informal Resolution (discussed below) and also may be extended for good cause.<sup>7</sup> Any extension of timeframes, other than for Informal Resolution, and the reason for the extension, will be shared with the parties in writing. Delays should not last more than 10 calendar days except when law enforcement specifically requests and justifies a longer delay.

### **Initial Response and Assessment**

Upon receipt of a report of Title IX Sexual Harassment, the Title IX Coordinator will promptly contact the Complainant and carry out an initial response and assessment.<sup>8</sup> The primary goals of this process are to address immediate health and safety needs, to gather critical information, and to educate the Complainant regarding resources and options for moving forward. This process will include:

- Explaining which authorities are able to offer "Privacy" or "Legal Confidentiality" and the distinction between the two.
- Dialoguing with the Complainant to more fully assess the nature and circumstances of the report.
- Addressing any immediate needs for physical safety and emotional well-being.
- Encouraging medical treatment, if appropriate, and describing the importance of preserving evidence and obtaining a sexual assault forensic examination.
- Reviewing this policy and providing a copy.
- Discussing the availability of Supportive Measures and considering the Complainant's wishes with respect to Supportive Measures, informing the Complainant of the availability of supportive measures with or without the filing of a Formal Complaint, and explaining to the Complainant the process for filing a Formal Complaint.
- Explaining that the criminal justice process utilizes different standards of proof and evidence and that any questions about whether a specific incident violated criminal law should be addressed to law enforcement or to the district attorney.

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<sup>6</sup> The Institute is deemed to have received a report of Sexual Misconduct when the Institute has Actual Knowledge.

<sup>7</sup> Extending for "good cause" would include extending to ensure the integrity and completeness of the investigation, to comply with a request by external law enforcement, to accommodate the availability of witnesses, to account for the Institute breaks or vacations, to account for complexities of a case, including the number of witnesses and volume of information provided by the parties, or for other legitimate reasons.

<sup>8</sup> The Institute will not investigate Sexual Misconduct disclosed during a public awareness event such as candlelight vigils, protests, or other public events. However, the Institute may use the information provided at such an event to inform its efforts for additional education and prevention efforts.

- Discussing the Complainant’s preferences for resolution and any barriers to proceeding in accordance with those preferences.
- Advising the Complainant of the prohibition against Retaliation.

Complainants alleging student violation of this policy shall have the opportunity to request that the complaint resolution procedure begin promptly and proceed in a timely manner.

### Supportive Measures

At any time following a report of Title IX Sexual Harassment, Supportive Measures are available for both the Complainant and the Respondent. Such measures are designed to restore or preserve equal access to the Institute’s Education Program or Activity without unreasonably burdening the other party, including measures designed to protect the safety of the parties or the Institute’s educational environment, or to deter Sexual Misconduct. The Institute will maintain as Private any Supportive Measures provided to the Complainant or Respondent, to the extent that maintaining such Privacy would not impair the ability of the Institute to provide the Supportive Measures. The following graphic sets out examples of available Supportive Measures.

Counseling	Extensions of Deadlines and Other Course-Related Adjustments	Modifications of Work or Class Schedules	Campus Escort Services
Mutual Restrictions on Contact Between the Parties	Changes in Work or Housing Locations	Leaves of Absence	Increased Security and Monitoring of Certain Areas of Campus

### Administrative Leave and Emergency Removal

The Institute will follow the Formal Complaint process described below before any disciplinary sanctions or other actions that are not Supportive Measures are imposed against a Respondent. However, the Institute may place a non-student employee Respondent on administrative leave during the pendency of the Formal Complaint process.

Institute also may remove a Respondent from Institute’s Education Program or Activity on an emergency basis if Institute undertakes an individualized safety and risk analysis and determines, as a result of the analysis, that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of Title IX Sexual Harassment justifies removal. In the case of a student Respondent, if such a determination is made, Campus Director will provide written notice to the student. In the case of an employee Respondent, if such a determination is made the Executive Director will provide written notice to the employee. In all cases, the written notice will contain the basis for the decision, the terms of the emergency removal, and the procedure for challenging the decision.

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## **Initiating a Formal Complaint of Title IX Sexual Harassment**

A Complainant may file a Formal Complaint with the Institute's Title IX Coordinator at any time. The Complainant also may request that no further investigation take place, or that the matter be resolved through Informal Resolution (with the agreement of the Respondent and the Institute).

In furtherance of the Institute's obligation to ensure a safe, non-discriminatory environment, the Formal Complaint process also may be initiated by the Title IX Coordinator, even if a Formal Complaint has not been filed by a Complainant, or a Complainant has requested that no further investigation take place. When considering whether to initial the Formal Complaint process when a Complainant does not wish to file a Formal Complaint, the Title IX Coordinator will consider a range of factors, including:

- Whether there have been other allegations of Sexual Misconduct made against the Respondent.
- Whether the Title IX Sexual Harassment was perpetrated with a weapon or other forms of violence.
- Whether the Title IX Sexual Harassment involved threats.
- Whether the incident represents an escalation in misconduct by the Respondent.
- Whether the Complaint reveals a pattern of Sexual Misconduct at a given location or by a particular group.
- Whether the Institute has alternative means by which to obtain relevant evidence (*e.g.*, security cameras, witnesses).

Where a Formal Complaint process is initiated without a Formal Complaint filed by the Complainant, it will be signed by the Title IX Coordinator who will not be considered a Complainant or otherwise a party.

## **Initial Review of a Formal Complaint and Procedural Determination**

Upon receipt of a Formal Complaint, the Institute will conduct a prompt and careful review to confirm that the Sexual Misconduct alleged in the Formal Complaint constitutes Title IX Sexual Harassment, as that term is defined in this policy, and should be resolved under this Part Two. As noted above, alleged Sexual Misconduct will be treated as Title IX Sexual Harassment under Part Two of this policy unless and until a determination is made by the Institute that it does not qualify as Title IX Sexual Harassment.

If the Institute determines that the Sexual Misconduct alleged in a Formal Complaint includes a combination of Title IX Sexual Harassment and Institute Sexual Harassment, the Institute may continue to follow the policies and procedures in this Part Two for purposes of investigating and resolving the entire complaint.

If the Institute determines that the Sexual Misconduct alleged in the Formal Complaint (1) would not constitute Title IX Sexual Harassment even if proved, (2) did not occur in the Institute's Education Program or Activity, or (3) did not occur against a person in the United States, the Formal Complaint will be dismissed as a Formal Complaint of Title IX Sexual Harassment, and the Title IX Coordinator will proceed to determine whether the Sexual Misconduct can appropriately be adjudicated as a Formal Complaint of Institute Sexual Harassment.

A Formal Complaint of Title IX Sexual Harassment or any of its allegations also may be dismissed if:

- The Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any of its allegations;
- The Respondent is no longer enrolled or employed by the Institute; or
- Specific circumstances prevent the Institute from gathering evidence sufficient to reach a determination as to the Formal Complaint or its allegations.

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Following its initial review of the Formal Complaint, the Title IX Coordinator will notify the parties of the alleged Sexual Misconduct, and of the Title IX Coordinator's procedural determination regarding the policies under which the alleged Sexual Misconduct falls. This notice will specify whether the Formal Complaint has been dismissed as a Formal Complaint of Title IX Sexual Harassment, and whether the Title IX Coordinator has determined that the Sexual Misconduct can be adjudicated as a Formal Complaint of Institute Sexual Harassment.

Either party may appeal this procedural determination on any of the following bases:

- A procedural irregularity that affected the outcome;
- New evidence that was not reasonably available at the time the determination or dismissal was made and could affect the outcome; or
- The Title IX Coordinator had a conflict of interest or bias that affected the outcome of the matter.

Both parties may submit a written statement in support of or appealing the outcome to the Executive Director via email at [titleix@firstinstitute.edu](mailto:titleix@firstinstitute.edu) within 5 calendar days of receipt of the determination. When a statement in support or appeal is filed, the other party will be notified in writing.

Statements in support or appeal should be no more than 5 pages and must be submitted by the Complainant or Respondent (not by an advisor).<sup>9</sup> Following his or her review, the appeal officer will simultaneously issue a written decision to both parties describing the result of the appeal and the rationale for the result. The decision on the appeal is final and shall be conveyed in writing to both parties.

If the Title IX Coordinator determines that the Sexual Misconduct can appropriately be adjudicated as a Formal Complaint of Institute Sexual Harassment, and this determination is upheld following any appeal, from that point forward the Formal Complaint will be treated as Institute Sexual Harassment, and will be resolved pursuant to the policies and procedures set forth in Part Three of this policy.

### **Consolidation of Formal Complaints**

The Institute may consolidate Formal Complaints 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.

### **Informal Resolution of a Formal Complaint**

After a Formal Complaint of Title IX Sexual Harassment is filed, and at any time prior to reaching a determination regarding responsibility, a party may request that the matter be resolved through Informal Resolution. Informal Resolution is a completely voluntary process and requires the written consent of the Complainant and Respondent and the approval of the Title IX Coordinator or designee to proceed. Informal Resolution is not available to resolve allegations that an employee committed Sexual Misconduct against a student. At any time prior to reaching a resolution, any party has the right to withdraw from the Informal Resolution process and to resume the Formal Complaint process.<sup>10</sup>

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<sup>9</sup> All appeal officers will satisfy the training requirements mandated by applicable federal and state laws and be free of bias and conflicts of interest for or against Complainants or Respondents generally or an individual Complainant or Respondent. The appeal officer will not be same person as the adjudicator that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator

<sup>10</sup> Any individual facilitating an Informal Resolution will satisfy the training requirements mandated by applicable federal and state laws and be free of bias and conflicts of interest for or against Complainants or Respondents generally or an individual Complainant or Respondent.

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Prior to engaging in the Informal Resolution process, the Institute will provide a written notice to the parties disclosing the allegations, the requirements of the Informal Resolution process, including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations, and any consequences resulting from participation in the Informal Resolution process, including the records that will be maintained or could be shared.

The terms of an Informal Resolution, if successful, may include any of the Supportive Measures discussed above, as well as other arrangements agreed to by the parties. If an agreement acceptable to the Institute, the Complainant, and the Respondent is reached through Informal Resolution, the matter is considered to be resolved and the terms are implemented. The Institute will endeavor to conclude the Informal Resolution process within 45 calendar days of its initiation.

### **Investigation of a Formal Complaint**

Once the Institute has determined that all or part of the Sexual Misconduct alleged in the Formal Complaint constitutes Title IX Sexual Harassment, it will promptly initiate an investigation pursuant to Part Two of this policy. The investigation of a Formal Complaint of Title IX Sexual Harassment will proceed in accordance with the following parameters:

- **Designation of an Investigator.** As a first step, the Title IX Coordinator will designate an internal or external investigator (“Investigator”) to conduct a prompt, thorough, and impartial investigation of the reported Sexual Misconduct. The Title IX Coordinator may consult with the Institute’s senior administrators regarding the designation of the Investigator.<sup>11</sup>
- **Initial Notice of Investigation.** The Institute will provide an initial, written notice to the parties who are known that includes at least the following: (1) a discussion of the applicable process, including any option for Informal Resolution; (2) a sufficiently detailed statement of allegations, which includes the identities of the parties, if known, the conduct allegedly constituting Title IX Sexual Harassment, and the date and location of the alleged incident, if known; (3) a statement that the Respondent is presumed innocent and that a determination of responsibility is made at the conclusion of the process; (4) a statement regarding each party’s right to an advisor and to review and inspect evidence; and (5) a statement regarding any provision in the Institute’s Code of Conduct that prohibits the parties from knowingly making false statements or knowingly submitting false information during the Formal Complaint Process.
- **Ongoing Notice.** As the investigation progresses, the Institute will provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all interviews or other meetings, with sufficient time for the party to prepare to participate. Such notice also will include any applicable rules of order and decorum. If, in the course of an investigation, the Institute decides to investigate allegations about the Complainant or Respondent that were not included in the original notice provided to the parties, the Institute must provide notice of the additional allegations to the parties whose identities are known.
- **Burden of Proof and Burden of Gathering Evidence.** The burden of proof and burden of gathering evidence sufficient to reach a determination is the responsibility of the Institute, provided that the Institute cannot and will not access, consider, disclose, or otherwise use a party’s records that are made

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<sup>11</sup> Any individual designated as an Investigator will satisfy the training requirements mandated by applicable federal and state laws and be free of bias and conflicts of interest for or against Complainants or Respondents generally or an individual Complainant or Respondent.

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or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's 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 Institute obtains that party's voluntary, written consent to do so for a grievance process.

- **Fact-Finding.** The Investigator will seek to meet with all parties and witnesses separately and also will gather other evidence and information relevant to the determination as to whether or not a policy violation has occurred. The investigation may include, to the extent relevant, interviews of other witnesses and the review of pertinent documentation (*e.g.*, student or personnel files, relevant law enforcement documents). At all points during the fact-finding aspect of the investigation, the process will remain impartial and balanced.
- **Opportunity to be Heard.** The Complainant and Respondent will have an equal opportunity to be heard, to present inculpatory and exculpatory evidence, and to identify witnesses, including fact and expert witnesses. The Institute will not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.
- **Review of Evidence.** All relevant evidence, including both inculpatory and exculpatory evidence, will be objectively evaluated. Credibility determinations will not be based on a person's status as a Complainant, Respondent, or witness.
- **Advisors During an Investigation.** Throughout the investigation process, the Complainant and Respondent both have the right to be accompanied and counseled by an advisor of his or her choice.<sup>12</sup> The parties may be accompanied by their respective advisors (at the party's own expense if the advisor is a paid advisor) at any meeting or proceeding related to the investigation and resolution of a complaint. The advisor cannot actively participate or speak on behalf of the Complainant or Respondent. The Title IX Coordinator and Investigator must be advised in writing that an advisor will be present at least 24 hours before any scheduled meeting or proceeding.<sup>13</sup> The Institute reserves the right to have its own legal counsel present. If any advisor's conduct is not consistent with these guidelines, or any other applicable rules of order and decorum, he or she may be excluded from the process.
- **Coordination with Local Law Enforcement.** The standards for finding a violation of this policy are different from the standards used by local law enforcement to determine whether criminal conduct may have occurred. Conduct that constitutes Sexual Misconduct under this policy may not constitute sufficient evidence of a crime, and law enforcement may choose to decline investigating or prosecuting it as a crime. In the event local law enforcement does investigate allegations of Sexual Misconduct, any such investigation is independent of any investigation by the Institute. The Institute typically will not wait for the conclusion of any criminal investigation or proceeding to commence its own investigation (or to institute any Supportive Measures), and will make its determinations in accordance with this policy.<sup>14</sup> However, the Institute may elect to temporarily delay its investigation to enable law enforcement to gather evidence and engage in a preliminary investigation if, for example, the Institute

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<sup>12</sup> The Institute may require advisors to agree to a Non-Disclosure Agreement as a condition of participating in the investigation and hearing process.

<sup>13</sup> This notification should include the full name and title of the advisor of choice, as well as contact information (phone, email and address.)

<sup>14</sup> At the request of law enforcement, the Institute may agree to defer its investigation until after the initial stages of a criminal investigation. In such instances, the Institute will promptly resume its investigation as soon as it is notified by law enforcement that there is no longer a need to delay, or the Institute otherwise determines that it must proceed.



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believes such delay would benefit the Institute’s own investigation. When applicable and appropriate, the Institute may contact and coordinate with law enforcement.

- **Access to Evidence.** Both the Complainant and Respondent will have an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a Formal Complaint. Such evidence may include redactions of personally identifiable information in accordance with the Family Educational Rights and Privacy Act (FERPA) and other applicable privacy regulations. Prior to completion of the investigative report, the Investigator will send to each party and the party’s advisor, if any, such evidence in an electronic format or a hard copy, and provide the parties at least 10 calendar days to submit a written response, which the Investigator will consider prior to completion of the investigative report.
- **Legal Privilege:** The Investigator will not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.
- **Investigation Report.** The Investigator will prepare an investigation report that fairly summarizes relevant evidence. The report will be limited to a summary of the facts disclosed during the investigation and will not include conclusions as to responsibility. The Investigator has the discretion to determine the relevance of any proffered evidence and may determine what factual evidence is to be included in the investigation report.

Once the investigation is complete and the investigation report has been finalized, it will be provided to the Title IX Coordinator, consistent with the procedures set out below.

### **Pre-Hearing Preparations**

The Investigator will issue the investigative report to the Title IX Coordinator. Upon review, the Title IX Coordinator may accept the report as rendered or may request that the Investigator conduct additional interviews or seek out other evidence as deemed to be appropriate. The Investigator will complete any additional investigation, and any supplemental or revised report, as promptly as is reasonable. The following pre-hearing preparations also will be carried out:

- **Selection of Adjudicator.**<sup>15</sup> The Title IX Coordinator will either designate an internal adjudicator or refer the matter to an external adjudicator with appropriate experience (in either case, the “Adjudicator”).<sup>16</sup> At least 10 calendar days before the hearing, the parties will be provided notice of the names of any individuals with authority to make a finding or impose a sanction. The parties may request a substitution if the participation of an individual with authority to make a finding or impose a sanction poses a conflict of interest. The request will be considered by the Title IX Coordinator.

The Adjudicator will conduct a hearing on the matter as described more fully below. Neither the Institute’s Title IX Coordinator, nor the Investigator, may serve as the Adjudicator.<sup>17</sup>

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<sup>15</sup> Institute may, at its discretion, designate more than one Adjudicator.

<sup>16</sup> Reasons for referring a hearing to an external adjudicator include but are not limited to the presence of a conflict of interest or if a matter presents complex evidentiary issues.

<sup>17</sup> Any individual designated as a decision-maker will satisfy the training requirements mandated by applicable federal and state laws and be free of bias and conflicts of interest for or against Complainants or Respondents generally or an individual Complainant or Respondent.

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- **Initial Notice of Hearing.** At least 7 calendar days before the hearing, the Adjudicator will provide an initial, written notice to the parties that includes the following: (1) the date, time, and location of the hearing; (2) the charges to be reviewed by the Adjudicator; (3) the factual allegations concerning the violation; (4) the provisions of Institute’s Sexual Misconduct policy alleged to have been violated; (4) the sanctions that may be imposed; and (5) the specific rules and procedures for the hearing, including any rules of order or decorum.
  - **Pre-Hearing Review of Documents.** At least 10 calendar days in advance of the hearing, the Complainant and Respondent will each have the opportunity to review and respond to the final investigation report, including any supplemental report, and any relevant documents that will be provided to the Adjudicator. The Adjudicator will be provided with the same set of materials. Responses to the final investigative report must be submitted by the Complainant or Respondent (not by an advisor) to the Adjudicator within 10 calendar days. Absent a good cause showing, additional information will not be considered by the Adjudicator at this juncture if such information could have been provided to the Investigator during the investigation (meaning that during the investigation it was discoverable through the exercise of due diligence).
  - **List of Witnesses.** The Adjudicator will identify any witnesses that he or she wishes to hear from at the hearing based on a review of the investigation report. Also, the Complainant and Respondent each have the right to request the presence of any additional witnesses at the hearing, provided such witnesses were identified and interviewed as part of the investigation. The Adjudicator may permit the participation of a witness who was not interviewed during the investigation only if the Adjudicator determines that the new witness’ participation at the hearing is relevant and appropriate under the circumstances. In such cases, the Adjudicator will refer the matter to the Investigator for additional investigation, and direct the Investigator to prepare a supplemental report, which may delay the timing of the hearing. The Institute cannot compel the attendance of any witness.
  - **Timing.** The date, time, or location of a hearing may be changed for good cause, at the discretion of the Title IX Coordinator. Good cause may include, but is not limited to: the availability of the parties; the availability of witnesses; the timing of Institute breaks; efforts to utilize Informal Resolution; to comply with a request by external law enforcement; to account for complexities of a case including the number of witnesses and volume of information provided by the parties; or, to address other legitimate reasons. Any change to the date, time, or location of a hearing will be shared with the parties in writing and will include the reason for the extension. Delays should not last more than 10 calendar days except when law enforcement specifically requests and justifies a longer delay.

## Hearing Setting and Standards

Any hearing involving allegations of Title IX Sexual Harassment will be carried out in accordance with the following standards, so as to ensure that it is fair, impartial and provides a meaningful opportunity to be heard:

- **Setting.** Any hearing involving allegations of Title IX Sexual Harassment will be live. At the request of either party, the live hearing will occur with the parties located in separate rooms with technology enabling the Adjudicator and parties to simultaneously see and hear the party or the witness answering questions.
- **Advisors During the Hearing.** The Complainant and the Respondent both have the right to be accompanied and advised by an advisor of their choice at the hearing and any related meetings. The Institute reserves the right to have its own legal counsel present during the hearing. An Advisor must comport himself or herself in a manner that is not disruptive to the hearing and act with appropriate

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decorum.<sup>18</sup> Proceedings will be closed to non-participants and to the public, including friends and Institute personnel without an official interest in the case.

- **Standard of Evidence.** The Preponderance of the Evidence standard is used to determine whether this policy has been violated. This standard is used for Formal Complaints against students and employees alike, including faculty. Preponderance of the Evidence means that it is more likely than not that a policy violation occurred.
- **Rules of Evidence.** Formal rules of process, procedure, and technical rules of evidence, such as applied in criminal or civil court, are not used in these proceedings.
- **Review of Evidence.** All relevant evidence, including both inculpatory and exculpatory evidence, will be objectively evaluated. Credibility determinations will not be based on a person's status as a Complainant, Respondent, or witness.
- **Presumption of Non-Responsibility.** The Respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the Formal Complaint process.
- **Truthful Information.** The Complainant, the Respondent, and the witnesses and other individuals sharing information are expected to provide truthful information.
- **Sexual Predisposition and Prior Sexual Behavior.** Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence: (1) are offered to prove that someone other than the Respondent committed the alleged conduct; or (2) concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.
- **Recording or Transcript.** The Institute will create an audio or audiovisual recording, or transcript, of the hearing and make it available to the parties for inspection and review. Issues that result in no recording, a limited recording, or an inaudible recording are not considered procedural errors for the purposes of an appeal.
- **Legal Privilege.** Adjudicators will not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

### Hearing Format and Cross-Examination

The following hearing format will apply in all adjudications involving a Formal Complaint of Title IX Sexual Harassment:<sup>19</sup>

- The Adjudicator will explain the hearing process, provide an opportunity to all parties to ask questions about procedures, and read the charges.
- The Investigator will provide a brief statement summarizing the investigation. The Adjudicator may then pose questions to the Investigator. After the Adjudicator has concluded asking questions,

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<sup>18</sup>Whether an advisor is comporting him or herself in a manner that is not disruptive or acting with appropriate decorum to the hearing or meetings is determined in the sole discretion of the Adjudicator.

<sup>19</sup>The Adjudicator has the discretion to supplement this required format with additional procedures. Any such procedures will be consistent with the required format and applied equally to all parties.

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- the Complainant's advisor may then cross-examine the Investigator. After the Complainant's cross-examination has concluded, the Respondent's advisor may then cross-examine the Investigator.
- The Complainant may provide an opening statement. The Adjudicator may then pose questions to the Complainant. After the Adjudicator has concluded asking questions, the Respondent's advisor may cross-examine the Complainant.
  - The Respondent may provide an opening statement. The Adjudicator may then pose questions to the Respondent. After the Adjudicator has concluded asking questions, the Complainant's advisor may cross-examine the Respondent.
  - The Adjudicator will hear from witnesses that the Adjudicator determined to have information that is relevant to the matter, first on behalf of the Complainant and then on behalf of the Respondent. Invited witnesses may provide statements. When each witness is called, the Adjudicator may pose questions. After the Adjudicator has concluded asking questions to a witness, the Complainant's advisor may cross-examine the witness. After the Complainant's cross-examination has concluded, the Respondent's advisor may cross-examine the witness.
  - The Complainant may provide a closing statement. The Adjudicator may then pose questions to the Complainant. After the Adjudicator has concluded asking questions, the Respondent's advisor may cross-examine the Complainant regarding any new statements made by the Complainant during the Complainant's closing statement.
  - The Respondent may provide a closing statement. The Adjudicator may then pose questions to the Respondent. After the Adjudicator has concluded asking questions, the Complainant's advisor may cross-examine the Respondent regarding any new statements made by the Respondent during the Respondent closing statement.

This format ensures that during the live hearing, each party's advisor shall have an opportunity to cross-examine the other party and any witnesses. Cross-examination shall be conducted directly, orally, and in real time. Cross-examination must be conducted by the party's advisor and never by the party personally. If a party does not have an advisor to conduct cross-examination, the Institute will provide an advisor to that party free of charge.

Only relevant cross-examination and other questions may be asked of a party or witness. Before a party or witness answers a cross-examination or other question, the Adjudicator must first determine whether the question is relevant and explain any decision to exclude a question as not relevant. There may be no discussion or argument regarding relevance determinations with the Adjudicator at the hearing.

If a party or witness does not submit to cross-examination at the live hearing, the Adjudicator will not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the Adjudicator will not draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.

### **Determination and Sanctions; Notice of Outcome**

At the conclusion of the hearing, the Adjudicator will objectively weigh the evidence that has been presented and, based on a preponderance of such evidence, conclude whether the Respondent violated this policy.

If the Respondent is not found responsible for violating this policy, the Adjudicator will issue a written determination (described below).

If the Respondent is found responsible for violating this policy, the Adjudicator will determine sanctions and remedies. In determining the appropriate sanctions and remedies, the Adjudicator may consider a number of factors, including:

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- The nature of the conduct at issue, including whether it involved violence.
  - The impact of the conduct on the Complainant.
  - The impact of conduct on the Institute community.
  - The ability of the Institute, going forward, to maintain a safe and respectful environment conducive to learning.
  - Any previous conduct violations by the Respondent, both at the Institute or elsewhere, as well as any criminal convictions.

Remedies must be designed to restore or preserve equal access to the Institute's Education Program or Activity and need not be non-disciplinary or non-punitive and need not avoid burdening the Respondent.

Potential sanctions and remedies against a student for a violation of this policy include, but are not limited to: reprimand or warning; educational reflection assignment; change to academic schedule or housing; disciplinary probation; postponement of degree conferral; revocation of honor awards; restriction of access to Institute facilities or activities; issuance of a No Contact Order or requiring that such an order remain in place; suspension (limited time or indefinite); or expulsion. Sanctions and remedies may be issued individually or as combination.

Potential sanctions and remedies against an employee for a violation of this policy include, but are not limited to: reprimand or warning; change to teaching schedule; disciplinary probation; revocation of titles or honors; restriction of access to Institute facilities or activities; issuance of a No Contact Order or requiring that such an order remain in place; suspension (limited time or indefinite); or termination of employment. Sanctions and remedies may be issued individually, or as combination of sanctions may be imposed.

The Complainant and Respondent will be notified simultaneously in writing (which may include email), generally within 7 calendar days of the hearing, of the written determination which will include:

- An identification of the allegations.
- A recitation 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 this policy to the facts.
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the school imposes on the Respondent, and whether remedies designed to restore or preserve equal access to the Institute's Education Program or Activity will be provided by the Institute to the Complainant.
- Procedures and permissible bases for appeal.

The written determination becomes final either on the date that the Institute provides the parties with the written determination of the result of any 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.

### **Right to Appeal**

Either party may appeal the determination regarding responsibility on any of the following bases:

- A procedural irregularity that affected the outcome;
- New evidence that was not reasonably available at the time the determination was made and could affect the outcome;

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- The Title IX Coordinator, Investigator, or decision-maker had a conflict of interest or bias that affected the outcome of the matter; or
  - The sanction is disproportionate with the violation.

Each party may submit a written statement in support of or appealing the outcome to Executive Director via email at [titleix@firstinstitute.edu](mailto:titleix@firstinstitute.edu) within 5 calendar days of receipt of the determination. Statements in support or appeal should be no more than 3 pages and must be submitted by the Complainant or Respondent (not by an advisor).<sup>20</sup> When a statement in support or appeal is filed, the other party will be notified in writing.

Following his or her review, the appeal officer will simultaneously issue a written decision to both parties describing the result of the appeal and the rationale for the result. Generally, the appeal officer may either: (i) affirm the adjudicator's determination; (ii) alter the sanctions rendered; or, (iii) send the matter back to an Adjudicator for further proceedings consistent with its decision. The decision on the appeal is final and shall be conveyed in writing to both parties, normally within 7 calendar days of receipt.

### **Recordkeeping**

For any report or Formal Complaint of Title IX Sexual Harassment, the Institute will maintain records for 7 years that include:

- Records of any actions, including any Supportive Measures, taken in response to the report or Formal Complaint of Title IX Sexual Harassment.
- The bases for the Institute's conclusion that its response was not deliberately indifferent.
- Documentation that the Institute took measures designed to restore or preserve equal access.
- If the Institute did not provide Supportive Measures, the reasons why such a response was not clearly unreasonable in light of the known circumstances.

If the report or Formal Complaint of Title IX Sexual Harassment was subject to an adjudication pursuant to the Formal Complaint process outlined above, the Institute's record will also contain:

- Any determination regarding responsibility.
- Any audio or audiovisual recording or transcript.
- Any disciplinary sanctions imposed on the Respondent.
- Any remedies provided to the Complainant.
- Any appeal and the result.
- Any informal resolution and the result.

For a period of 7 years, the Institute also will keep all materials used to train Title IX Coordinator, investigators, adjudicators, and any person who facilitates an informal resolution process. Further, the Institute will make these training materials publicly available on its website.

### **Disclosure of Outcome**

The Institute will not share information obtained during the course of a proceeding with parties external to the Institute unless compelled to do so, such as by receipt of a lawfully issued subpoena. The Institute

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<sup>20</sup> All appeal officers will satisfy the training requirements mandated by applicable federal and state laws and be free of bias and conflicts of interest for or against Complainants or Respondents generally or an individual Complainant or Respondent. The appeal officer will not be same person as the adjudicator that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator.

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may share information about the proceeding internally with “school officials” with a “legitimate educational interest” consistent with FERPA. The parties to the proceeding choose whether they will disclose or discuss the outcome of a Title IX Sexual Harassment proceeding.

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## **PART THREE: POLICIES RELATING TO INSTITUTE SEXUAL HARASSMENT**

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### **Responding to and Resolving Reports of Institute Sexual Harassment**

When the Institute receives a report of Sexual Misconduct, the Institute will take appropriate steps to respond to the reported conduct and to resolve the matter promptly and equitably.<sup>21</sup> As noted in the Introduction and Overview, alleged Sexual Misconduct will be treated as Title IX Sexual Harassment under Part Two of this policy unless and until a determination is made by the Institute that it does not qualify as Title IX Sexual Harassment. If the Institute determines that the alleged Sexual Misconduct does not constitute Title IX Sexual Harassment, but does qualify as Institute Sexual Harassment, from that point forward it will be treated as Institute Sexual Harassment, and will be addressed pursuant to the policies and procedures set forth here, in Part Three of this policy.

The Institute will seek to complete the investigation and adjudication of a reported incident of Sexual Misconduct within 120 calendar days after the Investigators' first interview of the Complainant. This time frame may be extended for Informal Resolution (discussed below) and also may be extended for good cause.<sup>22</sup> Any extension of timeframes, other than for Informal Resolution, and the reason for the extension, will be shared with the parties in writing. Delays should not last more than 10 calendar days except when law enforcement specifically requests and justifies a longer delay.

### **Initial Response and Assessment**

Upon receipt of a report of Institute Sexual Harassment, the Title IX Coordinator will promptly contact the Complainant and carry out an initial response and assessment.<sup>23</sup> The primary goals of this process are to address immediate health and safety needs, to gather critical information, and to educate the Complainant regarding resources and options for moving forward. This process will include:

- Explaining which authorities are able to offer "Privacy" or "Legal Confidentiality" and the distinction between the two.
- Dialoguing with the Complainant to more fully assess the nature and circumstances of the report.
- Addressing any immediate needs for physical safety and emotional well-being.
- Encouraging medical treatment, if appropriate, and describing the importance of preserving evidence and obtaining a sexual assault forensic examination.
- Reviewing this policy and providing a copy.
- Discussing the availability of Supportive Measures and considering the Complainant's wishes with respect to Supportive Measures, informing the Complainant of the availability of supportive measures with or without the filing of a Formal Complaint, and explaining to the Complainant the process for filing a Formal Complaint.
- Explaining that the criminal justice process utilizes different standards of proof and evidence and that any questions about whether a specific incident violated criminal law should be addressed to law enforcement or to the district attorney.

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<sup>21</sup> The Institute is deemed to have received a report of Sexual Misconduct when the Institute has Actual Knowledge.

<sup>22</sup> Extending for "good cause" would include extending to ensure the integrity and completeness of the investigation, to comply with a request by external law enforcement, to accommodate the availability of witnesses, to account for the Institute breaks or vacations, to account for complexities of a case, including the number of witnesses and volume of information provided by the parties, or for other legitimate reasons.

<sup>23</sup> The Institute will not investigate Sexual Misconduct disclosed during a public awareness event such as candlelight vigils, protests, or other public events. However, the Institute may use the information provided at such an event to inform its efforts for additional education and prevention efforts.

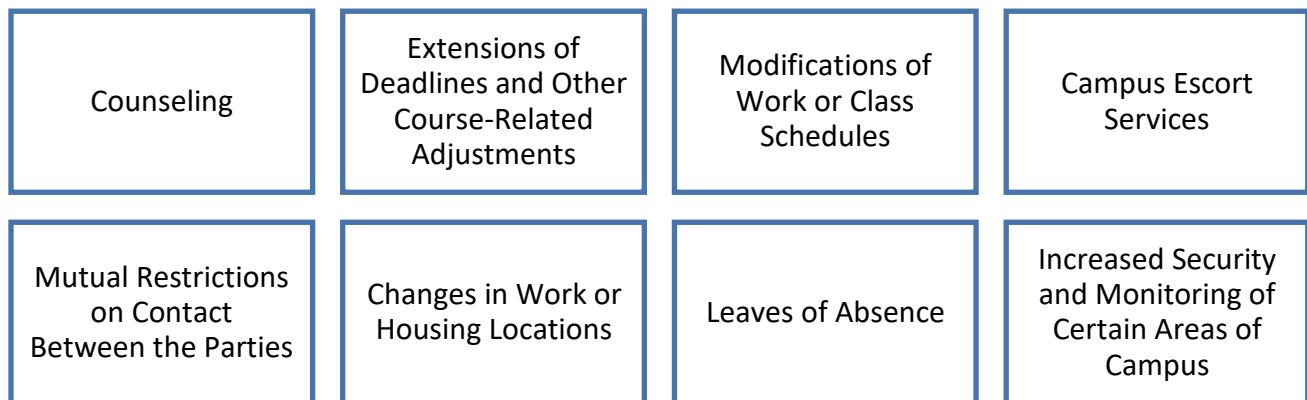


- Discussing the Complainant’s preferences for resolution and any barriers to proceeding in accordance with those preferences.
- Advising the Complainant of the prohibition against Retaliation.

Complainants alleging student violation of this policy shall have the opportunity to request that the complaint resolution procedure begin promptly and proceed in a timely manner.

### **Supportive Measures**

At any time following a report of Institute Sexual Harassment, Supportive Measures are available for both the Complainant and the Respondent. Such measures are designed to restore or preserve equal access to the Institute’s Education Program or Activity without unreasonably burdening the other party, including measures designed to protect the safety of the parties or the Institute’s educational environment, or to deter Sexual Misconduct. The Institute will maintain as Private any Supportive Measures provided to the Complainant or Respondent, to the extent that maintaining such Privacy would not impair the ability of the Institute to provide the Supportive Measures. The following graphic sets out examples of available Supportive Measures.



### **Administrative Leave and Emergency Removal**

The Institute will follow the Formal Complaint process described below before any disciplinary sanctions or other actions that are not Supportive Measures are imposed against a Respondent. However, the Institute may place a non-student employee Respondent on administrative leave during the pendency of the Formal Complaint process.

Institute also may remove a Respondent from Institute’s Education Program or Activity on an emergency basis if Institute determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of Institute Sexual Harassment justifies removal. In the case of a student Respondent, if such a determination is made by the Campus Director and will provide written notice to the student. In the case of an employee Respondent, if such a determination is made the Executive Director will provide written notice to the employee. In all cases, the written notice will contain the basis for the decision, the terms of the emergency removal, and the procedure for challenging the decision.

### **Initiating a Formal Complaint of Institute Sexual Harassment**

A Complainant may file a Formal Complaint with the Institute’s Title IX Coordinator at any time. The Complainant also may request that no further investigation take place, or that the matter be resolved through Informal Resolution (with the agreement of the Respondent and the Institute).

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In furtherance of the Institute's obligation to ensure a safe, non-discriminatory environment, the Formal Complaint process also may be initiated by the Title IX Coordinator, even if a Formal Complaint has not been filed by a Complainant, or a Complainant has requested that no further investigation take place. When considering whether to initiate the Formal Complaint process when a Complainant does not wish to file a Formal Complaint, the Title IX Coordinator will consider a range of factors, including:

- Whether there have been other allegations of Sexual Misconduct made against the Respondent.
- Whether the Institute Sexual Harassment was perpetrated with a weapon or other forms of violence.
- Whether the Institute Sexual Harassment involved threats.
- Whether the incident represents an escalation in misconduct by the Respondent.
- Whether the Complaint reveals a pattern of Sexual Misconduct at a given location or by a particular group.
- Whether the Institute has alternative means by which to obtain relevant evidence (*e.g.*, security cameras, witnesses).

Where a Formal Complaint process is initiated without a Formal Complaint filed by the Complainant, it will be signed by the Title IX Coordinator who will not be considered a Complainant or otherwise a party.

### **Initial Review of a Formal Complaint and Procedural Determination**

Upon receipt of a Formal Complaint, the Institute will conduct a prompt and careful review to confirm that the Sexual Misconduct alleged in the Formal Complaint constitutes Institute Sexual Harassment, as that term is defined in this policy, and should be resolved under this Part Three, provided such confirmation has not already been made.

If the Institute determines that the Sexual Misconduct alleged in the Formal Complaint (1) would not constitute Institute Sexual Harassment even if proved, or (2) was not committed by or against a Covered Party, the Formal Complaint will be dismissed as a Formal Complaint of Institute Sexual Harassment, and the Title IX Coordinator will proceed to determine whether the Sexual Misconduct can appropriately be adjudicated as a Formal Complaint of Institute Sexual Harassment

A Formal Complaint of Institute Sexual Harassment or any of its allegations also may be dismissed if:

- The Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any of its allegations;
- The Respondent is no longer enrolled or employed by the Institute; or
- Specific circumstances prevent the Institute from gathering evidence sufficient to reach a determination as to the Formal Complaint or its allegations.

Following its initial review of the Formal Complaint, the Title IX Coordinator will notify the parties of the alleged Sexual Misconduct, and of the Title IX Coordinator's procedural determination regarding the policies under which the alleged Sexual Misconduct falls. This notice will specify whether the Formal Complaint has been dismissed as a Formal Complaint of Institute Sexual Harassment, and whether the Title IX Coordinator has determined that the Sexual Misconduct can be adjudicated as a Formal Complaint of Institute Sexual Harassment.

Either party may appeal this procedural determination on any of the following bases:

- A procedural irregularity that affected the outcome;

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- New evidence that was not reasonably available at the time the determination or dismissal was made and could affect the outcome; or
  - The Title IX Coordinator had a conflict of interest or bias that affected the outcome of the matter.

Both parties may submit a written statement in support of or appealing the outcome to the Executive Director via email at [titleix@firstinstitute.edu](mailto:titleix@firstinstitute.edu) within 5 calendar days of receipt of the determination. When a statement in support or appeal is filed, the other party will be notified in writing.

Statements in support or appeal should be no more than 5 pages and must be submitted by the Complainant or Respondent (not by an advisor).<sup>24</sup> Following his or her review, the appeal officer will simultaneously issue a written decision to both parties describing the result of the appeal and the rationale for the result. The decision on the appeal is final and shall be conveyed in writing to both parties.

If the Title IX Coordinator determines that the Sexual Misconduct can appropriately be adjudicated as a Formal Complaint of Institute Sexual Harassment, and this determination is upheld following any appeal, from that point forward the Formal Complaint will be treated as Institute Sexual Harassment, and will be resolved pursuant to the policies and procedures set forth in Part Three of this policy.

### **Consolidation of Formal Complaints**

The Institute may consolidate Formal Complaints of Institute 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 Institute Sexual Harassment arise out of the same facts or circumstances.

### **Informal Resolution of a Formal Complaint**

After a Formal Complaint of Institute Sexual Harassment is filed, and at any time prior to reaching a determination regarding responsibility, a party may request that the matter be resolved through Informal Resolution. Informal Resolution is a completely voluntary process and requires the written consent of the Complainant and Respondent and the approval of the Title IX Coordinator or designee to proceed. Informal Resolution is not available to resolve allegations that an employee committed Sexual Misconduct against a student. At any time prior to reaching a resolution, any party has the right to withdraw from the Informal Resolution process and to resume the Formal Complaint process.<sup>25</sup>

Prior to engaging in the Informal Resolution process, the Institute will provide a written notice to the parties disclosing the allegations, the requirements of the Informal Resolution process, including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations, and any consequences resulting from participation in the Informal Resolution process, including the records that will be maintained or could be shared.

The terms of an Informal Resolution, if successful, may include any of the Supportive Measures discussed above, as well as other arrangements agreed to by the parties. If an agreement acceptable to the Institute, the Complainant, and the Respondent is reached through Informal Resolution, the matter is considered to

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<sup>24</sup> All appeal officers will satisfy the training requirements mandated by applicable federal and state laws and be free of bias and conflicts of interest for or against Complainants or Respondents generally or an individual Complainant or Respondent. The appeal officer will not be same person as the adjudicator that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator

<sup>25</sup> Any individual facilitating an Informal Resolution will satisfy the training requirements mandated by applicable federal and state laws and be free of bias and conflicts of interest for or against Complainants or Respondents generally or an individual Complainant or Respondent.

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be resolved and the terms are implemented. The Institute will endeavor to conclude the Informal Resolution process within 45 calendar days of its initiation.

### **Investigation of a Formal Complaint**

Once the Institute has determined that all or part of the Sexual Misconduct alleged in the Formal Complaint constitutes Institute Sexual Harassment, it will promptly initiate an investigation pursuant to Part Two of this policy. The investigation of a Formal Complaint of Institute Sexual Harassment will proceed in accordance with the following parameters:

- **Designation of an Investigator.** As a first step, the Title IX Coordinator will designate an internal or external investigator (“Investigator”) to conduct a prompt, thorough, and impartial investigation of the reported Sexual Misconduct. The Title IX Coordinator may consult with the Institute’s senior administrators regarding the designation of the Investigator.<sup>26</sup>
- **Initial Notice of Investigation.** The Institute will provide an initial, written notice to the parties who are known that includes at least the following: (1) a discussion of the applicable process, including any option for Informal Resolution; (2) a sufficiently detailed statement of allegations, which includes the identities of the parties, if known, the conduct allegedly constituting Institute Sexual Harassment, and the date and location of the alleged incident, if known; (3) a statement that the Respondent is presumed innocent and that a determination of responsibility is made at the conclusion of the process; (4) a statement regarding each party’s right to an advisor and to review and inspect evidence; and (5) a statement regarding any provision in the Institute’s Code of Conduct that prohibits the parties from knowingly making false statements or knowingly submitting false information during the Formal Complaint Process.
- **Ongoing Notice.** As the investigation progresses, the Institute will provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all interviews or other meetings, with sufficient time for the party to prepare to participate. Such notice also will include any applicable rules of order and decorum. If, in the course of an investigation, the Institute decides to investigate allegations about the Complainant or Respondent that were not included in the original notice provided to the parties, the Institute must provide notice of the additional allegations to the parties whose identities are known.
- **Burden of Proof and Burden of Gathering Evidence.** The burden of proof and burden of gathering evidence sufficient to reach a determination is the responsibility of the Institute, provided that the Institute cannot and will not access, consider, disclose, 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’s 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 Institute obtains that party’s voluntary, written consent to do so for a grievance process.
- **Fact-Finding.** The Investigator will seek to meet with all parties and witnesses separately and also will gather other evidence and information relevant to the determination as to whether or not a policy violation has occurred. The investigation may include, to the extent relevant, interviews of other witnesses and the review of pertinent documentation (*e.g.*, student or personnel files, relevant law

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<sup>26</sup> Any individual designated as an Investigator will satisfy the training requirements mandated by applicable federal and state laws and be free of bias and conflicts of interest for or against Complainants or Respondents generally or an individual Complainant or Respondent.

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enforcement documents). At all points during the fact-finding aspect of the investigation, the process will remain impartial and balanced.

- **Opportunity to be Heard.** The Complainant and Respondent will have an equal opportunity to be heard, to present inculpatory and exculpatory evidence, and to identify witnesses, including fact and expert witnesses. The Institute will not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.
- **Review of Evidence.** All relevant evidence, including both inculpatory and exculpatory evidence, will be objectively evaluated. Credibility determinations will not be based on a person's status as a Complainant, Respondent, or witness.
- **Advisors During an Investigation.** Throughout the investigation process, the Complainant and Respondent both have the right to be accompanied and counseled by an advisor of his or her choice.<sup>27</sup> The parties may be accompanied by their respective advisors (at the party's own expense if the advisor is a paid advisor) at any meeting or proceeding related to the investigation and resolution of a complaint. The advisor cannot actively participate or speak on behalf of the Complainant or Respondent. The Title IX Coordinator and Investigator must be advised in writing that an advisor will be present at least 24 hours before any scheduled meeting or proceeding.<sup>28</sup> The Institute reserves the right to have its own legal counsel present. If any advisor's conduct is not consistent with these guidelines, or any other applicable rules of order and decorum, he or she may be excluded from the process.
- **Coordination with Local Law Enforcement.** The standards for finding a violation of this policy are different from the standards used by local law enforcement to determine whether criminal conduct may have occurred. Conduct that constitutes Sexual Misconduct under this policy may not constitute sufficient evidence of a crime, and law enforcement may choose to decline investigating or prosecuting it as a crime. In the event local law enforcement does investigate allegations of Sexual Misconduct, any such investigation is independent of any investigation by the Institute. The Institute typically will not wait for the conclusion of any criminal investigation or proceeding to commence its own investigation (or to institute any Supportive Measures), and will make its determinations in accordance with this policy.<sup>29</sup> However, the Institute may elect to temporarily delay its investigation to enable law enforcement to gather evidence and engage in a preliminary investigation if, for example, the Institute believes such delay would benefit the Institute's own investigation. When applicable and appropriate, the Institute may contact and coordinate with law enforcement.
- **Access to Evidence.** Both the Complainant and Respondent will have an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a Formal Complaint. Such evidence may include redactions of personally identifiable information in accordance with FERPA and applicable privacy regulations. Prior to completion of the investigative report, the Investigator will send to each party and the party's advisor, if any, such evidence in an electronic format or a hard copy, and provide the parties at least 10 calendar days to

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<sup>27</sup> The Institute may require advisors to agree to a Non-disclosure Agreement as a condition of participating in the investigation and hearing process.

<sup>28</sup> This notification should include the full name and title of the advisor of choice, as well as contact information (phone, email and address.)

<sup>29</sup> At the request of law enforcement, the Institute may agree to defer its investigation until after the initial stages of a criminal investigation. In such instances, the Institute will promptly resume its investigation as soon as it is notified by law enforcement that there is no longer a need to delay, or the Institute otherwise determines that it must proceed.

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submit a written response, which the Investigator will consider prior to completion of the investigative report.

- **Legal Privilege:** The Investigator will not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.
- **Investigation Report.** The Investigator will prepare an investigation report that fairly summarizes relevant evidence. The report will be limited to a summary of the facts disclosed during the investigation and will not include conclusions as to responsibility. The Investigator has the discretion to determine the relevance of any proffered evidence and may determine what factual evidence is to be included in the investigation report.

Once the investigation is complete and the investigation report has been finalized, it will be provided to the Title IX Coordinator, consistent with the procedures set out below.

### **Pre-Hearing Preparations**

The Investigator will issue the investigative report to the Title IX Coordinator. Upon review, the Title IX Coordinator may accept the report as rendered or may request that the Investigator conduct additional interviews or seek out other evidence as deemed to be appropriate. The Investigator will complete any additional investigation, and any supplemental or revised report, as promptly as is reasonable. The following pre-hearing preparations also will be carried out:

- **Selection of Adjudicator.**<sup>30</sup> The Title IX Coordinator will either designate an internal adjudicator or refer the matter to an external adjudicator with appropriate experience (in either case, the “Adjudicator”).<sup>31</sup> At least 10 calendar days before the hearing, the parties will be provided notice of the names of any individuals with authority to make a finding or impose a sanction. The parties may request a substitution if the participation of an individual with authority to make a finding or impose a sanction poses a conflict of interest. The request will be considered by the Title IX Coordinator.

The Adjudicator will conduct a hearing on the matter as described more fully below. Neither the Institute’s Title IX Coordinator, nor the Investigator, may serve as the Adjudicator.<sup>32</sup>

- **Initial Notice of Hearing.** At least 7 calendar days before the hearing, the Adjudicator will provide an initial, written notice to the parties that includes the following: (1) the date, time, and location of the hearing; (2) the charges to be reviewed by the Adjudicator; (3) the factual allegations concerning the violation; (4) the provisions of Institute’s Sexual Misconduct policy alleged to have been violated; (4) the sanctions that may be imposed; and (5) the specific rules and procedures for the hearing, including any rules of order or decorum.
- **Pre-Hearing Review of Documents.** In advance of the hearing, the Complainant and Respondent will each have the opportunity to review the final investigation report, including any supplemental report, and any relevant documents that will be provided to the Adjudicator. The Adjudicator will be provided

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<sup>30</sup> Institute may, at its discretion, designate more than one Adjudicator.

<sup>31</sup> Reasons for referring a hearing to an external adjudicator include but are not limited to the presence of a conflict of interest or if a matter presents complex evidentiary issues.

<sup>32</sup> Any individual designated as a decision-maker will satisfy the training requirements mandated by applicable federal and state laws and be free of bias and conflicts of interest for or against Complainants or Respondents generally or an individual Complainant or Respondent.

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with the same set of materials. Absent a good cause showing, additional information will not be considered by the Adjudicator at this juncture if such information could have been provided to the Investigator during the investigation (meaning that during the investigation it was discoverable through the exercise of due diligence).

- **List of Witnesses.** The Adjudicator will identify any witnesses that he or she wishes to hear from at the hearing based on a review of the investigation report. Also, the Complainant and Respondent each have the right to request the presence of any additional witnesses at the hearing, provided such witnesses were identified and interviewed as part of the investigation. The Adjudicator may permit the participation of a witness who was not interviewed during the investigation only if the Adjudicator determines that the new witness' participation at the hearing is relevant and appropriate under the circumstances. In such cases, the Adjudicator will refer the matter to the Investigator for additional investigation, and direct the Investigator to prepare a supplemental report, which may delay the timing of the hearing. The Institute cannot compel the attendance of any witness.
- **Timing.** The date, time, or location of a hearing may be changed for good cause, at the discretion of the Title IX Coordinator. Good cause may include, but is not limited to: the availability of the parties; the availability of witnesses; the timing of Institute breaks; efforts to utilize Informal Resolution; to comply with a request by external law enforcement; to account for complexities of a case including the number of witnesses and volume of information provided by the parties; or, to address other legitimate reasons. Any change to the date, time, or location of a hearing will be shared with the parties in writing and will include the reason for the extension. Delays should not last more than 10 calendar days except when law enforcement specifically requests and justifies a longer delay.

### **Hearing Setting and Standards**

Any hearing involving allegations of Institute Sexual Harassment will be carried out in accordance with the following standards, so as to ensure that it is fair, impartial and provides a meaningful opportunity to be heard:

- **Setting.** A hearing involving allegations of Institute Sexual Harassment may or may not be live. The Institute also reserves the right to conduct a hearing without assembling all of the parties together at the same time or in the same space.
- **Advisors During the Hearing.** The Complainant and the Respondent both have the right to be accompanied and advised by an advisor of their choice at any hearing and any related meetings (at the party's own expense if the advisor is a paid advisor). The Institute reserves the right to have its own legal counsel present during any hearing. The role of a party's advisor shall be limited to support and consultation. The advisor cannot actively participate or speak on behalf of the Complainant or Respondent or address or question witnesses. An Advisor must comport himself or herself in a manner that is not disruptive during a hearing and act with appropriate decorum.<sup>33</sup> Proceedings will be closed to non-participants and to the public, including friends and Institute personnel without an official interest in the case.
- **Standard of Evidence.** The Preponderance of the Evidence standard is used to determine whether this policy has been violated. This standard is used for Formal Complaints against students and employees alike, including faculty. Preponderance of the Evidence means that it is more likely than not that a policy violation occurred.

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<sup>33</sup> Whether an advisor is comporting him or herself in a manner that is not disruptive or acting with appropriate decorum to the hearing or meetings is determined in the sole discretion of the Adjudicator.

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- **Rules of Evidence.** Formal rules of process, procedure, and technical rules of evidence, such as applied in criminal or civil court, are not used in these proceedings.
  - **Review of Evidence.** All relevant evidence, including both inculpatory and exculpatory evidence, will be objectively evaluated. Credibility determinations will not be based on a person's status as a Complainant, Respondent, or witness.
  - **Presumption of Non-Responsibility.** The Respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the Formal Complaint process.
  - **Truthful Information.** The Complainant, the Respondent, and the witnesses and other individuals sharing information are expected to provide truthful information.
  - **Sexual Predisposition and Prior Sexual Behavior.** Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence: (1) are offered to prove that someone other than the Respondent committed the alleged conduct; or (2) concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.
  - **Legal Privilege.** Adjudicators will not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

### Hearing Format

In the event a live hearing is held, the following hearing format may be applied. The Adjudicator has the discretion to supplement or revise this format with additional procedures. Any such procedures will be consistent with the required format and applied equally to all parties.

- The Adjudicator will explain the hearing process, provide an opportunity to all parties to ask questions about procedures, and read the charges.
- The Investigator will provide a brief statement summarizing the investigation. The Adjudicator may then pose questions to the Investigator. After the Adjudicator has concluded asking questions, the Complainant may then submit written questions to the Adjudicator to be asked of the Investigator. After the Complainant has concluded asking questions, the Respondent may then submit written questions to the Adjudicator to be asked of the Investigator.
- The Complainant may provide an opening statement. The Adjudicator may then pose questions to the Complainant. After the Adjudicator has concluded asking questions, the Respondent may then submit written questions to the Adjudicator to be asked of the Complainant.
- The Respondent may provide an opening statement. The Adjudicator may then pose questions to the Respondent. After the Adjudicator has concluded asking questions, the Complainant may submit written questions to the Adjudicator to be asked of the Respondent.
- The Adjudicator will hear from witnesses that the Adjudicator determined to have information that is relevant to the matter, first on behalf of the Complainant and then on behalf of the Respondent. Invited witnesses may provide statements. When each witness is called, the Adjudicator may pose questions. After the Adjudicator has concluded asking questions, the Complainant may submit written questions to the Adjudicator to be asked of the witness. The Respondent may then submit written questions to the Adjudicator to be asked of the witness.



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- The Complainant may provide a closing statement. The Adjudicator may then pose questions to the Complainant. After the Adjudicator has concluded asking questions, the Respondent may submit written questions to the Adjudicator to be asked of the Complainant.
  - The Respondent may provide a closing statement. The Adjudicator may then pose questions to the Respondent. After the Adjudicator has concluded asking questions, the Complainant may submit written questions to the Adjudicator to be asked of the Respondent.

As explained above, during the hearing the parties shall have an opportunity to have questions posed to each other and witnesses through the Adjudicator. The Adjudicator will examine the questions and ensure relevance and propriety. The Adjudicator shall have the discretion to determine whether to ask a question, rephrase the question, or not ask the question at all. At no time will either party be permitted directly to ask the other party or witnesses questions.

In the event that a live hearing is not held, the Adjudicator will determine and communicate the hearing format to the parties.

### **Determination and Sanctions; Notice of Outcome**

At the conclusion of the hearing, the Adjudicator will objectively weigh the evidence that has been presented and, based on a preponderance of such evidence, conclude whether the Respondent violated this policy.

If the Respondent is not found responsible for violating this policy, the Adjudicator will issue a written determination (described below).

If the Respondent is found responsible for violating this policy, the Adjudicator will determine sanctions and remedies. In determining the appropriate sanctions and remedies, the Adjudicator may consider a number of factors, including:

- The nature of the conduct at issue, including whether it involved violence.
- The impact of the conduct on the Complainant.
- The impact of conduct on the Institute community.
- The ability of the Institute, going forward, to maintain a safe and respectful environment conducive to learning.
- Any previous conduct violations by the Respondent, both at the Institute or elsewhere, as well as any criminal convictions.

Remedies must be designed to restore or preserve equal access to the Institute's Education Program or Activity and need not be non-disciplinary or non-punitive and need not avoid burdening the Respondent.

Potential sanctions and remedies against a student for a violation of this policy include, but are not limited to: reprimand or warning; educational reflection assignment; change to academic schedule or housing; disciplinary probation; postponement of degree conferral; revocation of honor awards; restriction of access to Institute facilities or activities; issuance of a No Contact Order or requiring that such an order remain in place; suspension (limited time or indefinite); or expulsion. Sanctions and remedies may be issued individually or as a combination.

Potential sanctions and remedies against an employee for a violation of this policy include, but are not limited to: reprimand or warning; change to teaching schedule; disciplinary probation; revocation of titles or honors; restriction of access to Institute facilities or activities; issuance of a No Contact Order or requiring that such an order remain in place; suspension (limited time or indefinite); or termination of employment. Sanctions and remedies may be issued individually or as a combination.

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The Complainant and Respondent will be notified simultaneously in writing (which may include email), generally within 7 calendar days of the hearing, of the written determination which will include:

- An identification of the allegations.
- A recitation 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 this policy to the facts.
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the school imposes on the Respondent, and whether remedies designed to restore or preserve equal access to the Institute's Education Program or Activity will be provided by the Institute to the Complainant.
- Procedures and permissible bases for appeal.

The written determination becomes final either on the date that the Institute provides the parties with the written determination of the result of any 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.

### **Right to Appeal**

Either party may appeal the determination regarding responsibility on any of the following bases:

- A procedural irregularity that affected the outcome;
- New evidence that was not reasonably available at the time the determination was made and could affect the outcome;
- The Title IX Coordinator, investigator, or decision-maker had a conflict of interest or bias that affected the outcome of the matter; or
- The sanction is disproportionate with the violation.

Both parties may submit a written statement in support of or appealing the outcome to Executive Director via email at [titleix@firstinstitute.edu](mailto:titleix@firstinstitute.edu) within 5 calendar days of receipt of the determination. Statements in support or appeal should be no more than 3 pages and must be submitted by the Complainant or Respondent (not by an advisor).<sup>34</sup> When a statement in support or appeal is filed, the other party will be notified in writing.

Following his or her review, the appeal officer will simultaneously issue a written decision to both parties describing the result of the appeal and the rationale for the result. Generally, the appeal officer may either: (i) affirm the adjudicator's determination; (ii) alter the sanctions rendered; or, (iii) send the matter back to an Adjudicator for further proceedings consistent with its decision. The decision on the appeal is final and shall be conveyed in writing to both parties, normally within 7 calendar days of receipt.

### **Case File**

Each Formal Complaint will trigger the creation of an investigatory file. The investigatory file will consist of the Formal Complaint, assessment, and supportive measures documentation prepared by the Title IX

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<sup>34</sup> All appeal officers will satisfy the training requirements mandated by applicable federal and state laws and be free of bias and conflicts of interest for or against Complainants or Respondents generally or an individual Complainant or Respondent. The appeal officer will not be same person as the adjudicator that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator.

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Coordinator, the final investigative report, including a record of any sanctions or remedial action taken, any audio recording of the hearing, and any documents created or used during the investigation. The Case File will be maintained for the duration of the investigation and for a period of 5 years following its conclusion. The Institute may grant the parties reasonable access to the record during business hours, consistent with applicable state and federal privacy laws.

### **Disclosure of Outcome**

The Institute will not share information obtained during the course of a proceeding with parties external to the Institute unless compelled to do so, such as by receipt of a lawfully issued subpoena. The Institute may share information about the proceeding internally with “school officials” with a “legitimate educational interest” consistent with FERPA. The parties to the proceeding choose whether they will disclose or discuss the outcome of a Institute Sexual Harassment proceeding.

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## PART FOUR: GLOSSARY OF TERMS

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**Actual Knowledge** means notice of Sexual Misconduct or allegations of Sexual Misconduct to the Institute's Title IX Coordinator or any official of the Institute who has authority to institute corrective measures on behalf of the Institute.

**Institute Sexual Harassment** means conduct that satisfies one or more of the following below. If conduct meets the definition of both Title IX Sexual Harassment and Institute Sexual Harassment, such conduct will be considered Title IX Sexual Harassment for the purposes of this policy.

1. An employee of the Institute conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
2. **Sexual Harassment** is unwelcome conduct of a sexual nature. Sexual harassment can include unwelcome sexual advances, requests for sexual favors, or other verbal, nonverbal or physical conduct of a sexual nature where such conduct is sufficiently severe or pervasive that it has the effect, intended or unintended, of unreasonably interfering with an individual's work or academic performance or it has created an intimidating, hostile or offensive environment and would have such an effect on a reasonable person.;
3. **Sexual Assault**, which means one of the following offenses:
  - *Rape* is the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the Consent of the victim. (Note: this definition also includes offenses of sodomy and sexual assaults with an object).
  - *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 his/her age or because of his/her temporary or permanent mental incapacity.
  - *Incest* is sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
  - *Statutory rape* is sexual intercourse with a person who is under the statutory age of consent.
4. **Dating Violence**, which means violence committed by an individual—
  - A. who is or has been in a social relationship of a romantic or intimate nature with the victim; and
  - B. where the existence of such a relationship shall be determined based on a consideration of the following factors:
    - i. The length of the relationship.
    - ii. The type of relationship.
    - iii. The frequency of interaction between the persons involved in the relationship.
5. **Domestic Violence**, which means 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 the jurisdiction receiving grant monies, 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 the jurisdiction.
6. **Stalking**, which means engaging in a course of conduct directed at a specific person that would cause a reasonable person to—
  - A. fear for his or her safety or the safety of others; or
  - B. suffer substantial emotional distress.

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7. **Sexual Exploitation**, which means taking sexual advantage of another person or violating the sexual privacy of another when consent is not present. This includes, but is not limited to, the following actions (including when they are done via electronic means, methods or devices):
- A. Sexual voyeurism or permitting others to witness or observe the sexual or intimate activity of another person without that person's consent;
  - B. Indecent or lewd exposure or inducing others to expose themselves when consent is not present
  - C. Recording any person engaged in sexual or intimate activity in a private space without that person's consent;
  - D. Distributing sexual information, images, or recordings about another person without that person's consent;
  - E. Recruiting, harboring, transporting, providing, or obtaining another person for the purpose of sexual exploitation; or
  - F. Inducing Incapacitation in another person with the intent to engage in sexual conduct, regardless of whether prohibited sexual conduct actually occurs.

**Consent** is informed, freely given, mutually understandable words or actions that indicate a willingness to participate in sexual activity.

Effective consent may never be obtained when there is a threat of force or violence, or any other form of coercion, intimidation, force or threat of harm. Silence or lack of resistance, in and of itself, does not demonstrate consent. A person's manner of dress does not constitute consent. A current or previous dating or sexual relationship is not sufficient to constitute consent, and consent to one form of sexual activity does not imply consent to other forms of sexual activity. Consent can be revoked at any time by expressing in words or actions that they no longer want the sexual activity to continue. When consent is withdrawn or can no longer be given, sexual activity must stop. Consent cannot be obtained from someone legally prevented from giving consent by their age, from someone who is unable to understand or who cannot communicate a lack of consent, or someone who is Incapacitated. Voluntary intoxication is not an excuse for failure to obtain consent.

The definition of consent does not vary based upon a participant's sex, sexual orientation, gender identity or gender expression.

**Complainant** means an individual who is alleged to be the victim of conduct that could constitute Sexual Misconduct.

**Educational Program or Activity** includes locations, events, or circumstances over which the recipient exercised substantial control over both the Respondent and the context in which the Sexual Misconduct occurs, and also includes any building owned or controlled by a student organization that is officially recognized by the Institute.

**Formal Complaint** means a document filed by a Complainant or signed by the Title IX Coordinator alleging Sexual Misconduct against a Respondent and requesting that the Institute investigate the allegation of Sexual Misconduct.

For purposes of Part Two of the policy only: At the time of filing a Formal Complaint, a Complainant must be participating in or attempting to participate in an Education Program or Activity of the Institute.

**Incapacitation** means the inability, temporarily or permanently, to give Consent, because an individual is mentally and/or physically helpless, asleep, involuntarily restrained, unconscious, or unaware that sexual activity is occurring. Depending on the degree of intoxication, someone under the influence of alcohol, drugs, or other intoxicants may be incapacitated and therefore unable to consent. Warning signs that a

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person may be approaching incapacitation may include, but are not limited to, vomiting, incoherent speech, and difficulty walking or standing up. The perspective of a sober, reasonable person in the position of the Respondent will be the basis for determining whether a Respondent should have been aware that the Complainant was incapacitated and therefore unable to Consent.

**No Contact Order** means a directive prohibiting contact between or among designated individuals through any means, direct or indirect, including personal contact, email, telephone, text message, social media, or by means of a third party.

**Party** means either the Complainant or the Respondent. **Parties** means the Complainant and the Respondent.

**Respondent** means an individual who has been reported to be the perpetrator of conduct that could constitute Sexual Misconduct.

**Retaliation** means intimidating, threatening, coercing, or in any way discriminating against an individual for exercising any right or privilege secured by Title IX or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing.

**Sexual Misconduct** means either Title IX Sexual Harassment or Institute Sexual Harassment.

**Supportive Measures** means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent before or after the filing of a Formal Complaint or where no Formal Complaint has been filed.

**Title IX Sexual Harassment**<sup>35</sup> means conduct on the basis of sex that satisfies one or more of the following:

1. An employee of the Institute conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the Institute's Education Program or Activity;
3. **Sexual Assault**, as defined in 20 U.S.C. 1092(f)(6)(A)(v), which means one of the following offenses:
  - *Rape* is the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the Consent of the victim. (Note: this definition also includes offenses of sodomy and sexual assault with an object).
  - *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 his/her age or because of his/her temporary or permanent mental incapacity.
  - *Incest* is sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
  - *Statutory rape* is sexual intercourse with a person who is under the statutory age of consent.
4. **Dating Violence**, as defined in 34 U.S.C. 12291(a)(10), which means violence committed by an individual—

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<sup>35</sup> In the event of a conflict between the statutes and regulations cited and the text of the policy definitions, the statutes and regulations control.

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- A. who is or has been in a social relationship of a romantic or intimate nature with the victim; and
  - B. where the existence of such a relationship shall be determined based on a consideration of the following factors:
    - i. The length of the relationship.
    - ii. The type of relationship.
    - iii. The frequency of interaction between the persons involved in the relationship.
5. **Domestic Violence**, as defined in 34 U.S.C. 12291(a)(8), which means 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 the jurisdiction receiving grant monies, 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 the jurisdiction.
6. **Stalking**, as defined in 34 U.S.C. 12291(a)(30), which means engaging in a course of conduct directed at a specific person that would cause a reasonable person to—
- A. fear for his or her safety or the safety of others; or
  - B. suffer substantial emotional distress.