



# University of St. Augustine for Health Sciences Title IX Policy and Procedures

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The United States Department of Education (DOE) mandates that institutions comply with specific requirements under Title IX of the Educational Amendments of 1972. Title IX is a federal civil rights law that prohibits discrimination on the basis of sex. The University of St. Augustine for Health Sciences (“USAHS” or “the University”) is committed to providing a safe educational and working environment for its students, faculty, staff, and other members of the university community.

USAHS believes that all members of the University community should be free from all acts of sexual harassment. USAHS does not discriminate on the basis of sex in the education programs or activities that it operates and is required by Title IX not to discriminate in such a manner. Further, the requirement not to discriminate extends to admission and employment. All members of the University community and all visitors, regardless of sex, gender, sexual orientation, gender identity, or gender expression are advised that any sexual harassment by any student, employee, or third party is prohibited. Any attempt to commit sexual harassment, or to assist or willfully encourage any such act, is a violation of this Policy. Sexual harassment is contrary to the basic values of USAHS, which include promoting a sense of community, fostering learning, instilling integrity, and achieving excellence. USAHS is committed to providing for the prompt and equitable resolution of all complaints of sexual harassment.

This Policy applies to all complaints of sexual harassment in USAHS’ education programs and activities. It prohibits conduct that: occurs on campus or other University property; occurs in connection with University educational programs or activities, which includes locations, events, or circumstances over which USAHS exercises substantial control. This Policy prohibits sexual harassment by all third parties (including but not limited to visitors, guests, volunteers and contractors) on USAHS campuses and during university programs and activities. It also applies to applicants for admission to, or employment with, USAHS. This policy does not apply to sex discrimination that occurs against a person outside of the United States. Inquiries about the application of Title IX to USAHS may be referred to USAHS’ Title IX Coordinator, to the Assistant Secretary of the Department of Education, or both. Further, if the alleged harassment/violation does not meet the requirements to be considered a Title IX offense, it may still be an incident requiring investigation under the Student Code of Conduct, Title VII, and/or other disciplinary/investigatory proceedings.

Violations of this policy may result in disciplinary action up to and including removal from the University for students and termination of employment for faculty and staff.

## 1. Definitions

**Complainant:** A complainant is an individual who is alleged to be the victim of conduct that could constitute sexual harassment.

**Consent:** Consent is defined at USAHS as a clear, unambiguous, and conscious agreement expressed in mutually understandable words or actions to voluntarily engage in specific sexual or intimate activity or conduct. Conduct will be considered “without consent” if no clear affirmative consent, verbal or otherwise, is given. It is the responsibility of each person involved in the sexual activity to ensure that he or she has the affirmative consent of

the other or others to engage in the sexual activity. Affirmative Consent is not present (1) if obtained through the use of force, threat, coercion, or intimidation; or (2) when an individual is incapacitated, such as by consumption of drugs or alcohol or being unconscious or asleep; or (3) if given by someone who is not able to effectively communicate or to understand the nature of the conduct being engaged in. Silence or an absence of resistance on the part of the individual does not imply or constitute consent. Past consent does not imply future consent. Consent can be withdrawn at any time. Consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another. The intoxication or recklessness of a respondent is not an excuse for him or her not receiving affirmative consent from the complainant before engaging in a specific sexual activity.

**Formal Complaint:** Formal complaint means a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the University investigate the allegation of sexual harassment. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the University with which the formal complaint is filed. As used in this paragraph, the phrase “document filed by a complainant” means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by the University) that contains the complainant’s physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint. Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or otherwise a party.

**Retaliation:** Retaliation means intimidating, threatening, coercing, or in any way discriminating against an individual for the purpose of interfering with 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 under Title IX. Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX, constitutes retaliation. The University must keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder. Complaints alleging retaliation may be filed according to the grievance procedures for sex discrimination. USAHS will take immediate and appropriate steps to investigate or otherwise determine if retaliation due to the reporting of sexual harassment or discrimination occurs.

**Respondent:** Respondent means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

**Sexual Discrimination:** Sexual discrimination for the purpose of this Policy is defined as including, but not limited to, treating individuals differently because of their gender or sexual orientation, in connection with the terms and conditions of employment or educational opportunities. Discrimination does not occur, however, when an individual is treated differently than another individual for legitimate reasons.

**Sexual Harassment:** Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

1. An employee of the University conditioning the provision of an aid, benefit, or service of the University 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 University's education program or activity;
3. Sexual assault, defined as an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation. Sex offenses include any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent:
  - a. **Rape (except Statutory Rape)**-The carnal knowledge of a person, 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 or physical incapacity.
  - b. **Sodomy**-Oral or anal sexual intercourse with another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
  - c. **Sexual Assault with an Object**- To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity
  - d. **Statutory Rape**-Sexual intercourse with a person who is under the statutory age of consent.
  - e. **Fondling**-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.
  - f. **Incest**-Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law
4. Dating violence, defined as violence committed by a person:
  - a. Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
  - 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 the relationship.
    - iii. The frequency of interaction between the persons involved in the relationship;
5. Domestic violence, which includes 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; or

6. Stalking, defined as 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.

## **2. Reporting Violations of This Policy**

Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the 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) by using the telephone number or electronic mail address, or by mail to the office address, listed for the Title IX Coordinator below. Additionally, reports can be made to the local Campus Director, and/or Human Resources personnel, who will then work with the Title IX Coordinator to begin the grievance process. The Title IX coordinator, or his or her designee, may conduct the investigation. The Title IX Coordinator or his or her designee will not be responsible for conducting the investigation if he or she has any bias or conflict of interest related to the report or parties involved.

### **Title IX Coordinator for all USAHS campuses:**

Dawn Werling  
Vice President, Student Administration  
5401 La Crosse Ave.  
Austin, Texas 78739  
Phone: 760-410-5407  
E-mail: [dwerling@usa.edu](mailto:dwerling@usa.edu)

Any questions or complaints regarding Title IX may be referred to USAHS's Title IX Coordinator and Title IX Deputy Coordinators and/or to the Department of Education's Office of Civil Rights – Regional Division Offices listed below. Additionally, inquiries about the application of Title IX may be referred to the Assistant Secretary for Postsecondary Education at 400 Maryland Avenue, S.W., Washington, D.C. 20202, 202-453-6914.

**Filing a Criminal Complaint:** Any person has the right to file both a criminal complaint and a Title IX complaint simultaneously.

To file a criminal complaint please contact the local police department for your campus listed below.

### **USAHS's Florida Campuses**

#### **U.S. Department of Education - Regional Office IV**

61 Forsyth St. SW, Suite 19T40  
Atlanta, GA 30303

Phone: (404) 974-9450 Email: [OCR@ed.gov](mailto:OCR@ed.gov)

**Local Police, St. Augustine Campus**

St. Augustine Police Department

151 King St.

St Augustine, FL 32084

Phone: (904) 825-1074

**Local Police, Miami Campus**

Coral Gables Police Department

2801 Salzedo St #1

Coral Gables, FL 33134

Phone: (305) 442-1600

**USAHS California Campus**

**U.S. Department of Education - Regional Office IX**

50 Beale St. Room 9700

San Francisco, CA 94105

Phone: (415) 486-5700 Email: [OCR@ed.gov](mailto:OCR@ed.gov)

**Local Police:**

San Diego County Sheriff's San Marcos Station

182 Santar Place

San Marcos, CA 92069

Phone: (760) 510-5200

**USAHS Texas Campuses**

**U.S. Department of Education - Regional Office VI**

1999 Bryan St., Ste. 1620

Dallas, TX 75201

Phone: (214) 661-9600 Email: [OCR@ed.gov](mailto:OCR@ed.gov)

**Local Police, Austin:**

Austin Police Department

404 Ralph Ablanedo Dr.

Austin, TX 78748

Phone: (512) 974-5037

**Local Police, Irving:**

Irving Police Department

305 N. O'Connor Road

Irving, TX 75061

Phone: (972) 273-1010

In addition, any Campus Director and/or Human Resources personnel who has actual knowledge of an incident of sexual harassment must report it to the Title IX coordinator. USAHS takes all reports of sexual harassment

seriously and, upon receiving notice of any alleged violation of this Policy, shall take immediate steps to conduct a thorough, prompt, and appropriate investigation of the complaint. The University reserves the right to remove the respondent from the University if there is an immediate threat to the health and safety of the campus community. Non-student employee respondents may also be placed on administrative leave during the pendency of the grievance process and investigation.

A complainant who contacts the Title IX Coordinator with an allegation of sexual harassment will be notified of his or her right to confidentiality in regard to public recordkeeping, including Clery Act reporting and disclosures, any accommodations provided, protective measures provided and/or supportive measures provided, to the extent that maintaining such confidentiality would not impair the ability of the institution to provide the accommodations, protective, or supportive measures. If the complainant wishes to move forward with the process and files a formal complaint, he or she will be asked a series of questions to provide information. If the complainant prefers, he or she may complete the information from the form and submit it to the Title IX Coordinator. The *Sexual Harassment Formal Complaint* is available from the Title IX Coordinator or by downloading [here](#). However, an investigation cannot occur without the filing of a formal complaint, which will require disclosure and notice. The only exception to this would be if the Title IX Coordinator determines that a complaint and investigation must go forward and decides to file, regardless of the wishes of the complainant. Given the sensitive nature of reports of sexual violence, the University shall ensure that the information is maintained in a secure manner.

#### **Determination of supportive or protective measures**

Upon notification of an incident of sexual harassment USAHS shall take steps to ensure equal access to its education programs and activities for both the complainant and respondent, as necessary, including providing supportive or protective measures before the final outcome of an investigation. The University may offer supportive measures to the complainant or respondent before or after filing of a formal complaint or where no formal complaint has been filed. These measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent. Such measures are designed to restore or preserve equal access to the University's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the University's educational environment, or deter sexual harassment. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. The University must maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the University to provide the supportive measures. The Title IX Coordinator must promptly contact the complainant to discuss the availability of supportive measures, consider the complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

Pursuant to the Clery Act, if a complainant alleging an act of rape, fondling, incest, statutory rape, domestic violence, dating violence, or stalking requests protective measures and they are reasonably available, regardless of whether the complainant chooses to report the crime to local law enforcement, USAHS is obligated to comply with a request for a living and/or academic situation change following an alleged sex offense. Factors that might

be considered include the specific need expressed by the complainant; the age of the students involved; the severity of pervasiveness of the allegations; any continuing effects on the complainant; whether the complainant and alleged perpetrator share the same eating areas, class, transportation or job location; and whether other judicial measures have been taken to protect the complainant (e.g., civil protection orders). These measures are designed to protect the Complainant and provide the Complainant with options to avoid contact with the alleged perpetrator. These measures may include a change in academic activities, living, transportation, dining, and working situation as appropriate.

After the initial report of alleged sexual harassment, possible immediate interim suspension can be invoked on the accused (“Respondent”) if there is a reasonable cause to believe the Respondent’s behavior is of such a nature as to pose a threat of harm or injury to the Complainant or any other member of the campus community. The Title IX Coordinator shall work with the Complainant to determine what, if any, protective measures shall be implemented.

### **3. Grievance Process**

#### **Formal Complaint**

Upon receipt of a formal complaint, notice will be provided regarding the grievance process, including any informal resolution process, to the parties who are known. The notice shall provide sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting sexual harassment, and the date and location of the alleged incident, if known. The notice will also include a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process. USAHS will treat complainants and respondents equitably, providing remedies to a complainant where a determination of responsibility for sexual harassment has been made against the respondent, and by following a grievance process that complies with Title IX requirements before the imposition of any disciplinary sanctions or other actions that are not supportive measures.

The parties will be informed that they may have an advisor of their choice, who may be, but is not required to be, an attorney, and may inspect and review evidence. The parties will also be informed of Code of Conduct policies and the consequences for knowingly making false statements or knowingly submitting false information during the grievance process.

The Title IX Coordinator may choose to consolidate formal complaints as to allegations of 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 sexual harassment arise out of the same facts or circumstances. Where a grievance process involves more than one complainant or more than one respondent, references in this section to the singular “party,” “complainant,” or “respondent” include the plural, as applicable.

#### **Investigation**

Notice will be provided simultaneously to the complainant and the respondent in writing that a complaint has been received by USAHS and will be investigated under this Policy. The parties will be provided notice of the allegations, including sufficient details known at the time such as: the identities of the parties involved in the incident, if known, the conduct allegedly constituting sexual harassment and the date and location of the alleged

incident, if known. The written notice will include a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process. The written notice will inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney, and may inspect and review evidence. The written notice will inform the parties of any provision in the University's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process. If, during the course of the investigation, additional allegations surface then the parties will be provided with a supplemental notice of these allegations should they be investigated.

The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rests on the University and not on the parties, provided that the University cannot access, consider, disclose or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychology, 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 University obtains that party's voluntary, written consent to do so for a grievance process under Title IX.

USAHS shall determine, given the circumstances surrounding the complaint, the proper party to conduct the investigation. The proper party may or may not be the Title IX Coordinator and shall be the person best able to conduct an impartial and fair review of the complaint. The investigation will normally include interviewing the complainant(s), respondent(s), witnesses, and other relevant parties and will include a review of any relevant documents and other information. It may include reviewing law enforcement investigation documents (if applicable) and reviewing student and personnel files. Both the complainant and the respondent may provide the investigator(s) with the names of witnesses, documents, and other information. The investigator(s) will exercise his/her discretion in deciding which individuals identified as witnesses during the investigation should be interviewed and which documents or other information should be reviewed. The interviews, meetings, and other proceedings are not recorded by USAHS and may not be recorded by others. The complainant and the respondent are afforded equal procedural rights during the investigation. The complainant and respondent will be able to present evidence and witnesses, including experts.

Written notice shall be provided to both parties and any individual whose participations is expected. Such notice will include the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate.

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, including the evidence upon which the University does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation. Each party may consult with an advisor of their choice during the investigation; however, they are limited to providing support to the party and are not to serve as a representative for the party during the investigative process. Prior to completion of the investigative report, the University will send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties must have at least **10 days** to submit a written response, which the investigator will consider prior to completion of the investigative report. The University must make all such evidence subject to the parties' inspection and review available at any hearing



to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.

The complainant's prior sexual relationships or conduct are neither relevant nor admissible during the investigation and will not be considered, other than the prior sexual relationship or conduct with the respondent if the respondent alleges consent. The fact that a complainant may currently have or had in the past a dating or sexual relationship with the respondent that was consensual is not sufficient by itself to constitute consent and does not preclude a determination that sexual harassment occurred.

At any time prior to or during an investigation, the respondent may accept responsibility for some or all of the alleged violations. The matter will then proceed to the sanctioning phase and any appeal of the sanctioning decision.

The investigator(s) will prepare a report summarizing the interviews conducted and the evidence reviewed. The investigative report must fairly summarize relevant evidence, and, at least **10 days** prior to a hearing (if a hearing is required) or other time of determination regarding responsibility, send to each party and the party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response.

If, after investigation, it is found that the conduct alleged in the formal complaint would not constitute sexual harassment as defined under Title IX even if proved, did not occur in the University's education program or activity, or did not occur against a person in the United States, then the University will dismiss the formal complaint with regard to that conduct for purposes of sexual harassment under Title IX. This does not preclude action under another provision of University policy, including, but not limited to, the USAHS Code of Conduct, Title VII, and/or other disciplinary/investigatory proceedings.

The University will also dismiss a complaint if: a complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein; the respondent is no longer enrolled or employed by USAHS; or specific circumstances prevent USAHS from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein. Written notice will be provided to the parties regarding the dismissal.

### **Informal Resolution**

If the complainant and respondent agree, certain cases may be resolved informally, including through mediation in appropriate cases, following the filing of a formal complaint. If the parties agree to an informal resolution process, the University must provide to the parties a written notice which:

1. Discloses the allegations, the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint, and any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared
2. Obtains the parties' voluntary, written consent to the informal resolution process; and
3. Does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student. Cases involving allegations of sexual assault may not be suitable for mediation. The Title IX Coordinator may also determine that informal resolution is not appropriate based on the facts and circumstances of the particular case. All informal resolutions will be conducted

or overseen by the Title IX Coordinator or designee. Under no circumstances will a complainant be required to resolve a matter directly with the respondent.

If both parties are satisfied with a proposed informal resolution, and the Title IX Coordinator considers the resolution to satisfy USAHS's obligations to provide a safe and non-discriminatory environment, the resolution will be implemented and the informal resolution process will be concluded. If informal resolution does not resolve the matter, the grievance process will resume. At any point in the process, either the complainant or the respondent may elect to end the informal process in favor of proceeding with the formal grievance process. Further, no statements made during the course of informal resolution can be used or disclosed during the formal grievance process, should it proceed.

### **Hearing**

Unless all parties agree to an informal resolution, the University will conduct a live hearing as part of its investigation. The investigator(s) will make all such evidence subject to the parties' inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination. Credibility determinations will not be based upon a person's status as a complainant, respondent, or witness. The University 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. At the live hearing, the decision-maker(s) must permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Such cross-examination at the live hearing must be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally, notwithstanding the discretion of the University under Title IX to otherwise restrict the extent to which advisors may participate in the proceedings. At the request of either party, the University must provide for the live hearing to occur with the parties located in separate rooms with technology enabling the decision-maker(s) and parties to simultaneously see and hear the party or the witness answering questions. Only relevant cross-examination and other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a cross-examination or other question, the decision-maker(s) must first determine whether the question is relevant and explain any decision to exclude a question as not relevant. If a party does not have an advisor present at the live hearing, the University must provide, without fee or charge to that party, an advisor of the University's choice, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party.

Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent. A decision-maker may rely on any statement of a party or witness, regardless of whether the party/witness submits to cross-examination, in reaching a determination regarding responsibility. Live hearings may be conducted with all parties physically present in the same geographic location or, at the University's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other. The University must create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection and review.

#### **4. Determination regarding responsibility**

The decision-maker(s), who cannot be the same person(s) as the Title IX Coordinator or the investigator(s), must issue a written determination regarding responsibility. To reach this determination, the University must apply the preponderance of evidence standard. The written determination must include:

1. Identification of the allegations potentially constituting sexual harassment;
2. A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
3. Findings of fact supporting the determination;
4. Conclusions regarding the application of the University's Code of Conduct to the facts;
5. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the University imposes on the respondent, and whether remedies designed to restore or preserve equal access to the University's education program or activity will be provided by the University to the complainant; and
6. The University's procedures and permissible bases for the complainant and respondent to appeal.

If the decision-maker(s) determines that a violation of University Policy has or may have occurred, he/she will determine an appropriate resolution, including remedial and/or disciplinary action, up to and including termination of the employee, expulsion or suspension of a student, or other reasonable disciplinary sanctions.

The decision-maker(s) shall provide both parties with written notice of its findings and the reasons for such findings simultaneously. The decision-maker(s) shall use the preponderance of evidence standard in making his or her findings. If a violation of this Policy is found, the notice shall provide the sanctions to the respondent and to the complainant, as appropriate under Title IX. The notice shall set forth either party's right to appeal, the identity of the Appeal Officer, and the process and time limit for such an appeal. The determination regarding responsibility becomes final either on the date that the University provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

In addition to discipline against the respondent, resolutions may include remedies for the complainant, which may include steps such as reassignment of a course section or residency, counseling services, medical services, academic support services, or changes to the school's overall services or policies, including altering withdrawal penalties within courses. Any remedies offered would be separate from, and in addition to, any protective or supportive measure that may have been provided prior to the conclusion of any investigation. Resolutions may also include remedies for the broader University population, such as training or changes to policies or services.

## **5. Student Amnesty Policy and Bystander Intervention**

USAHS encourages the reporting of sexual harassment. Sometimes, students may be reluctant to come forward and report an incident of sexual harassment, or serve as a witness, because they are concerned that they may be charged with violating other campus policies, such as USAHS's alcohol or drug policy. In order to encourage reporting of sexual harassment, students who report an incident of sexual harassment, or who serve as witnesses to an incident of sexual harassment, will not face disciplinary sanctions for violations of the student conduct code at or near the time of the incident as long as any such violations did not place the health or safety of any other person at risk, or involve plagiarism, cheating, or academic dishonesty.

## **6. Appeals**

Both parties have the right to appeal a determination regarding responsibility or the University's dismissal of a formal complaint, or any allegations therein, on the following bases:

1. Procedural irregularity that affected the outcome of the matter;
2. Evidence didn't support sanction(s) imposed;
3. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
4. The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

The University will:

1. Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties;
2. Ensure that the decision-maker(s) for the appeal is not the same person as the decision-maker(s) that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator;
3. Ensure that the decision-maker(s) for the appeal complies with the standards set forth in Title IX;
4. Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome;
5. Issue a written decision describing the result of the appeal and the rationale for the result; and
6. Provide the written decision simultaneously to both parties.

The University may offer an appeal equally to both parties on additional bases. Appeals for sexual harassment complaints involving non-student employee respondents will be governed by the procedures in University personnel policies or Faculty Handbook, as well as Title IX, as applicable. If any right of appeal is granted through those policies, both the complainant and the respondent shall have equal rights of appeal.

Any appeal must be filed in writing within five (5) days from the receipt of the notice of resolution. The University will determine the appropriate individual in University leadership to hear any appeal ("Appeal Officer"), depending on the circumstances of the case, including the identity of the respondent. There is a presumption that the decision, and any sanction or discipline, was made properly, and the Appeal Officer may not substitute his or her judgment for that of the decision-maker.

The Appeal Officer shall give both parties timely notice of the receipt of an appeal. Both parties shall be provided the opportunity to make a written submission to the Appeal Officer. The Appeal Officer shall be limited to the record, including any information that was part of the investigation or the resolution hearing. The Appeal Officer shall not conduct another hearing but may conduct interviews with the complainant, respondent, or witnesses in his or her discretion. The party appealing shall have the burden of proof in any appeal. The Appeal Officer shall use the preponderance of evidence standard in the determination of any appeal.

The Appeal Officer shall give written notice to both parties of the outcome of the appeal and the reasons for his or her decision. The decision of the Appeal Officer is final.

## **7. Additional Information**

**Time Frames for Process:** While each situation is different and there can be no way to determine how long an investigation will take, the Title IX Coordinator shall use her best efforts to reach resolution within a reasonable

timeframe not to exceed 60 days, exclusive of any appeals, from the time the complaint is reported to notice of resolution, unless good cause is shown for an extension. The complainant and respondent will be provided with written notice if there is good cause to extend resolution time frame and the reasons for the extension. Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity, or the need for language assistance or accommodation of disabilities.

**Sources of Counseling, Advocacy, and Support:** Victims of Sexual Harassment can receive assistance immediately by calling the local police department (911, if emergency) and local counseling resources listed by campus below. In partnership with ComPsych (a Student Assistance Program provider), USAHS offers free counseling services and online resources whenever and wherever needed. Students (and members of the student's household) may call 844-819-4777 (toll free) and be connected to free and confidential highly trained master's or doctoral level clinicians via phone. Students and household members also have unlimited access to <https://www.guidanceresources.com/groWeb/login/login.xhtml>. Students will need to use "USAHS" as the Web ID to create a free account. USAHS employees may contact the Employee Assistance Program (EAP) by contacting 1-844-819-4777 or online at [www.guidanceresources.com](http://www.guidanceresources.com) (Organization Web ID: USAEAP). EAP is a free, "Confidential Resource" at USAHS, which means that all conversations will remain confidential and will not initiate any type of investigation into the incident. Sexual assault reports must be made by contacting the University's Title IX Coordinator or Deputy Coordinators, who are the appropriate University Officials for receiving reports of sexual assault. USAHS students can contact the following off-campus resources for counseling services: The National Domestic Violence Hotline, 1-800-799-SAFE (7233), or 1-800-787-3224 (TTY). For students at the **USAHS Florida Campuses:** The Betty Griffin Center 24-hour crisis hotlines, Telephone: (904) 824-1555. For students at the **USAHS California Campus:** North County Family Violence Center Prevention Services, 330 Rancheros Dr. San Marcos, CA, Telephone: (760) 798-2835. For students at the **USAHS Austin, Texas Campus:** Victim Services Resources: 24-hour crisis hotlines, Telephone: (512) 974-5037. For students at the **USAHS Dallas, Texas Campus:** [Dallas Area Rape Crisis Center](#) (DARC-C), Telephone: (972) 641-7273