

Sacred Heart University
Title IX Formal Grievance Policy
Effective August 14, 2020

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I. Introduction

This Policy is intended to define, address and remedy sexual harassment via a defined process required by the U.S. Department of Education (USDOE) under new Title IX Regulations, effective August 14, 2020. This Policy applies to all members of the SHU community, including students, faculty and staff. The scope of this Policy is set forth in Section II, below. This Policy contains citations to the applicable Title IX Regulations throughout. See 34 C.F.R. Part 106.

SHU prohibits sexual harassment by faculty, staff, students and those who use SHU facilities. The prohibition applies regardless of the gender of the individuals involved and includes sexual relationships involving a status differential and those between peers, colleagues, and co-workers.

The terms of this Policy supersede any contrary school policies pertaining to the investigation or adjudication of sexual harassment, as defined herein.

This Formal Grievance Policy proceeds in four additional sections.

Section II defines the scope of this Formal Grievance Policy. Under the new Title IX Regulations, sexual harassment must be investigated and adjudicated under the procedures set forth in this policy.

Section III contains the U.S. Department of Education's statements regarding equitable treatment under the Title IX Regulations. The concepts of equitable treatment include the provision of supportive measures and waiting until the grievance process concludes to make conclusions.

Section IV contains SHU's Formal Grievance Process, as required by the Regulations. This section contains information on filing a Formal Complaint of sexual harassment, the investigation process, the role of the Title IX Coordinator, Title IX's live hearing requirements, the appeals process, and other topics. Students, faculty, and staff should consult this section to learn about the process SHU will use to investigate and adjudicate allegations of sexual harassment.

Section V explains that SHU will not retaliate against any person for that person's involvement in the Title IX process.

SHU has designated a Title IX Coordinator to oversee the investigation and resolution of reports of sexual harassment and SHU's compliance with Title IX. Any questions about this policy, SHU's processes under Title IX, or reports of alleged sexual harassment should be directed to the Title IX Coordinator:

Mia James Westendorp
Title IX Coordinator
Office of Human Resources
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titleixcoordinator@sacredheart.edu

The Title IX Coordinator, in conjunction with the Executive Director of Human Resources (for faculty and staff matters), will oversee all matters relating to sexual harassment on campus, including distribution of policies, educational programs, investigations, policy enforcement, and follow-up with complainants and respondents in investigations. Any questions regarding this Formal Grievance Policy or Title IX generally may be directed to the Title IX Coordinator.

II. Scope of Policy

This Formal Grievance Policy will apply to “sexual harassment” in a SHU “education program or activity” against a person in the United States, per USDOE Regulations, effective August 14, 2020. 34 C.F.R. § 106.44(a).

A. Definitional Requirement

“Sexual harassment” is defined in the Regulations (§ 106.30) to be conduct on the basis of sex that satisfies one or more of the following:

1. A SHU employee conditioning the provision of an aid, benefit, or service on an individual’s participation in unwelcome sexual conduct (“quid pro quo”);
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 SHU’s education program or activity; or
3. Sexual assault, dating violence, domestic violence, or stalking. (These terms are defined in the Definitions section).

B. Jurisdictional Requirement

An “education program or activity” includes locations, events, or circumstances over which SHU exercises substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by SHU. USDOE’s Regulations exclude any “education program or activity” that does not occur in the United States. (§ 106.44(a).)

If alleged sexual misconduct does not satisfy the USDOE’s definitional or jurisdictional requirements, such as off-campus sexual misconduct alleged to have an on-campus effect, then SHU has discretion to address it outside of this Policy.

C. Other Definitions

The terms “Complainant” and “Respondent” are used throughout this Policy. A Complainant is an individual who is alleged to be the victim of conduct that could constitute sexual harassment. A Respondent is an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment. (§ 106.30.)

Other terms used within this Policy, like “Supportive Measures” and “Formal Complaint,” are defined below. All relevant terms, including Consent and Incapacitation, are defined in the Definitions section.

III. USDOE Statements of Equitable Treatment

A. As required by USDOE’s Regulations, SHU’s Formal Grievance Process will “treat complainants and respondents equitably by [1] offering supportive measures ... to a complainant, and [2] by following a grievance process that complies with [the Title IX Regulations] before the imposition of any disciplinary sanctions or other actions that are not supportive measures ... against a respondent.” (106.44(a); 106.45(b)(1)(i).) This Policy explains the new Title IX Regulations’ requirements.

Supportive measures also may be offered as needed to respondents and other members of the SHU community who may be affected by sexual misconduct.

B. The Title IX Regulations define “supportive measures” as “non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent.” They may be sought or provided before or after the filing of a Formal Complaint, or where no Formal Complaint has been filed. “Such measures are designed to restore or preserve equal access to the [school’s] education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the [school’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 or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.

SHU will keep any supportive measures provided to the complainant or respondent confidential, to the extent possible. However, supportive measures that impact other members of the SHU community (e.g. mutual no-contact orders, where the other party must be made aware of the order and its implications), may be disclosed in order to enforce them. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

C. An individual’s status as a respondent will not be considered a negative factor during consideration of the grievance. Respondents are entitled to, and will receive the benefit of, a presumption that they are not responsible for the alleged conduct unless and until the grievance process concludes and a determination regarding responsibility is issued. Similarly, credibility determinations will not be based on a person’s status as a complainant, respondent, or witness. (106.45(b)(1)(ii-iv).)

D. SHU’s Formal Grievance Process will provide remedies to a complainant only if the grievance process described in this Policy results in a determination that the respondent is responsible for sexual harassment. Remedies are designed to restore or preserve equal access to the school’s education program or activity, and they may include the same individualized services as supportive measures. Remedies may be disciplinary and punitive. (106.45(b)(1)(i).)

E. Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process (Title IX administrators) will not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent in the grievance process. SHU will provide necessary and appropriate training to each administrator involved in the Title IX process. Training materials will not rely on sex stereotypes and will promote impartial investigations and adjudications of Formal Complaints of sexual harassment. (106.45(b)(1)(iii).)

IV. Formal Grievance Procedure

This portion of the Policy outlines the steps taken to initiate a grievance, as well as USDOE's procedural requirements for investigation and adjudication of Formal Complaints.

A. Formal Complaint

- i. The submission of a Formal Complaint triggers the Formal Grievance Process described herein when received by the Title IX Coordinator. (These terms are defined in the Definitions section.)
The Title IX Regulations define a Formal Complaint as "a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment [as defined by the Title IX Regulations] against a respondent and requesting that [SHU] 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." A Formal Complaint must be in writing and may be filed with the Title IX Coordinator in person, by mail, or by email.
- ii. The Formal Complaint must contain the complainant's physical or digital signature, or some other indication that the complainant is the person filing it. (106.30.)
- iii. If SHU receives an allegation of sexual misconduct that falls within the Formal Grievance Policy's scope (it meets both the Title IX Regulations' jurisdictional requirements and definition of "sexual harassment" (see Section II)) but no Formal Complaint is filed, then the new Title IX Regulations prevent SHU from administering a formal grievance process that may permit "the imposition of any disciplinary sanctions or other actions ... against a respondent." Supportive measures, however, may still be given. According to USDOE, the purpose of the Formal Complaint is to clarify that the complainant (or the Title IX Coordinator) believes that the school should investigate the allegations of sexual harassment against the respondent. 34 C.F.R. § 106.44(a); 34 C.F.R. § 106.45(b)(1)(i); see also 34 C.F.R. § 106.8(c).

Accordingly, SHU strongly encourages complainants to file Formal Complaints, so that the required Formal Grievance Process described in this Policy can be initiated. If the alleged conduct meets the Regulations' definitional and jurisdictional requirements, the law now requires a Formal Complaint before SHU can pursue a full investigation or explore the

possibility of an informal or early resolution, which occur before holding a disciplinary hearing or issuing sanctions.

- iii. After filing a Formal Complaint, a complainant may withdraw their Formal Complaint at any time by providing written notice to the Title IX Coordinator. That withdrawal will result in dismissal of the Formal Grievance Process unless the Title IX Coordinator takes action under subsection A.iv immediately below. (See also Subsection D.v. below re permissive dismissal.)
- iv. A Title IX Coordinator may sign a Formal Complaint to initiate or continue the Formal Grievance Process described herein, if necessary to fulfill the school's duties under Title IX to not be deliberately indifferent to actual knowledge of sexual misconduct. Signing a Formal Complaint does not make a Title IX Coordinator a complainant or otherwise a party. (106.30.)
- v. SHU may, but is not required to, consolidate Formal Complaints arising out of the same factual circumstances in two scenarios:
 - 1. Where there is more than one complainant or respondent;
 - 2. Where a complaint has also been filed by the respondent against the complainant. (106.45(b)(4).) In such cases, the Formal Grievance Process for a later-filed complaint may be consolidated into an earlier-filed process rather than re-start from the beginning (e.g., the new charges may be considered in the course of a pre-existing investigation).
- vi. Mandatory Dismissal (106.45(b)(3)(i, iii).)
 - 1. If a Formal Complaint is filed, SHU will investigate its allegations.
 - 2. If the conduct alleged does not meet the Formal Grievance Policy scope requirements in Section II for "sexual harassment" as defined by USDOE, SHU must dismiss the Formal Complaint under this Policy.
 - 3. In such circumstance, SHU will promptly and simultaneously send written notice to each party of the dismissal of the Formal Complaint and the reasoning.

B. Title IX Coordinator Initial Responsibilities

- i. Upon receipt of any report of alleged sexual misconduct, the Title IX Coordinator will promptly contact the complainant to discuss the availability of supportive measures and explain the process involved in filing a Formal Complaint. The Title IX Coordinator will inform the complainant of the availability of supportive measures with or without the filing of a Formal Complaint, and will consider the complainant's wishes with respect to supportive measures. (106.44(a).)
- ii. Supportive measures will be assessed and may be offered as needed to complainants, respondents and other members of the SHU community who may have been affected by the allegations at issue. See Section III.B. regarding supportive measures.
- iii. The Title IX Coordinator may conduct a limited, threshold investigation:
 - 1. to determine if the Formal Grievance Policy scope requirements in Section II for § 106.30 "sexual harassment" have been met;

2. if the Complainant does not file a Formal Complaint, to determine whether the school's Title IX obligations require the Title IX Coordinator to "sign" a Formal Complaint; and
3. for other limited purposes; *provided that* if a Formal Complaint is filed or signed, the Title IX Coordinator will fulfill the terms of this Formal Grievance Process, including the notice provisions immediately below and the more thorough investigation process described below even if it is somewhat duplicative of the threshold investigation.

If the respondent is a current employee, the Deputy Title IX Coordinator for HR matters may conduct or participate in the threshold investigation.

- iv. The Title IX Coordinator may remove a respondent from the education program or activity on an emergency basis, provided that the Title IX Coordinator undertakes an individualized safety and risk analysis, and determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal. The respondent must receive notice and an opportunity to challenge the decision immediately following such removal. (106.44(c).)
- v. The Title IX Coordinator, or a Deputy Title IX Coordinator for employee matters, may place a non-student employee respondent on administrative leave during the pendency of a Formal Grievance Process. (106.44(d).)

C. Notice of Allegations (106.45(b)(2))

- i. Upon receipt of a Formal Complaint, SHU will provide written notice to known parties of the following:
 1. Notice of SHU's Formal Grievance Process by providing access to this policy.
 2. Notice of the allegations potentially constituting sexual harassment as defined in 106.30, including sufficient details known at the time. Sufficient details are defined in the Title IX Regulations to include:
 - a. The identities of the parties involved in the incident, if known;
 - b. The conduct allegedly constituting sexual harassment under 106.30; and
 - c. The date and location of the alleged incident, if known.
 3. Per the Title IX Regulations, the written notice must also include the following statements:
 - a. The respondent is presumed not responsible for the alleged conduct.
 - b. A determination regarding responsibility is made at the conclusion of the grievance process.
 - c. The parties may have an advisor of their choice, who may be, but is not required to be, an attorney.
 - d. The parties may inspect and review evidence.
 - e. The parties are prohibited from knowingly making false statements or knowingly submitting false information during the grievance process.
 4. The notice must be given as soon as practicable and with sufficient time to prepare a response before any initial investigation interview.

- ii. If, at any point during the course of the investigation, SHU decides to investigate allegations that are not included in the original notice, it will provide notice of the additional allegations to the parties.

D. Investigation Procedure

- i. The Title IX Coordinator will appoint an Investigator to investigate the allegations subject to the Formal Grievance Process. The investigation may include, among other steps, interviewing the complainant, the respondent, and any witnesses; reviewing law enforcement investigation documents if applicable; reviewing relevant student or employment files; and gathering and examining other relevant documents, social media and evidence.

The Investigator will attempt to collect all relevant information and evidence. While the Investigator will have the burden of gathering evidence, it is crucial that the parties present evidence and identify witnesses to the Investigator so that they may be considered during the investigation. As described below in Section IV.E.iii.3., while all evidence presented at a hearing by the parties will be considered, the adjudicator(s) may, in its/their discretion consider relevant evidence.

The investigation file should contain all information gathered during the investigation that is potentially relevant to the alleged misconduct; the Investigator should not filter or exclude evidence or decide the weight or credibility of evidence, unless the evidence is clearly irrelevant or not pertinent to the facts at issue.

Following the investigation, the Investigator will draft an investigation report succinctly describing all collected information. The Investigator will not make any recommendation as to whether a Policy violation has occurred or potential sanctions.

ii. Evidentiary Considerations

- 1. While investigating the allegations of any Formal Complaint of sexual harassment, the Investigator will conduct an objective evaluation of all relevant evidence. Relevant evidence is any evidence that may tend to make the allegations at issue more or less likely to be true (both corroborating and “exculpatory” or contradicting evidence). (106.45(b)(1)(ii).)
- 2. Standard of evidence
 - a. In assessing allegations of sexual harassment and conducting its Formal Grievance Process, SHU will use a preponderance of the evidence standard. (106.45(b)(1)(vii).) The “preponderance” standard means that the alleged sexual misconduct is “more likely than not” to have occurred.
 - b. That standard will apply to all Formal Complaints of sexual harassment, regardless of whether the Formal Complaint is against a student or an employee or faculty member. (106.45(b)(1)(vii).)

- iii. As dictated by the Title IX Regulations at 34 C.F.R. § 106.45(b)(5), when investigating a Formal Complaint and throughout the grievance process, SHU will:
 - 1. Ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on the school and not on the parties. (106.45(b)(5)(i).) This means that the school's decision-makers will use the preponderance standard. See also Subsection D.i. above.
 - 2. Provide an equal opportunity for the parties to present witnesses and other relevant evidence. (106.45(b)(5)(ii).)
 - 3. Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence. (106.45(b)(5)(iii).)
 - a. That said, SHU expects the parties to respect the sensitive nature of allegations of sexual misconduct and to respect other parties' sense of confidentiality.
 - b. While SHU cannot prevent a party from discussing the allegations under investigation, the Title IX Regulations and this Policy prohibit retaliation against any person because they participate or refuse to participate in any part of the school's sexual misconduct processes. See Section V. below.
 - c. Consistent with FERPA's prohibition on re-disclosure of confidential information, any person who receives another person's confidential information solely as a result of participation in any investigation or proceeding under this Policy, is prohibited from using or disclosing such confidential information outside of such forums without express consent or for any improper purpose. This provision only applies to other people's confidential information, as a party is never restricted from discussing their own experience. This provision does not apply to any information learned outside of an investigation or proceeding under this Policy.
 - 4. Provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice. The advisor may be, but is not required to be, an attorney. SHU will not limit the choice or presence of an advisor for either the complainant or respondent in any meeting or grievance proceeding; however, SHU will restrict the extent to which the advisor may actively participate in the proceedings, which will apply equally to both parties' advisors. (106.45(b)(5)(iv).)
 - a. Advisors are not permitted to directly participate in any proceeding, except as specified in Section IV.E.iv. below related to hearings. Advisors may be present solely to advise or support the party and are prohibited from speaking directly to the investigator, adjudicators, other parties, or witnesses in such proceedings.
 - 5. Provide written notice to each party of the date, time, location, participants, and purposes of each Formal Grievance Process meeting at which they are invited to participate, with sufficient time for the party to prepare to participate.
 - a. For all hearings, SHU will provide 10 days' notice;

- a. A complainant notifies the Title IX Coordinator in writing that he or she would like to withdraw the Formal Complaint or any allegation therein;
 - b. The respondent is no longer enrolled or employed by the school; or
 - c. Specific circumstances prevent SHU from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.
(106.45(b)(3)(ii).)
2. In all such circumstances, supportive measures may be continued.
3. Under the first circumstance, the Title IX Coordinator may choose in his or her discretion to sign the Formal Complaint to continue the Formal Grievance Process. See also Sections IV.A.iii-iv, above.
4. Under the second circumstance:
 - a. The respondent's student or employment records may be marked to indicate their departure during a disciplinary process (which may resume if they return to SHU), but will not indicate that such respondent was found or assumed responsible for any alleged misconduct pending at the time of departure.
 - b. The respondent may be required to notify the Title IX Coordinator if they intend to visit any building owned or controlled by SHU or a student organization that is officially recognized by SHU, or if they otherwise seek to attend any SHU education program or activity or event, so that the complainant may be given an opportunity to receive supportive measures if needed.
5. If permissive dismissal is granted under this section, the Formal Grievance Process will cease. Under the Title IX Regulations, effective August 14, 2020, no further investigation will occur, and no disciplinary sanctions or actions can be imposed against the respondent. See Section IV.A.ii. (citing 34 C.F.R. § 106.44(a); 34 C.F.R. § 106.45(b)(1)(i); 34 C.F.R. § 106.8(c).)
6. A permissive dismissal under this section differs from a mandatory dismissal under Section IV.A.vi. for alleged conduct that does not meet the Formal Grievance Policy scope requirements contained in Section II for § 106.30 "sexual harassment."

E. Adjudication

- i. Adjudication via hearing
 1. SHU's Formal Grievance Process will culminate in a live hearing before one or more adjudicators, who will consider all evidence presented (subject to the terms below) and determine whether a respondent is responsible or not responsible for a violation of this Policy, based on the criteria of a preponderance of evidence. Under that standard, the burden of proof is met, and a respondent may be found responsible for a policy violation, if the adjudicator(s) determine that it is more likely than not that the respondent committed the conduct alleged. Respondents are entitled to, and will receive the benefit of, a presumption that they are not responsible for the alleged conduct until the grievance process concludes and a determination regarding responsibility is issued. If the

respondent is found responsible for a violation of this Policy, the respondent may be subjected to disciplinary action. (106.45(b)(6)(i).)

2. The adjudicators will be selected by the Title IX Coordinator and may vary based on the enrollment or employment status of the respondent.
 - a. Student-respondent cases typically will be adjudicated by a three-member panel of trained SHU faculty and/or staff. One of the three panel members will be designated as the chairperson. A separate adjudicator who is not a member of the three-member panel is also permitted to preside as a hearing officer and make evidentiary rulings at the hearing.
 - b. Employee and Faculty-respondent cases typically will be adjudicated by the Executive Director for Human Resources.

The adjudicators will not be the same person as the Title IX Coordinator or the Investigator.

3. At the request of either party, SHU will allow the live hearing to take place with the parties located in separate rooms. Technology must enable the adjudicator(s) and parties to simultaneously see and hear the party or witness answering questions. Live hearings may, then, be conducted with all parties physically present in the same location, or any or all parties, witnesses and other participants may appear at the live hearing virtually.
4. SHU will create a transcript or recording (audio or audiovisual) of any adjudicative hearing. It will be available to the parties for inspection and review in compliance with FERPA.

ii. Information Submission

1. The Title IX Coordinator will identify the adjudicators to the parties five days in advance of the hearing. Either party may challenge a named adjudicator if believed to have a conflict of interest or bias. A challenge must be delivered in writing to the Title IX Coordinator at least two days in advance of the hearing, specifying the reasons for such belief. The Title IX Coordinator has sole discretion to keep or replace the challenged adjudicator, and if replaced, will postpone the hearing to allow for a replacement adjudicator.
2. Five days in advance of the hearing, the parties will identify their expected attendees (including any advisor) and their expected witnesses (including themselves), including the witnesses' expected sequence, via writing to the Title IX Coordinator, who will supply the disclosure to the other party so that they can be prepared. The parties will not be strictly bound to their disclosures, but they should be submitted in good faith.
3. Typically, the parties will be in charge of choosing and supplying their own witnesses at the hearing. When necessary for the pursuit of truth and to gather evidence sufficient to reach a determination, the adjudicators will have discretion to ask the Title IX Coordinator to request additional witnesses after receipt of the parties' witness lists;

recognizing, however, that the school has no ability to compel any witness to attend. Any such requested witness will be disclosed to the parties.

iii. Evidence

1. At the hearing, all relevant evidence will be objectively evaluated. Relevant evidence is any evidence that may tend to make the allegations at issue more or less likely to be true (corroborating and exculpatory or contradicting evidence). Credibility determinations will not be based on a person's status as a complainant, respondent, or witness. (106.45(b)(1)(ii).)
2. The Title IX Regulations state that questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless:
 - a. "offered to prove that someone other than the respondent committed the conduct alleged" or
 - b. "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."(34 C.F.R. § 106.45(b)(6)(i).)
3. Relevant evidence presented at a hearing by the parties will be considered.

iv. Cross-examination

1. As stated above in Section IV.D.iii.4., each party may be accompanied to the hearing by the advisor of their choice. The advisor may be, but is not required to be, an attorney. Advisors may be present solely to advise or support the party and are prohibited from speaking directly to the investigator, adjudicators, other parties, or witnesses during the hearing, except for conducting cross examination.
2. At the hearing, each party's advisor is permitted 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. (106.45(b)(6)(i).) However, the adjudicator(s) will typically ask questions before either advisor.
3. If a party does not have an advisor present at the live hearing, SHU will provide without fee or charge to that party, an advisor who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party. (106.45(b)(6)(i).)
 - a. If a party does not have an advisor for the hearing, the party must notify the Title IX Coordinator no later than the party's pre-hearing disclosures. (See Section IV. E. ii. 2., above.) Otherwise, the hearing may be delayed, and the appointed advisor may have less time to prepare for the hearing.
 - b. *Process for appointing advisor: pool of trained advisors will be provided to the party for them to choose.*
4. Only relevant cross-examination and other questions may be asked of a party or witness. See Section IV.E.iii., above, regarding relevancy. 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. (106.45(b)(6)(i).)

5. If a party or witness does not submit to cross-examination at the live hearing, the adjudicator(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility. However, the adjudicator(s) cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions. (106.45(b)(6)(i).)

v. Determination Regarding Responsibility

1. The adjudicator(s) will issue a written determination following the hearing. Based on the preponderance of the evidence, the adjudicator(s) will decide if the respondent is responsible for engaging in the conduct alleged, and if so, what disciplinary action may be appropriate.
2. The written determination will include:
 - a. Identification of the allegations potentially constituting sexual harassment as defined in 106.30;
 - b. 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 evidence, and hearings held;
 - c. Findings of fact supporting the determination;
 - d. Conclusions regarding the application of this Policy to the facts;
 - e. A statement of, and rationale for, the result as to each allegation, including:
 - i. A determination regarding responsibility;
 - ii. Any disciplinary sanctions the adjudicator(s) imposes on the respondent; and
 - iii. Whether remedies designed to restore or preserve equal access to SHU's education program or activity will be provided to the complainant; and
 - f. Procedures and permissible bases for the parties to appeal the determination. (106.45(b)(7)(ii).)
3. The written determination will be provided to the parties simultaneously.
4. Supportive measures also may be provided to the complainant that are designed to restore or preserve equal access to SHU's education program or activity, even if they are not listed in the written determination. Remedies and supportive measures that do not impact the respondent should not be disclosed in the written determination; rather, the determination should simply indicate that "remedies will be provided to the complainant." 85 Fed. Reg. at 30425. The Title IX Coordinator is responsible for effective implementation of any remedies and supportive measures. (106.45(b)(7)(iv).)

vi. Range of Sanctions and Remedies (106.45(b)(1)(vi))

1. The following sanctions against a student who has been found responsible for violating the Formal Grievance Policy will vary depending on the severity of the violation. Information regarding the definition(s) of specific sanctions is located in the Student Code of Conduct and Community Standards. Each sanction has been formally defined in the Student Code of Conduct.

- i) Sexual Harassment Violations: Any student found responsible for violating the Formal Grievance Policy will likely receive a sanction ranging from warning to expulsion depending on the severity of the incident, and taking into account any previous disciplinary violations.
- ii) Sexual assault/misconduct Violations: Any student found responsible for violating the policy by non-consensual or forced sexual contact (where no intercourse has occurred) will likely receive a sanction ranging from probation to expulsion, depending on the severity of the incident, and taking into account any previous disciplinary violations. Any person found responsible for violating the policy by non-consensual or forced sexual intercourse will likely face a sanction of suspension or expulsion.
- iii) Intimate Partner/Dating Relationship Violence Violations: Any student found responsible for violating the policy by intimate partner violence will likely receive a sanction ranging from warning to expulsion depending on the severity of the incident, and taking into account any previous disciplinary violations.
- iv) Stalking Violations: Any student found responsible for violating the policy by stalking will likely receive a sanction ranging from warning to expulsion, depending on the severity of the incident, and taking into account any previous disciplinary violations.

vii. Finality

The determination regarding responsibility becomes final either:

1. if an appeal is filed, on the date that SHU provides the parties with the written determination of the result of the appeal, or
2. if an appeal is not filed, the date on which an appeal would no longer be considered timely. (106.45(b)(7)(iii).)

F. Appeals

- i. Both parties may appeal from a determination regarding responsibility, or from a dismissal of a Formal Complaint or any allegations therein, on the following bases:
 1. A procedural irregularity, meaning an alleged failure to follow the process outlined in this Policy, that affected the outcome of the matter;
 2. New evidence *that was not reasonably available to the appealing party at the time of the hearing or dismissal*, that could affect the outcome of the matter; and

3. The Title IX Coordinator, Investigator, or adjudicator(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 notice of appeal must describe specifically the basis upon which such conflict of interest or bias is alleged and how it allegedly affected the outcome.
- ii. Appeals must be submitted in writing to the Title IX Coordinator within 10 days of the date that the written adjudication determination is provided to the parties. The written appeal must state the grounds for the appeal, include the name of the appealing party, and bear evidence that it was submitted by the appealing party. The appeal statement must contain a sufficient description supporting the grounds for appeal. If the grounds for appeal is to consider new evidence that could affect the outcome of the matter that was not reasonably available to the appealing party before or during the time of the hearing or the dismissal, then the written appeal must include such information. The Title IX Coordinator retains discretion to verify and/or waive minor procedural variations in the timing and content of the appeal submission.
- iii. Upon receipt of an appeal, SHU will
 1. Notify the other party in writing when the 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 original determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator;
 3. Ensure that the decision-maker(s) for the appeal does not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent, and that the decision-maker(s) for the appeal has received the appropriate and necessary training;
 4. Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome.
(106.45(b)(8)(iii).)
- iv. SHU will provide a copy of the appeal to the non-appealing party. The non-appealing party may submit a written statement within 10 days that may seek to affirm the initial decision and/or respond to the appeal statement.
- v. The Title IX Coordinator has discretion to impose or withhold any applicable sanctions or supportive measures prior to the appeal deadline and prior to the resolution of any appeal.
- vi. The decision-maker(s) for the appeal will issue a written decision describing the result of the appeal and the rationale for the result within a reasonably prompt time frame following receipt of all appeals materials. The appeal will determine whether the adjudicator(s) made an error on the grounds alleged in the appeal statement. The appeal is typically determined based on the existing record, but the appeal decision-maker(s) will have discretion to

convene a limited or full hearing if needed. The appeal decision will be given simultaneously to both parties. (106.45(b)(8)(iii)(E-F).)

G. Informal Resolution

- i. At any time prior to reaching a determination regarding responsibility, SHU may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication. SHU may not offer an informal resolution process unless a Formal Complaint is filed. Both parties must agree to participate in an informal resolution process, and if they do, the Formal Grievance Process stops. Either party may withdraw from the informal process and re-start the Formal Grievance Process at any time before an informal resolution is reached. SHU will not require the parties to participate in an informal resolution process, and will not require them to waive their rights to a Formal Grievance Process. (106.45(b)(9).)
- ii. SHU will not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student. (106.45)(b)(9)(iii).)
- iii. Prior to facilitating an informal resolution process, SHU will:
 1. Provide written notice to the parties disclosing the following:
 - a. The allegations;
 - b. 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;
 - c. The fact that, at any time prior to agreeing to an informal resolution, any party may withdraw from the informal resolution process and resume the Formal Grievance Process; and
 - d. Any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.
 2. Obtain the parties' voluntary, written consent to the informal resolution process. (106.45(b)(9)(i-ii).)
- iv. If the parties agree to a resolution during an informal resolution process, the Formal Complaint will be deemed withdrawn and the Formal Grievance Process will be terminated. However, the resolution will be considered binding, and its breach will give rise to a new Formal Grievance Process, which may restart the Formal Grievance Process.

V. Retaliation (34 C.F.R. § 106.71.)

- A. No person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX, its regulation, or this Policy, 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. "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 or this [Policy], constitutes retaliation.”

- B. SHU will “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 Title IX, FERPA, or as otherwise required by law, or to carry out SHU’s Title IX procedures.
- C. The exercise of rights protected under the First Amendment does not constitute retaliation.
- D. Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a sexual misconduct grievance proceeding does not constitute retaliation. A determination regarding responsibility alone, however, is not sufficient to conclude that any party made a materially false statement in bad faith.
- E. Complaints alleging retaliation may be filed with the Title IX Coordinator.

In the event an individual alleges that the Title IX Coordinator retaliated against them, the individual may file a complaint with Robert M. Hardy, Vice President of Human Resources. The Title IX Coordinator will not oversee the investigation or adjudication of a complaint alleging that they engaged in retaliation.