

# NEW JERSEY CITY UNIVERSITY INTERIM POLICY ON *SEX-BASED MISCONDUCT*

## I. POLICY STATEMENT

New Jersey City University (“NJCU”) prohibits *sex-based misconduct*,<sup>1</sup> consisting of *sex discrimination* and *sex-based harassment*, as defined herein in any *education program or activity* that it operates. NJCU’s Notice of Nondiscrimination is located at [Notice of Non-Discrimination | New Jersey City University \(njcu.edu\)](#).

This Policy has been drafted to comply with the requirements of Title IX and its implementing regulations, 34 C.F.R. Part 106, including the final Title IX regulations issued by the U.S. Department of Education’s Office for Civil Rights in April 2024.<sup>2</sup>

NJCU has adopted procedures that provide for the prompt and equitable resolution of complaints made by students, employees, or other individuals who are participating or attempting to participate in its *education program or activity*, or by the Title IX Coordinator, alleging any action of *sex-based misconduct* that would be prohibited by Title IX or the Title IX regulations.

This Policy applies to incidents that occur on or after August 1, 2024.

NJCU prohibits discrimination based on all protected characteristics in its New Jersey City University Policy Prohibiting Discrimination in the Workplace. However, *sex-based misconduct* is addressed through this Policy and process.

Appendix B provides information regarding disability accommodations for the *parties*.

## II. JURISDICTION

This Policy governs the conduct of NJCU students, employees, and third *Parties* participating in a NJCU *education program or activity* or engaging in conduct that has reasonable connection to NJCU.<sup>3</sup>

Conduct that occurs under NJCU’s *education program or activity* includes:

---

<sup>1</sup> All italicized terms are defined within the Policy or in Appendix A.

<sup>2</sup> This Policy has also been drafted to comply with Title VII of the Civil Rights Act of 1964, relevant provisions of the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics (Clery Act), as amended by relevant provisions of the Violence Against Women Reauthorization Act of 2013 (VAWVA), and with the New Jersey Law against Discrimination.

<sup>3</sup> Third parties can include, for example, paid or unpaid interns, independent contractors, vendors, guests, applicants for admission and employment and other non-employees.

- Any academic, extracurricular, research, occupational training or any other *education program or activity* by NJCU receiving federal financial assistance. Off-campus activity is covered under this Policy if it is part of NJCU’s *education program or activity*.
- Conduct that occurs in a building owned or controlled by a student organization that is officially recognized by NJCU and conduct that is subject to NJCU’s disciplinary authority under NJCU’s Student Code of Conduct:  
<https://www.njcu.edu/about/njcu-policies-and-procedures/university-policy-library/student-services-and-responsibilities-policies/student-code-conduct>
- With regard to conduct that occurs outside of United States but within NJCU’s program or activity, NJCU prohibits and will address allegations of *sexual assault, dating violence, domestic violence* and *stalking* and other sexual misconduct allegations creating a *hostile environment* at NJCU.
- Online harassment: When harassing communications prohibited by this Policy occurs through websites, social media and other online venues over which NJCU has no control, NJCU will engage to address and mitigate the effects.
- All vendors serving NJCU through third-party contracts are subject to this Policy and procedures.

NJCU’s Title IX Coordinator will select the appropriate process to use based upon the nature of the conduct reported, the role of the respondent, and whether the conduct occurred within its education program or activity.

If all elements of jurisdiction are met, NJCU will investigate the allegations according to the procedures as set forth in the Policy as appropriate unless informal resolution is pursued or unless there are grounds for dismissal of the complaint. Any such dismissals shall be subject to appropriate appeal rights under this Policy as outlined in the “dismissals” section, XVII.

NJCU is not obligated to act in response to information that was provided by a person during a public event to raise awareness about *sex-based harassment* that was held on campus or through an online platform sponsored by NJCU unless it indicates an imminent and serious threat to the health or safety of a *complainant, students, employees*, or other persons. However, in all cases this information can be used to inform efforts to prevent *sex-based harassment*.

### III. OVERVIEW

NJCU's procedures under this Policy provides for the prompt and equitable resolution of *sex-based misconduct* complaints, alleging *sex discrimination* or *sex-based harassment*.

**Sex discrimination**, as defined by Title IX, includes discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity, and is further defined in Section V.

**Sex-based harassment**, as defined in Section V, means sexual harassment and other harassment on the basis of sex, including on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and/or gender identity when it takes the form of:

- Hostile environment harassment
- Quid pro quo harassment;
- Dating Violence and Domestic Violence;
- Specific Offenses (i.e. rape, sodomy, sexual assault);
- Stalking;
- Sexual exploitation.

**Retaliation** is prohibited under this Policy. Retaliation is adverse action, including intimidation, threats coercion or discrimination against any person, by NJCU student, employee, or a person authorized by NJCU to provide benefit, or service under NJCU's *education program or activity*, for the purpose of interfering with any right of privilege secured by law or this policy, or because the person has engaged in protected activity, including reporting information, making a complaint, testifying, assisting, or participating or refusing to participate in any manner in an investigation for resolution process under this Policy.

*Peer Retaliation* is also prohibited.

NJCU is obligated to ensure that the *resolution process* is not abused for retaliatory purposes. The Title IX Coordinator will evaluate a counter-complaint to ensure that it was made in good faith and not potentially retaliatory.

#### **IV. WHO CAN MAKE A COMPLAINT UNDER THIS POLICY?**

The following people have a right to make a complaint of *sex-based misconduct* under this Policy:

- A student or *employee* of NJCU who is alleged to have been subjected to conduct that could constitute *sex-based misconduct*;
- A person other than a student or employee of NJCU who is alleged to have subjected to conduct that could constitute *sex-based misconduct* under this Policy at a time when that individual was participating or attempting to participate in NJCU's *education program or activity*

- A parent, guardian, or other authorized legal representative with the legal right to act on behalf of a *complainant* or
- NJCU's Title IX Coordinator initiating a complaint on their behalf.

## V. PROHIBITED SEX-BASED MISCONDUCT DEFINED

This Policy prohibits the following types of *sex-based misconduct*: (1) **sex discrimination** and (2) **sex-based harassment**, as defined below, based upon the totality of the facts and circumstances involved in the incident.

A. The following conduct constitutes *sex discrimination*:

### 1. Discrimination based on Gender Identity

Unwelcome conduct directed toward a person based on their deeply felt, inherent sense of their gender, which may or may not be different than their sex assigned at birth, is prohibited under the Policy.

### 2. Discrimination based on Past, Present, or Potential Pregnancy or Related Conditions

Subjecting a person to shame, punishment, unwanted sexual attention, or unwanted conduct based on past, present, or potential pregnancy or related conditions is prohibited under the Policy.

For the purposes of this definition, pregnancy or related conditions includes, the following as disclosed, without any requirements for documentation:

- (i) Pregnancy, childbirth, termination of pregnancy, or lactation;
- (ii) Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation;
- (iii) Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions

Further discussion regarding pregnancy or related conditions and NJCU's obligations for pregnancy accommodations are discussed in Appendix C.

### 3. Discrimination based on Sex Characteristics

Unwelcome conduct directed toward a person based on their physiological sex characteristics, which include a person's anatomy, hormones, chromosomes

associated with male or female bodies, or intersex traits is prohibited under the Policy.

#### 4. Discrimination Based on Sex Stereotypes

Unwelcome conduct directed toward a person based on nonconformity with stereotypical notions of how someone of their sex, or perceived sex, is expected to act or appear, or that seeks to restrict a community member from participating in activities that are not stereotypically associated with that community member's sex, or perceived sex, is prohibited under the Policy.

#### 5. Discrimination Based on Sexual Orientation

Unwelcome conduct directed toward a person based on their emotional, romantic, or sexual attraction to a particular gender or sex is prohibited under the Policy.

### B. The following conduct constitutes *sex-based harassment*:

#### 1. Hostile Environment Harassment

Hostile environment *sex-based harassment* is conduct that is: (1) unwelcome; (2) *sex-based*; (3) subjectively and objectively offensive, and (4) so severe OR pervasive, (5) that it results in a limitation of or denial of a person's ability to participate in or benefit from NJCU's *education program or activity*.

The following factors are considered in determining whether a hostile environment harassment has occurred:

- (a) The degree to which the conduct affected the *complainant's* ability to access NJCU's *education program or activity*
- (b) The type, frequency, and duration of the conduct
- (c) The *parties'* ages, roles within NJCU's *education program or activity*, previous interactions, and other factors about each *party* that may be *relevant* to evaluating the effects of the conduct
- (d) The location of the conduct and the context in which the conduct occurred, and
- (e) Other *sex-based harassment* in NJCU's *education program or activity*.

#### 2. Quid Pro Quo Harassment

*Quid Pro Quo* harassment is conduct in which either a: (a) NJCU *employee*, (b) agent or (c) other person authorized by NJCU to provide an aid, benefit or service under

NJCU *education program or activity*, explicitly or impliedly conditions the provision of an aid, benefit, or service on a person's participation in unwelcome sexual conduct.

### 3. Dating Violence

Dating violence is violence, including but not limited to sexual or physical abuse or the threat of such abuse, committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim,

The existence of such a relationship shall be determined based on the reporting *party's* statement and with consideration of (i) the length of the relationship; (ii) the type of relationship and (iii) the frequency of interaction between the persons involved in the relationship.

### 4. Domestic Violence

Domestic Violence is violence on the basis of sex committed by a current or former spouse or intimate partner of the *complainant* by a person with whom the complainant shares a child in common or by a person who is cohabiting with or has cohabitated with the *complainant* as a spouse or intimate partner or by a person similarly situated to a spouse of the *complainant* under the domestic or family violence laws of New Jersey or by any other person against a youth or adult complainant who is protected from those acts under the family or domestic violence laws of New Jersey.

For the purposes of this definition: (1) the relationship between the *respondent* and the *complainant* must be more than just two people living together as roommates; and (2) the people cohabitating must be current or former spouses or have an intimate relationship.

### 5. Specific Offenses:

- A. Rape – 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.
- 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 – The use of 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. Fondling - The touching of the private body parts of another person, such as their, breasts, buttocks, groin, anus, genitalia, inner thighs 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.
- E. Incest - Non forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- F. Statutory rape- Non forcible sexual intercourse with the person who is under the statutory age of consent.

## 6. Stalking

Stalking means engaging in a course of conduct on the basis of sex directed at a specific person that would cause a reasonable person to: (1) fear for their safety or the safety of others; or (2) suffer substantial emotional distress.

For the purposes of this definition:

(1) course of conduct requires that there be more than one incident and the conduct is directed at a specific person. Stalking can occur in person or using technology and can include, but are not limited to watching, following, using tracking devices, monitoring online activity, unwanted contact, property invasion, or damage, hacking accounts, threats, violence, sabotage and attacks.

(2) reasonable person means a reasonable person under similar circumstances and with similar identities to the *complainant*; and

(3) substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

## 7. Sexual Exploitation

Sexual exploitation occurs when an individual takes non-consensual or abusive sexual advantage of another for their own benefit or for the benefit of anyone other than the person being exploited.

Examples of Sexual Exploitation include, but are not limited to:

- Sexual voyeurism
- Invasion of sexual privacy
- Taking pictures, video or audio recording of another in a sexual act, or in any other sexually related activity when there is a reasonable expectation of privacy during the activity, without the consent of all involved in the activity or exceeding the boundaries of consent

- Prostituting another person
- Engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or a sexually transmitted disease (STD) or infection (STI), without informing the other person of the virus, disease, or infection
- Causing or attempting to cause the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give consent to sexual activity, or for the purpose of making that person vulnerable to non-consensual sexual activity
- Forcing a person to take an action against that person's will by threatening to show, post, or share information, video, audio, or an image that depicts that person's nudity or sexual activity
- Creating or disseminating synthetic media, including images, videos, or audio representations of individuals doing or saying sexually-related things that never happened, or placing identifiable real people in fictitious pornographic or nude situations without their consent (i.e. Deepfakes).

## **VI. KNOWINGLY SUBMITTING FALSE STATEMENTS OR FALSE INFORMATION IS PROHIBITED**

Knowingly making false statements or submitting false information in connection with any allegation of *sex-based misconduct*, as opposed to providing information which, even if erroneous, is provided in good faith, is prohibited. Anyone who knowingly makes false statements or submits false information in connection with any allegation of *sex-based misconduct* will be subject to disciplinary action in accordance with NJCU Student Conduct, NJCU Bylaws, policies, and collective bargaining agreements. A *party*, witness, or other participant in NJCU's grievance process will not be disciplined under this provision based solely on a determination regarding whether *sex-based misconduct* occurred.

## **VII. CONFIDENTIAL EMPLOYEES ARE REQUIRED TO MAINTAIN CONFIDENTIALITY**

The following individuals ("Confidential Employees") do not have a duty to submit a report to the Title IX Coordinator when they obtain information that may constitute *sex-based misconduct* under the Policy. *The only exception is when they learn of an imminent threat of serious injury or threat or danger or abuse of a minor/elder individual with a disability or when required to disclose by court order or law.*

A. The following are designated Confidential Employees:

1. NJCU health office staff members located in Vodra Hall, Suite 107, [hwc@njcu.edu](mailto:hwc@njcu.edu); **Phone:** 201-200-3456



2. Counselors, guidance counselors, or other staff members at NJCU's counseling center Gilligan Student Union Building (GSUB), Room 308; [counselingcenter@njcu.edu](mailto:counselingcenter@njcu.edu); **Phone:** 201-200-3165
3. Director, [Speicher-Rubin Women's Center for Equity and Diversity](#), Gilligan Student Union Building (GSUB), Room 318, **Phone:** 201-200-3189
4. Any other NJCU employee whose communications are privileged or confidential under federal, state, or local law. The employee's confidential status for the purposes of this definition applies only to information received while the employee is functioning within the scope of their duties to which privilege or confidentiality applies)
5. Any NJCU employee who is conducting an Institutional Review Board-approved human-subjects research study designed to gather information about *sex-based misconduct*. The employee's confidential status is limited to information received while conducting the study.

NJCU will most likely be unable to conduct an investigation into the allegations or address the conduct if the matter is reported only to a Confidential Employee.

The obligations of Confidential Employees are discussed in Appendix D.

### **VIII. MANDATORY REPORTERS REQUIRED TO NOTIFY THE TITLE IX COORDINATOR OF SEX-BASED MISCONDUCT**

All NJCU faculty and employees (including student-employees), other than those deemed Confidential Employees, are Mandated Reporters and are expected to promptly notify the Title IX Coordinator of all known details of actual or alleged *sex-based misconduct* and/or retaliation.<sup>4</sup>

*Complainants* may want to carefully consider whether they share personally identifiable details with Mandated Reporters since information they disclose implicating discrimination, harassment, and/or retaliation will be shared with the Title IX Coordinator.

Mandatory Reporters are not required to report *sex-based misconduct* if they learn of the conduct during a public awareness event to raise awareness about *sex-based harassment* held on NJCU campus or through an online platform sponsored by NJCU.

Mandated Reporters, who are themselves a target of harassment or other misconduct are not required to report their own experience but are encouraged to do so.

Mandated Reporters who have themselves engaged in a violation of this Policy are required

---

<sup>4</sup> Any NJCU employee who receives a report of Sexual Assault, Dating Violence, Domestic Violence, and Stalking (and other Clery Act-defined crimes), alleged to have occurred on or adjacent to NJCU property must promptly report the information to NJCU's Public Safety Department.

to report their own misconduct.

#### **IX. EMPLOYEES' OBLIGATIONS WHEN INFORMED OF STUDENT'S PREGNANCY**

Employees will provide a student with the contact information for the student's Title IX Coordinator upon being informed by a student that the student is pregnant. They will also inform the student that the Title IX Coordinator can coordinate specific actions to prevent *sex-based misconduct* and ensure the student's equal access to NJCU's education programs or activities. For more information on accommodation options for pregnant students, please see Appendix C.

#### **X. ALCOHOL AND DRUG USE AMNESTY**

NJCU recognizes that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) while witnessing or being subjected to *sex-based misconduct* incidents might be hesitant to report due to fear of potential consequences for their own conduct. Those who report *sex-based misconduct* either as a reporter or third-party witness will not be subjected to disciplinary action by NJCU for Code of Conduct violations, such as their own personal consumption of alcohol or drugs at or near the time of the incident.

#### **XI. SUPPORTIVE MEASURES**

When a Title IX Coordinator learns of a report of *sex-based misconduct*, the Title IX Coordinator will promptly contact the *complainant* to inform the *complainant* of the availability of supportive measures, inform the *complainant* that supportive measures and accommodations are available even if the *complainant* does not wish to proceed with an investigation and/or informal resolution, and discuss the *complainant's* wishes regarding supportive measures.

Supportive measures and accommodations are non-disciplinary, non-punitive individualized services designed to restore or preserve equal access to education and to ensure safety, prevent retaliation and avoid an ongoing hostile environment. Supportive measures are available to *complainants*, *respondents*, and other affected individuals. NJCU will implement supportive measures in a way that does not unreasonably burden any *party*.

Where no complaint has been filed but supportive measures impacting a *respondent* have been requested, the *respondent* will be provided an unsigned Notice of Allegations which will contain, if known: (a) the name of the *Parties*; (b) the date, time, and location of the alleged *sex-based misconduct*; (c) the underlying factual allegations; and (d) each type of *sex-based misconduct* alleged by the *complainant*.

NJCU will maintain the confidentiality of the supportive measures, provided that confidentiality does not impair NJCU's ability to provide these supportive measures.

The Title IX Coordinator is responsible for coordinating and ensuring the effective implementation of supportive measures for students with the Dean of Students and for employees with the Human Resources Director to assist employees.

**Range of Supportive Measures include but are not limited to:**

- (a) Counseling services through the Counseling Center or other appropriate office, or referral to an off-campus agency
- (b) Appropriate changes to academic programs, including changes in class schedule, accommodations to permit students to take an incomplete or drop a course or courses without penalty, permitting students to attend a class via videoconference platform or other alternative means, providing an academic tutor, or extending deadlines for assignments
- (c) Pregnancy accommodations
- (d) Making appropriate changes to residential housing situations or providing assistance in finding alternate housing
- (e) Changing an employee's work assignment or schedule
- (f) Providing an escort to and from class or campus work location
- (g) Arranging appropriate transportation services to ensure safety
- (h) Issuing a No Contact Order whereby continued intentional contact would be a violation of NJCU Policy and subject to disciplinary action
- (i) Enforcing an Order of Protection issued by a court
- (j) Emergency removal of a *respondent* when they pose an imminent threat to the physical health or safety of any person, and
- (k) Any other actions deemed appropriate by the Title IX Coordinator.

Where appropriate, the Title IX Coordinator has the authority to review and modify supportive measures.

A *party's* request to seek modification or reversal of NJCU's decision to provide, deny, modify, or terminate supportive measures can be made in writing to the Title IX Coordinator. An impartial employee not involved with the initial decision or implementation of the supportive measures will render decision within 10 (ten) days of receiving a request and will provide a written determination to the impacted *party(ies)* and to the Title IX Coordinator.

## **XII. NO CONTACT ORDERS**

A No Contact Order is a directive prohibiting intentional direct or indirect contact or communication between specific individuals. Students who violate a No Contact Order are in violation of the Student Code of Conduct and will be subject to disciplinary action under the Code. Employees who violate a No Contact Order are in violation of the *relevant* collective bargaining

agreement or employment agreement and are subject to applicable disciplinary procedures.

No Contact Orders may be issued to *complainants*, *respondents*, and other individuals as appropriate. No Contact Orders, and modifications of No Contact Orders, are drafted by the Title IX Coordinator and issued by the Dean of Students in student matters or the Director of Human Resources in employee matters. No Contact Orders can be issued to one individual alone or they may be reciprocal.

### **XIII. PREGNANCY ACCOMMODATIONS**

Accommodations available to students and employees seeking accommodations for past, present, or future pregnancy and related conditions, are specified in Appendix C.

### **XIV. ANONYMOUS COMPLAINTS**

NJCU's ability to investigate, respond, and provide remedies, including supportive measures, may be limited or precluded when a complaint is reported anonymously, depending on the information disclosed.

NJCU will respect a *complainant's* request not to initiate a resolution process but cannot guarantee this in all cases especially when there is a pattern behavior, allegations of severe misconduct, or a compelling threat to health and/or safety.

The Title IX Coordinator will report the following types of incidents to law enforcement: (a) an imminent threat of serious injury to the *complainant* or any other person; or (b) unlawful sexual activity involving a minor or a person with a cognitive disability.

### **XV. GENERAL PRINCIPLES OF RESOLUTION PROCESS**

The resolution process includes either informal resolution or investigation. While the process takes into account the preferences of the *parties*, the final decision rests with the Title IX Coordinator.

Resolution proceedings are confidential, and all *parties* are expected to maintain this confidentiality in accordance with NJCU's Policy.

#### **A. *Equitable treatment, Presumption of Non-Responsibility, Lack of Conflict or Bias***

NJCU will treat *complainants* and *respondents* equitably and will provide for a prompt resolution of all complaints under this Policy.

NJCU will maintain the presumption that the *respondent* is not responsible for the reported *sex-based misconduct* until a determination is made and the appeal process has been exhausted.

The Title IX Coordinator, investigator, or decision-maker must not have a conflict or bias for or against *complainants* or *respondents* or an individual *complainant* or *respondent*. A *decision-maker* may be the same person as the Title IX Coordinator or investigator provided that there is no bias or conflict of interest.

If a *party* believes that an NJCU official who is administering any portion of the grievance process has a conflict of interest or bias for or against *complainants*, *respondents*, or witnesses generally or against an individual *complainant*, *respondent*, or witness, any *party* may make a request to have that conflicted or biased University official removed from the process.

Requests for removal must include a detailed description of the conflict or bias. All requests for removal must be directed to the Title IX Coordinator or to the University Counsel if the allegations are against the Title IX Coordinator. After receiving a request for removal, the Title IX Coordinator or the University Counsel, will ask the individual with the alleged conflict of interest or bias to provide a short, written response to the request for removal and consider that response before making a determination. If a conflict or bias exists, the Title IX Coordinator or the University Counsel will take immediate steps to replace that official to ensure an impartial and fair grievance process is maintained.

#### *B. Consolidation of Complaints*

NJCU can consolidate complaints of *sex-based misconduct* against more than one *respondent*, or by more than one *complainant* against one or more *respondents*, or by one *party* against another *party*, when the allegations of *sex-based misconduct* arise out of the same facts or circumstances.

#### *C. Unauthorized Recording & Copying*

The *parties* and witnesses are prohibited from recording any part of the process and from unauthorized copying of documents or materials. Copying includes but is not limited to audio or video recording, streaming, photographing, scanning, transcribing, or any other form that conflicts with the spirit of this provision. Allegations of non-compliance will be reviewed by the Dean of Students or the Director of Human Resources as appropriate and may result in disciplinary action.

## **XVI. INITIAL EVALUATION OF THE COMPLAINT**

Within ten (10) days of receiving notice, complaint, or knowledge of alleged misconduct, the Title IX Coordinator will have scheduled an intake with the *complainant* in a live question and answer format and made an initial evaluation in whether the reported conduct may reasonably constitute a violation of the Policy. This initial evaluation will be documented by the Title IX Coordinator in writing.

If it is determined that the matter would not constitute a violation of the Policy, it will be dismissed. Supportive measures for the *Parties* will still be provided.

If the conduct falls within NJCU's jurisdiction, and the *complainant* wishes to initiate a *complaint*, the Title IX Coordinator will work with the *complainant* to determine whether the *complainant* wishes to follow an Informal Resolution process or the investigative process described in the Policy.

If the *complainant* does not wish to file a *complaint*, the Title IX Coordinator, who has the ultimate discretion as to whether a *complaint* is initiated will offer supportive measures and determine whether to initiate a *complaint* themselves, based upon the grounds listed below.

If a *complainant* makes a request that an investigation not take place, the Title IX Coordinator will weigh the *complainant's* request against NJCU'S obligation to provide a safe, non-discriminatory environment for all students, employees, and visitors, including the *complainant*. Factors used to determine whether to honor such a request include, but are not limited to:

- (a) The *complainant's* request not to proceed with the initiation of a *complaint*
- (b) The *complainant's* reasonable safety concerns regarding initiation of a *complaint*
- (c) The risk that additional prohibited *sex-based misconduct* that would occur if a *complaint* is not initiated
- (d) The severity of the *sex-based misconduct*
- (e) The age and relationship of the *parties*
- (f) The scope of the alleged *sex-based misconduct*, including information suggesting a pattern, ongoing conduct, and whether it would impact multiple individuals
- (g) The availability of evidence to assist a *decision-maker* in determining whether the alleged misconduct occurred
- (h) Whether NJCU could end the alleged *sex-based misconduct* and prevent its recurrence without initiating its resolution process whether the *respondent* has a history of violent behavior or is a repeat offender;

If deemed necessary, the Title IX Coordinator will consult with the CARE Team (<https://www.njcu.edu/academics/resources-services/njcu-care-team>) and/or conduct a *violence risk assessment* ("VRA") for purposes of determining whether to initiate a complaint.

If the Title IX Coordinator decides to initiate a *complaint*, they will notify the *parties* that a

University Complaint is being initiated. The person who experienced the unwelcome conduct will continue to be designated as the *complainant* and will receive all *relevant* communications, information, and updates pertaining to the investigation. Any investigative materials obtained or generated prior to the initiation of the University Complaint will be included in the investigative materials if they relate to the allegations contained in the University Complaint.

## **XVII. NJCU'S DISCRETION TO DISMISS A COMPLAINT**

NJCU may dismiss a *complaint* if, at any time during the *resolution process*, one of more of the following occur:

- (i) NJCU is unable to identify the *respondent* after taking reasonable steps to do so
- (ii) The *respondent* is not participating in NJCU's program or activity and is not employed by NJCU
- (iii) A *complainant* voluntarily withdraws any or all of the allegations in the *complaint*, and the Title IX Coordinator declines to initiate a *complaint*
- (iv) NJCU determines that the conduct alleged in the complaint, even if proven, would not constitute *sex-based misconduct* under this policy. Before dismissing the complaint, NJCU will make reasonable efforts to clarify the allegations with the *complainant*;

A decision-maker, described in Section XXII, can also recommend dismissal.

**When a complaint of *sex-based harassment* is dismissed**, NJCU will also:

- Offer supportive measures to the *complainant* as appropriate
- If the *respondent* has been notified of the allegations, offer supportive measures to the *respondent* as appropriate
- Take other prompt effective steps as appropriate, through the Title IX Coordinator to ensure that *sex-based misconduct* does not continue or recur within NJCU's *education program or activity*.

In all *sex-based misconduct* cases, the Title IX Coordinator will also take other appropriate, prompt, and effective steps to ensure that *sex-based misconduct* does not continue or recur within the university community.

*Appeal of a Dismissal*: NJCU will promptly notify the *complainant* in writing of the basis for the dismissal. If the dismissal occurs after the *respondent* has been notified of the allegations, then NJCU will notify the *parties* simultaneously,

If the *complainant* appeals, but the *respondent* was not notified of the *complaint*, the Title IX Coordinator must provide the *respondent* with a Notice of Allegations and notify the *respondent* of the complainant's appeal process.

The dismissal decision is appealable by any *party* and appeals must be filed within three (3) business days of the notification of the dismissal. The grounds for dismissal are set forth below.

Upon receipt of a dismissal appeal in writing, the Title IX Coordinator will share the petition with all of the *parties* and provide five days for other *parties* to respond. The Title IX Coordinator has the opportunity to respond and his or her response statement will be shared with the *parties*. The *parties* do not have an opportunity to provide further response.

The Title IX Coordinator will designate an official not connected to the decision-making process, involved in the dismissal, to review the appeal and to issue an appeal decision to the *parties*, their advisors, where applicable, and the Title IX Coordinator describing the result of the appeal and the rationale for the result within 10 (ten) days of the receipt of all the materials, unless an extension of time is warranted based upon circumstances of the case and the *parties* are notified.

### **XVIII. EMERGENCY REMOVAL/INTERIM SUSPENSION OF A STUDENT AND ADMINISTRATIVE LEAVE OF AN EMPLOYEE**

NJCU may remove a *student respondent* accused of *sex-based misconduct* upon receipt of notice, knowledge, or a complaint, or at any time during the resolution process from any of its *education program or activity* in a manner that is consistent with the provisions contained in this Policy when a *respondent* poses an imminent and serious threat to the health or safety of a student, employee, or other member of the university community consistent with its Violence Risk Assessment ("VRA"), as defined in Appendix A. The Title IX Coordinator will conduct VRA, in consultation with NJCU's Care Team. An emergency removal is not a determination of responsibility.

When an emergency removal or interim suspension is imposed, wholly or partially, the affected *student* will be notified of the action, which will include a written rationale, and the option to challenge the emergency removal or interim suspension within three days of the notification. The *complainant* will also be notified.

Upon receipt of challenge, the Title IX Coordinator will meet with the *student* as soon as reasonably possible thereafter to allow them to show cause why the removal or interim suspension should not be implemented or should be modified. The emergency removal or interim action are waived if not challenged within three days. The *student* is entitled to an advisor of choice, during this process, and a trained advisor will be provided if the *student*



requests one. The Title IX Coordinator has the discretion to allow the *complainant* to participate in this meeting with their advisor of choice, and one will be provided, if it is determined that it would be equitable to do so. Details regarding advisors of choice are set forth in Section XIX, below.

NJCU will give the *respondent* notice and an opportunity to appeal the emergency removal immediately following the removal. Any revocation of the emergency removal will be sent to both *parties*. An emergency removal or interim suspension may be affirmed, modified, or lifted as a result of a requested review or as new information becomes available. The Title IX Coordinator will communicate the final decision in writing typically within five (five) days of the review meeting.

When the *respondent* is an *employee*, or a *student employee*, accused of *sex-based* conduct in the course of their employment, existing provisions for interim action, including for unionized employees, are typically applicable instead of the above emergency removal process and can be found here:

<https://www.njcu.edu/sites/default/files/njcuemployeehandbook-f.pdf>

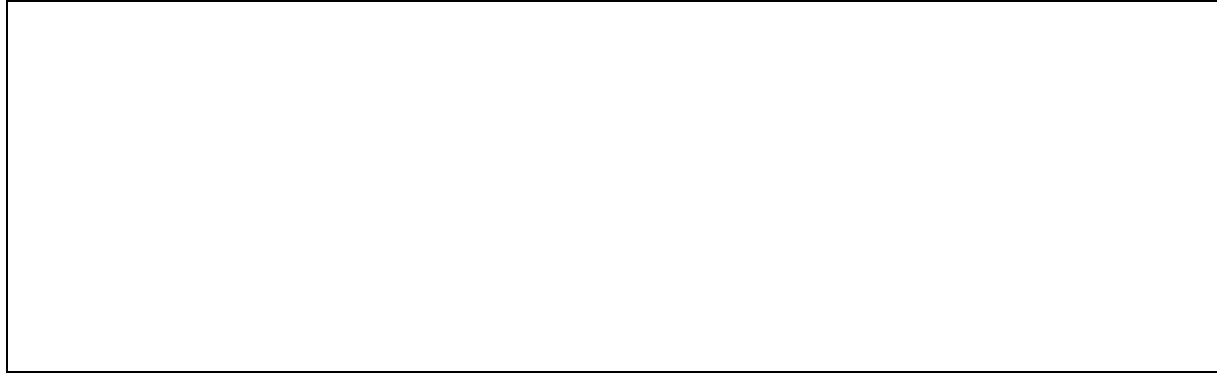
Violation of the terms of an emergency removal under the Policy will be grounds for separate disciplinary action which may include actions up to or including expulsion from the school or college or termination of employment.

## **XIX. ADVISORS OF CHOICE**

- A. Advisors of Choice permitted for complaints of sex-based harassment involving student complainant or a student respondent

Unless otherwise specified, **advisors of choice are allowed to participate only for complaints of *sex-based harassment involving student complainants or student respondents***. NJCU will provide the *parties* in such cases with the same opportunities to be accompanied to any meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney.

- NJCU is not obligated to offer an advisor unless otherwise specified in the Policy and has the discretion to do to preserve equity among parties
- NJCU will not limit the choice or presence of the advisor for the *complainant* or *respondent* in any meeting or proceeding
- NJCU may establish restrictions regarding the extent to which the advisor may participate in these grievance procedures, as long as the restrictions apply equally to the *parties*
- NJCU will provide the same opportunities, if any, to have people other than the advisor the *parties*' choice present during any meeting or proceedings, such as supportive persons.



Advisors of choice are not permitted to: (1) directly communicate with NJCU officials acting pursuant to the Policy; (2) submit documents on behalf of a *party*; or (3) otherwise communicate on behalf of a *party*.

If the conduct of an advisor is not consistent with the Policy, the *party* will be given notice of their advisor's improper behavior. The advisor's inability to attend a meeting cannot reasonably interfere with or delay meetings requested pursuant to the Policy.

*B. Employees entitled to union representatives for all sex-based misconduct complaints*

NJCU will uphold Weingarten rights of employee respondents who are entitled to union representation. To uphold the principles of equity, the complainant will be permitted to have an advisor of choice where respondent exercises their Weingarten rights and NJCU will provide a trained advisor upon request.

**XX. INFORMAL RESOLUTION PROCESS**

To initiate informal resolution, a *complainant* or *respondent* may make such a request to the Title IX Coordinator at any time prior to a final determination, or the Title IX Coordinator may offer the option to the *parties*. NJCU will obtain voluntary, written confirmation that all *parties* wish to resolve the matter through informal resolution before proceeding and will not pressure the *parties* to participate in informal resolution.

*Parties* can have an advisor of choice during the informal resolution process, subject to the conditions outlined in Section XIX.

If an informal resolution option is not available or selected, NJCU will initiate or continue an investigation and subsequent resolution process to determine whether the Policy has been violated.

Before initiation of an informal resolution process, NJCU will provide the *parties* with a notice consisting of:

- The allegations
- The requirements of the informal resolution process
- That, prior to agreeing to a resolution, any *party* has the right to withdraw from the informal resolution process and to initiate or resume NJCU's resolution process
- That the *parties'* agreement to a resolution at the conclusion of the informal resolution process will preclude the *parties* from initiating or resuming the resolution process arising from the same allegations
- The potential terms that may be requested or offered in an informal resolution agreement, including notification that an informal resolution agreement is binding only on the *parties* and
- What information that NJCU will maintain, and whether and how it could disclose such information for use in its resolution process.

NJCU offers the following types of informal resolution:

1. **Supportive Measures:** When the Title IX Coordinator can resolve the matter informally by providing supportive measures (only) designed to remedy the situation.

The Title IX Coordinator will meet with the *complainant* to determine reasonable supportive measures that are designed to restore or preserve the *complainant's* access to NJCU's *education program and activity*. Such measures can be modified as the *complainant's* needs evolve over time or circumstances change. If the *respondent* has received the Notice of Allegations, the Title IX Coordinator may also provide reasonable supportive measures for the *respondent* as deemed appropriate.

2. **Learning Discussion:** When the Title IX Coordinator can resolve the matter informally by having an informative dialogue with the *respondent* to discuss the *complainant's* concerns and institutional expectations or can accompany the *complainant* in their desire to confront the conduct.

The Title IX Coordinator can address the *complainant's* allegations by meeting with the *respondent(s)*, with or without the *complainant*, to discuss the *respondent's* behavior and its implications upon the Policy. This discussion is non-disciplinary and non-punitive. *Respondent(s)* are not required to attend such meetings, nor are they compelled to provide any information if they attend. The conversation will be documented as the informal resolution for the matter, if it takes place. In light of this conversation, or the *respondent's* decision not to attend, the Title IX Coordinator may also implement remedial actions to ensure that policies and expectations are clear and to minimize the risk of recurrence of any concerning behavior.

- 3. Acknowledged Accountability.** When the *Respondent* is willing to accept responsibility for violating Policy and is willing to agree to actions that will be enforced similarly to sanctions, and the *complainant(s)* and NJCU are agreeable to the resolution terms.

The *respondent* may accept responsibility for any or all of the alleged Policy violations at any point during the resolution process. If the *respondent* indicates an intent to accept responsibility for **all** alleged Policy violations, the ongoing process will be paused, and the Title IX Coordinator will determine whether informal resolution is an option.

If informal resolution is available, the Title IX Coordinator will determine whether all *parties* and NJCU are able to agree on responsibility, restrictions, sanctions, restorative measures, and/or remedies. If so, the Title IX Coordinator implements the accepted finding that the *respondent* is in violation of NJCU Policy, implements agreed-upon restrictions and remedies, and determines the appropriate responses.

This resolution is not subject to appeal once all *parties* indicate their written agreement to all resolution terms. When the *Parties* cannot agree on all terms of resolution, the resolution process will either continue or resume.

When a resolution is reached, the appropriate sanction(s) or responsive actions are promptly implemented to effectively stop the harassment or discrimination, prevent its recurrence, and remedy the effects of the discriminatory conduct, both on the *complainant* and the community.

- 4. Other Forms of Resolution:** When the *Parties* agree to resolve the matter through other mechanisms, which may include mediation, shuttle negotiation, restorative practices, facilitated dialogue, and more.

Other forms of resolution may involve agreements to pursue individual or community remedies, such as targeted or broad-based educational programming or training, supported direct conversations or interactions with the respondent(s), indirect actions by the Title IX Coordinator or other appropriate NJCU officials, and other tailored resolution methods. Some of these approaches will result in an agreed-upon outcome, while others will be resolved through dialogue. All *parties* must consent to this approach, and they may, but are not required to, have direct or indirect contact during the process.

The factors to be taken into account in deciding upon this approach:

- The *parties'* amenability
- Likelihood of potential resolution, considering any power dynamics between the *parties*
- The nature and severity of the alleged misconduct

- The *parties'* motivation to participate
- Civility of the *parties*
- Results of a violence risk assessment/ongoing risk analysis
- *Respondent's* disciplinary history
- Whether an emergency removal or other interim action is needed
- Facilitator's skill
- *Complaint* complexity
- Goals of the *Parties*
- Adequate resource (e.g., time, staff, etc.)

The Title IX Coordinator has the authority to determine whether this resolution is available or successful, to facilitate a resolution that is acceptable to all *parties*, and/or to accept the *parties'* proposed resolution.

*Parties* do not have the authority to stipulate restrictions or obligations for individuals or groups that are not involved in this type of informal resolution process.

The Title IX Coordinator maintains records of any resolution that is reached under this process and will provide notification to the *parties* of what information is maintained. Failure to abide by the resolution agreement may result in appropriate responsive/disciplinary actions (e.g., dissolution of the agreement and resumption of the resolution process, referral to the conduct process for failure to comply). The results of *complaints* resolved by thus resolution are not appealable.

## **XXI. INVESTIGATIVE RESOLUTION PROCEDURE**

Following the intake with the *complainant*, the Title IX Coordinator will issue a Notice of Allegations to the *parties* within 10 (ten) days, unless there are reasonable grounds for delays or extensions, such as addressing safety concerns.

### **A. Written Notice of Allegations**

The Notice of Allegations will be mailed to the *parties'* official NJCU email and will include:

- A meaningful summary of all allegations
- The identity of the involved *parties* (if known)
- The precise misconduct being alleged
- The date and location of the alleged incident(s) (if known)
- The specific policies/offenses implicated
- A description of, link to, or copy of the applicable procedures
- A statement that the *parties* are entitled to an equal opportunity to access the *relevant* and not otherwise impermissible evidence

- The name(s) of the investigator(s), along with a process to identify to the Title IX Coordinator in advance of the interview process, any conflict of interest that the Investigator(s) may have
- A statement that NJCU presumes the *respondent* is not responsible for the reported misconduct unless and until the evidence supports a different determination
- A statement that determinations of responsibility are made at the conclusion of the process and that the *parties* will be given an opportunity during the review and comment period to inspect and review all *relevant* evidence
- A statement that retaliation is prohibited
- A statement that the *parties* may have an advisor of their choice for *sex-based harassment* complaints in those instances there is a *student complainant* or a *student respondent* who may accompany them through all steps of the *resolution process*
- A statement that *respondents* who are members of a union are entitled to union representation throughout the process and *complainants* may have an advisor of their choice
- Information about the confidentiality of the process, including that the *parties* and their advisors, where applicable, may not share NJCU's work product obtained through the resolution process
- A statement informing the *parties* that this Policy prohibits knowingly making false statements, including knowingly submitting false information during the resolution process
- Detail on how a *party* may request disability accommodations during the resolution process
- An instruction to preserve any evidence that is directly related to the allegations
- In those cases where complaints are consolidated and NJCU decides to investigate additional allegations of *sex-based misconduct* by the *respondent* towards the *complainant* that are not included in the notice provided or that are not included in a complaint that is consolidated, NJCU will notify the *parties* of the additional allegations.

## B. Resolution Timeline

NJCU will make a good faith effort to complete the *resolution process*, within 120 days after the Notice of Allegations, including appeals. The *resolution process* can be extended as necessary for appropriate cause by the Title IX Coordinator. The *parties* will receive regular updates on the progress of the *resolution process*, as well as notification and a rationale for any extensions or delays, and an estimate of how much additional time will be needed to complete the process.

The investigation and written determination phase will be completed within 60-75 days. Some investigations may take longer, depending on issues such as the nature, extent, and complexity of the allegations, witness availability (such as exam periods, school breaks or

vacation), number of witnesses, volume of information provided by the *parties*, compliance with requests by law enforcement involvement, and other factors.

A short delay in its investigation (several days to a few weeks) is allowed if circumstances require. Such circumstances include but are not limited to a request from law enforcement to delay the investigation temporarily, the need for language assistance, the absence of *parties* and/or witnesses, and/or health conditions. NJCU will promptly resume its *resolution* process as soon as feasible. During such a delay, NJCU will implement and maintain supportive measures for the *parties* as deemed appropriate and notify the *parties* of the delay. The Title IX Coordinator must notify the *parties* in writing, indicate the reason for the delay, and provide a timeframe for completing the investigation.

If a *party* or witness chooses not to participate in the *resolution process* or becomes unresponsive, NJCU reserves the right to continue it without their participation to ensure a prompt resolution. Non-participatory or unresponsive *parties* retain the rights outlined in this Policy and the opportunity to participate in the *resolution process*.

### C. Resolution Process – Investigation and Report

The *resolution process* involves an objective evaluation of all available *relevant*, and not otherwise impermissible evidence, that supports that the *respondent* engaged in a policy violation as well as evidence that supports that the *respondent* did not engage in a policy violation. Credibility determinations may not be based solely on an individual's status or participation as a *complainant*, *respondent*, or witness. All *parties* have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence, and to receive a written investigation report that accurately summarizes this evidence.

The burden is on NJCU – not on the *parties* – to conduct an investigation that gathers sufficient evidence to determine whether *sex-based misconduct* has occurred.

NJCU applies the preponderance of the evidence standard of proof (*i.e.*, whether it is more likely than not that the prohibited conduct took place) to determine whether *sex-based misconduct* occurred.

NJCU will take reasonable steps to prevent and address the *parties'* unauthorized disclosure of information and evidence obtained solely throughout this *resolution process*. Disclosure of such information and evidence for purposes of administrative proceedings or litigation related to the complaint of *sex-based misconduct* are authorized.

#### 1. Evidence Gathering

Interviews of *parties* and witnesses will take place after the Notice of Allegations have been issued.

*Questioning the Parties and the Witnesses:* NJCU's process for proposing and asking *relevant* and not otherwise impermissible questions and follow-up questions of *parties* and witnesses, including questions challenging credibility in those cases where credibility is in dispute and is *relevant*, is described below. This process also allows the parties to provide other evidence directly related to the allegations being investigated.

- The Investigator will interview the *complainant* and the *respondent* and conduct any necessary follow-up interviews with each.
- Interview all available, relevant witnesses and conduct follow-up interviews as necessary.
- Provide each interviewed party and witness an opportunity to review and verify the investigator's transcript or recording of the relevant evidence/testimony from their respective interviews and meetings.
- Share the verified transcript or recording with the other parties.
- Each party will have the opportunity to suggest witnesses and questions they wish the investigator to ask of another party and/or witnesses. The questions asked by the *parties* will be evaluated to determine whether they are *relevant* and not otherwise impermissible. Questions that are unclear or harassing will not be permitted though the *parties* asking such questions will be given an opportunity to revise those questions. All questions asked will be documented in the investigation report.
- The *parties* have ten (10) days to respond to the questions.
- Subsequent meetings or interviews are also recorded and/or transcribed and they are shared with the parties.

Impermissible questions are described in Section XX1.D below.

The use of expert witnesses is not permitted in NJCU's *resolution process*.

Following an investigation and evaluation of all *relevant* and not otherwise impermissible evidence, the Title IX Coordinator and/or an investigator designated by the Title IX Coordinator will send a Closure of Investigation Notice, which will include a list of witnesses whose information will be used to render a finding.

## 2. Investigative Report

The Title IX Coordinator and/or an investigator designated by the Title IX Coordinator will create a preliminary investigative report that that gathers, assesses, and synthesizes the evidence, accurately summarizes the investigation and party and witness interviews, and provides all relevant evidence. The investigative report is not intended to catalog all evidence obtained by the investigator, but only to provide a fair summary of the *relevant* evidence, evidence that tends to prove and disprove the allegations. The investigator may



redact *irrelevant* information from the investigative report when that information is contained in documents or evidence that is/are otherwise *relevant*.

The Title IX Coordinator will simultaneously provide the preliminary investigative report to the decision-maker and to the *parties*, and their advisors, where applicable, as well as an opportunity to inspect and review all relevant evidence obtained as part of the investigation for a review and comment period of 15 days from receipt so that each party may meaningfully respond to the evidence. The parties may elect to waive all or part of the review period.

Each *party* will have the right to review the other *party's* response.

The written response cannot be more than 5 pages, single-space, size 12 font. The response can address:

- Information in the report that the *parties* want emphasized
- Inconsistencies in the testimony that should be highlighted
- Information in the report that the *parties* believe is inaccurate
- Information in the report that the *parties* believe is mischaracterized or taken out of context
- Correction or clarification of information in the report
- Content, testimony, and/or evidence that the *parties* believe does not comply with this Policy.

The written response may not include:

- New content, testimony, or evidence
- Any information from witnesses that were not interviewed as part of the investigation
- Character assessments
- References to the prior sexual history of the other *party* (unless the referenced prior sexual history is between the *complainant* and the *respondent* offered to prove consent), and
- Any other information designated as prohibited in the Policy.

The Title IX Coordinator has the discretion to determine whether content does not comply with established policies and procedures.

The investigator will incorporate the *relevant* responses into the final investigation report and/or submit the final investigation report noting the absence of responses.

The decision-maker will have an additional 15 days to review the final investigation report and make a written determination, using the preponderance of evidence standard to determine whether *sex-based misconduct* occurred. The decision-maker retains the right to engage in further fact-finding and to interview parties and witnesses, where necessary.

Any such meetings will be recorded and the recording or transcript of the meetings will be shared with parties.

The *parties* will be notified of any delays.

#### D. Determination Regarding Responsibility

The decision-maker will review the final investigation report and the investigation file, including the evidence and information obtained through the investigator-led questioning meetings.

The *resolution process* requires the decision-maker to question parties and witnesses to adequately assess a party's or witness's credibility to the extent that credibility is both in dispute and relevant to evaluate the allegations. Where the decision-maker is not also the investigator, the decision-maker can meet with any party or witness to question them in order to assess their credibility. These meetings will be recorded and the recording or transcript will be shared with the *parties*.

The decision-maker can weigh the credibility of a party or witness, including a party's or witness's refusal to respond to *relevant* and permissible questions. However, with respect to sex-based harassment complaints involving student complainant(s) or student respondent(s), the decision-maker cannot draw an inference about whether sex-based harassment occurred based solely on a party's or witness's refusal to respond to relevant and permissible questions.

The decision-maker will not make credibility determinations based on a person's status as a *complainant, respondent, or witness*.

The decision-maker will evaluate *relevant* and not otherwise impermissible evidence for its persuasiveness. The following types of evidence are considered impermissible and will be excluded or redacted from the record, even if otherwise considered *relevant*:

- (a) Evidence that is protected under a privilege as recognized by federal, state, or local law, or evidence provided to a confidential employee, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality
- (b) A *party's* or witness's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the *party* or witness, unless NJCU obtains that *party's* or witness's voluntary, written consent for use in the grievance procedures
- (c) Evidence that relates to the *complainant's* sexual interests or prior sexual conduct, unless evidence about the *complainant's* prior sexual conduct is offered to prove that someone other than the *respondent* committed the alleged conduct or is evidence

- about specific incidents of the *complainant's* prior sexual conduct with the *respondent* that is offered to prove consent to the alleged *sex-based misconduct*;
- (d) Expert witnesses who are not approved by the investigator
  - (e) The social security number, home address, or similar highly sensitive information pertaining to a *party*, witness, or other person referenced in the grievance process, and
  - (f) Any other materials prohibited by federal, state, or local law.

If the decision-maker is not persuaded based upon a preponderance of the evidence that *sex-based misconduct* occurred, whatever the quantity of the evidence is, the decision maker will not determine that *sex-based misconduct* occurred.

The decision-maker will notify the *parties* simultaneously, or without significant time delay between notifications in writing for the determination, whether *sex-based misconduct* occurred under this Policy using their NJCU designated email address, and will include:

- (a) A description of the alleged *sex-based misconduct*
- (b) Information about the policies and procedures that the University used to evaluate the allegations
- (c) The decision-maker's evaluation of the *relevant* and not otherwise impermissible evidence and determination whether *sex-based misconduct* occurred
- (d) Information regarding sanctions that NJCU is permitted to share pursuant to state or federal law
- (e) The rationale for the written determination
- (f) NJCU's procedures for the *complainant* and *respondent* to appeal.

If there is a determination that *sex-based misconduct* occurred, the Title IX Coordinator will, as appropriate:

- coordinate the provision and implementation of remedies to a *complainant* and other people NJCU identifies as having had equal access to NJCU's *education program or activity* limited or denied by *sex-based misconduct*
- coordinate the imposition of any disciplinary sanctions on a *respondent*, including notification to the *complainant* of any such disciplinary actions, and
- take other appropriate prompt and effective steps to ensure that *sex-based misconduct* does not continue or recur within NJCU's program or activity
- comply with the grievance procedures before the imposition of any disciplinary sanctions against a *respondent*; and
- not discipline a *party*, witness, or others participating in the grievance procedures for making a false statement or for engaging in consensual sexual conduct based solely on the determination whether *sex-based misconduct* occurred. NJCU will address false statements by initiating a disciplinary process under its Code of Conduct as long as there is evidence independent of the determination whether *sex-based misconduct* occurred.

The determination of responsibility will be sent by email using the *parties'* NJCU email address or any other email address known to NJCU.

The determination of responsibility becomes final either on the date on which the decision on appeal is issued, or, if no *party* appeals, the date on which an appeal would no longer be considered timely.

## E. Sanctions

Sanctions refer to the consequences imposed on a *respondent* following a determination they are responsible for violating the Policy. When determining which sanction to impose, NJCU will consider the following factors: (1) the specific *sex-based misconduct* at issue; (2) the circumstances accompanying the lack of consent (such as force, threat, coercion, incapacitation); (3) the sanctions imposed on the *respondent* in other matters involving similar conduct; (4) the impact of the offense on the *parties* and the broader NJCU community, including the safety of the NJCU community; (5) the *respondent's* prior disciplinary history; (6) the need for sanctions/responsive actions to bring an end to the conduct at issue and to remedy their effects; and (7) any other information deemed *relevant* by the decision-maker.

Sanction ranges for prohibited conduct are provided in Appendix E.

### 1. The following sanctions may be imposed on a *student-respondent*:

- (a) Warning: Notice to the *respondent*, in writing, that continuation or repetition of the wrongful conduct, within a period of time stated in the warning, may result in more severe disciplinary action
- (b) Required Counseling: A mandate to meet with and engage in either NJCU counseling or external counseling to better understand the misconduct and its effect
- (c) Restriction: a *student* may be restricted in their activities including, but not limited to, being restricted from locations, programs, participation in certain activities or extracurriculars, or from holding leadership in student organizations
- (d) Probation: An official sanction for violation of this policy, providing for more severe disciplinary sanctions for a specified period of time. Terms of the probation may include denial of certain privileges or extracurricular activities, and it includes notice of the probability of more severe disciplinary sanctions if the *student* is found to violate the Policy during the probationary period
- (e) Residence Hall Dismissal: Permanent separation of the student from the residence hall and termination of the student's housing or license agreement, as applicable
- (f) Suspension: Exclusion from classes and other University privileges and activities as set forth in the notice of suspension for a definite period of time not to exceed two years

- (g) Dismissal: Permanent termination of student status, except that a dismissed student will be permitted to apply for readmission after a period of no less than three years in matters where the decision has expressly permitted such reapplication and set forth reasonable conditions for readmission
- (h) Expulsion: Permanent termination of student status
- (i) Withholding of Degree: A student's academic degree that has been earned but not yet awarded, may be withheld until the completion of the disciplinary process as set forth in the Policy, including the completion of all disciplinary sanctions imposed
- (j) Revocation of Degree: Revoking degree awarded from NJCU for violations of the Policy committed by a student prior to graduation but discovered after the student is awarded a degree, and
- (k) Revocation of Admission: Revoking an offer of admission prior to a student enrolling at NJCU.

In addition to the sanction imposed (except for expulsion, withholding of degree, revocation of degree, and revocation of admission), NJCU will require any student determined to be responsible for a violation of the Policy to receive appropriate education and/or training related to the *sex-based misconduct* at issue. Students who are suspended, dismissed, or expelled as a result of the disciplinary process are not entitled to a refund of their tuition and/or fees.

Transcript Notations & Withholding of Degrees: When a student-respondent is found responsible and the sanction is either suspension or expulsion, the school or college must place a notation on the respondent's transcript stating that respondent "was suspended [or expelled] after a finding of responsibility for a code of conduct violation."

In all other matters, the school or college must place a notation of the findings and sanction on a respondent's transcript unless a resolution agreement, the Decision-maker's determination, or the decision on appeal expressly indicate otherwise.

In matters where a student-respondent was expelled as a result of a Clery Act crime of violence, including but not limited to sexual assault, the notation will not be removed. For all other matters, after four years from the date of the conclusion of the disciplinary proceeding, or one year after the conclusion of any suspension, whichever is later, the respondent has the right to request that a transcript notation from a finding of responsibility be removed. If a finding of responsibility is vacated for any reason, the notation must be removed.

2. The following sanctions/responsive actions/corrective actions may be imposed upon employee-respondent:

- Verbal or Written Warning

- Performance Improvement Plan/Management Process
- Enhanced Supervision, Observation, or Review
- Required Counseling
- Required Training or Education
- Probation
- Denial of Pay Increase/Pay Grade
- Loss of Oversight or Supervisory Responsibility
- Demotion
- Transfer
- Shift or schedule adjustments
- Reassignment
- Delay of (or referral for delay of) Tenure Track Progress
- Assignment to new supervisor
- Restriction of Stipends, Research, and/or Professional Development Resources
- Suspension/Administrative Leave without Pay
- Termination
- Other actions that might be deemed appropriate.

Employees who are subject to a disciplinary process contained in a collective bargaining agreement with the University or an employee with disciplinary rights under the New Jersey Civil Service Law, a determination that the *respondent* is responsible, will be referred for discipline under the applicable collective bargaining agreement or Civil Service Law.

### 3. Remedies for *Complainants*

In the event that the *Respondent* is found responsible for violating the Policy, the Title IX Coordinator will implement remedies for the *complainant*, designed to restore or preserve equal access to NJCU's *education program or activity*. Such remedies may include a continuation of the same supportive measures and accommodations can be more expansive. The supportive measures can be disciplinary, punitive and burden the *respondent*.

### 4. Implementation of Sanctions

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

## F. Appeals

The following provisions govern the appeal of written determination and/or sanctions.

*Parties* intending to appeal under this section must send a written appeal to NJCU’s Title IX Coordinator within 10 days of the delivery of the written determination. The written appeal must contain the *relevant* ground(s) for appeal and a detailed description of the rationale for the appeal.

The Title IX Coordinator will notify the *parties* of the appeal. The decision-maker will determine if the appeals request meets the grounds for appeal, specified below, and will notify the *parties* simultaneously in writing of the decision, whether it was approved or denied, and the rationale. If the appeal is approved, the non-appealing *party* can submit a response within 7 (seven) days. If the appeal is denied, the decision is not appealable.

### 1. Grounds for Appeal

A *party* may appeal the decision-maker’s determination of responsibility and/or the sanction imposed on the following grounds:

- (a) Procedural irregularity that would change the outcome of the matter
- (b) New evidence that would change the outcome of the matter and that was not reasonably available at the time the written determination was made
- (c) The Title IX Coordinator, investigator, or decision-maker had a conflict of interest or bias for or against *complainants* or *respondents* generally or the individual *complainant* or *respondent* that affected the outcome of the matter, or
- (d) The disproportionate nature of the sanction.

If the appeals goes forward, the Title IX Coordinator will:

- Implement appeal procedures equally for the *Parties*, which includes the opportunity for the non-appealing *party* to submit a written response to the written appeal, due within 10 days of the delivery of the appealing *party*’s written appeal.
- Assign an appeal arbiter, who did not take part in the investigation or dismissal of the complaint, who will review the investigative materials and the written submission of the *Parties*. The Appeal Arbiter will be one who did not take part in an investigation of the allegations or dismissal of the complaint.

### 2. Appeals Arbiter’s Jurisdiction

The appeals arbiter will make changes to the findings only when there is clear error and to sanctions/responsive actions only if there is a compelling justification to do so. An appeal is not an opportunity for the appeals arbiter to substitute their judgement for that of the original decision-maker merely because they disagree with the finding and/or sanctions.

### 3. Time-Frame for Appeals

Within 20 days of receipt of the non-appealing *party's* written response to the written appeal or the non-appealing *party's* failure to provide the submission, the appeal arbiter will issue an appeal decision indicating the final outcome and rationale for that decision.

A notice of appeal outcome will be sent to the *parties* with the result of the appeal simultaneously, or without significant time delay between notifications, and the rationale for the result.

#### 4. Potential Outcome of the Appeal

The appeal arbiter may, in whole or in part, modify the sanction, remand the matter for a new investigation, remand the matter for the issuance of a written determination containing new or additional analysis, or affirm the written determination.

Once an appeal is decided, the outcome is final and constitutes the final determination; further appeals are not permitted, even if a decision or sanction is changed on remand (except in the case of a new determination). When appeals result in no change to the finding or sanction, that decision is final. When an appeal results in a new finding or sanction, that finding or sanction can be appealed one final time on the grounds listed above and in accordance with these procedures.

If a remand results in a new determination that is different from the appealed determination, that new determination can be appealed, once, on any of the available appeal grounds.

#### 5. Sanction Status During the Appeal

Any sanctions imposed as a result of the determination are stayed (i.e., not implemented) during the appeal process, and supportive measures may be maintained or reinstated until the appeal determination is made.

If any of the sanctions are to be implemented immediately post-determination, but pre-appeal, then the emergency removal procedures (detailed above) for a “show cause” meeting on the justification for doing so must be permitted within two (2) business days of implementation.

##### G. Withdrawal or Resignation before Complaint Resolution

##### 1. Student's Lack of Participation, Withdrawal, or Transfer Before the Resolution Process is Completed

Should a *student respondent* decide not to participate in the *resolution process*, the process proceeds absent their participation to a reasonable resolution.

If a *student respondent* withdraws from NJCU with a *sex-based misconduct* investigation or adjudication pending, the resolution process may continue, or the Title IX Coordinator may



exercise their discretion and dismiss the complaint. If the *complaint* is dismissed, NJCU may still provide reasonable supportive or remedial measures as deemed necessary to address safety and/or remedy any ongoing effects of the alleged discrimination, harassment, and/or retaliation.

In the event that the resolution process continues, any decision and sanction will be binding, pending appeal. NJCU will place a notation on the *respondent's* transcript that the *respondent* "withdrew with conduct charges pending."

If the *respondent* is subsequently found not responsible at the end of grievance process, the transcript notation will be removed. If the *respondent* is subsequently found responsible after the sanction process and the sanction is either suspension or expulsion, the transcript notation will include the sanction imposed.

## 2. Employee's Withdrawal Before the Resolution Process is Completed

If an *employee respondent* withdraws from NJCU with unresolved allegations pending, the *resolution process* may continue, or the Title IX Coordinator may exercise their discretion to dismiss the Complaint. If the Complaint is dismissed, NJCU may still provide reasonable supportive or remedial measures as deemed necessary to address safety and/or remedy any ongoing effects of the alleged discrimination, harassment, and/or retaliation.

When an employee resigns and the *complaint* is dismissed, the employee may not return to NJCU in any capacity. Human resources, the registrar, and admissions will be notified, accordingly, and a note will be placed in the employee's file that they resigned with allegations pending and are not eligible for rehire. The records retained by the Title IX Coordinator will reflect that status.

## **XXII. REVISIONS OF THESE PROCEDURES**

NJCU reserves the right to make changes to this Policy as necessary, and once those changes are posted online, they are in effect. If government laws or regulations or court decisions alter the requirements in a way that impacts this Policy, this Policy will be construed to comply with the most recent government laws, regulations, or court holdings.

Individuals who wish to file a Complaint about NJCU's policy or process may contact the U.S. Department of Education's Office for Civil Rights using contact information available at <https://ocrcas.ed.gov/contact-ocr>.

## APPENDIX A: DEFINITIONS

1. **Admission** means selection for part-time, full-time, special, associate, transfer, exchange, or any other enrollment, membership, or matriculation in or at an *education program or activity* operated by NJCU.
2. **Complaint** means an oral or written request to NJCU that objectively can be understood as a request for NJCU to investigate and make a determination about alleged sex-based misconduct.
3. **Consent** is a mutual and understandable exchange of affirmative words or actions which indicate permission to engage in mutually agreed upon sexual activity. Consent must be informed, voluntary, and actively given. Consent is free of force – including physical violence, threats, intimidation and coercion, including emotional manipulation. Consent is evaluated from the perspective of what a reasonable person would conclude are mutually understandable words or actions. It is the responsibility of each *party* to determine what the other person has consented to before engaging in the activity.

Consent to some sexual activity (such as kissing or fondling) cannot be assumed to be consent for other sexual activity (such as intercourse)

The absence of a negative response is not consent.

Consent cannot be given where an individual is incapacitated. Incapacitation is a state where someone cannot make rational, reasonable decisions because s/he lacks the capacity to give knowing consent (e.g. to understand the “who, what, when, where, why, or how” of their sexual interaction).

--Mental or physical incapacitation can result from the following:

alcohol or drug use, unconsciousness, or blackout;

--mental disability, sleep, involuntary physical restraint, or from the consumption of rape drugs.

Alcohol related incapacity results from a level of alcohol ingestion that is more severe than impairment, being under the influence, drunkenness or intoxication;

Evidence of incapacity may be detected from context clues, such as: slurred speech, bloodshot eyes, the smell of alcohol on a person’s breath; shaky equilibrium; vomiting; unusual behavior; unconsciousness. However, these signs alone do not necessarily indicate incapacitation since the existence of consent is based on the

totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances.

Whether the *Respondent* knew nor should have the *complainant* to be physically or mentally incapacitated is significant in determination of consent in incapacitation cases. “Should have known” is an objective, reasonable person standard that assumes that a reasonable person is both sober and exercising good judgment.

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

4. **Disciplinary Sanctions** means consequences imposed on a *respondent* following a determination under this Policy that the *respondent* violated NJCU’s prohibition against *sex-based misconduct*.
5. **Education Program or Activity** is defined in Section II of the Policy.
6. **Employee** is a person employed by NJCU either full or part-time, including student-employees when acting within the scope of their employment.
7. **Parties** means *Complainant(s)* and *Respondent(s)*.
8. **Peer Retaliation** means retaliation by a student against another student.
9. **Reasonable person** is an objective standard meaning a person in the *Complainant’s* position, such as having similar characteristics/demographics to the *Complainant*.
10. **Relevant** means related to the allegations of sex-based misconduct under investigation as part of the resolution procedures. Questions are *relevant* when they seek evidence that may aid in showing whether the alleged sex-based misconduct occurred, and evidence is *relevant* when it may aid a *decision-maker* in determining whether the alleged *sex-based misconduct* occurred.
11. **Respondent** means a person who is alleged to have violated NJCU’s prohibition on *sex-based misconduct*.
12. **Resolution Process** refers to the process of investigation and resolution of allegations of prohibited conduct under this Policy, including Informal Resolution.

13. **Sex-based** or “on the basis of sex” means conduct that is sexual in nature, or that is directed to the *Complainant* because of his/her/their actual or perceived sex or gender identity.
14. **Sex-based misconduct**, consisting of “sex discrimination” and “*sex-based harassment*” is defined in Section V of the Policy.
15. **Student** means a person who has gained admission. Only a student *party* can make a complaint of *sex-based harassment*. When the student is also an employee of NJCU, a fact-specific determination must be made whether the student *party’s* primary relationship was to receive an education and whether the alleged *sex-based harassment* occurred while the student was performing employment-related work.
16. **Violence Risk Assessment (VRA)** is the process of evaluating the immediacy of violence posed by an individual or group following a threat. This involves an evidence-based appraisal of risk factors that increase the potential for violence, identification of stabilizing forces that may mitigate this risk, a contextual analysis of violence risk considering environmental circumstances, and the application of intervention and management strategies to reduce the risk of violence.

## APPENDIX B

### **DISABILITY ACCOMMODATIONS**

This Policy does not alter NJCU's institutional obligations under applicable federal, state or local disability laws, including the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973, among others. *Parties* may request reasonable accommodations for disclosed disabilities to the Title IX Coordinator at any point during the process that do not fundamentally alter the procedures. The Title IX Coordinator will not affirmatively provide disability accommodations that have not been specifically requested by the *Parties*, even where the *Parties* may be receiving accommodations in other institutional programs and activities.

If the *Complainant* or *Respondent* discloses a disability, the Title IX Coordinator may consult, as appropriate, NJCU's Office of Specialized Services and Supplemental Instruction.

## APPENDIX C

### **PREGNANCY AND RELATED CONDITIONS**

Rights to lactation space for NJCU *students* and *employees*: NJCU will ensure *students* and *employees* can access a lactation space, which will be a space other than a bathroom, that is clean, shielded from view, free from intrusion from others, and may be used by a student or employee for expressing breast milk or breastfeeding as needed.

Pregnancy accommodations for *students* and *employees* also include:

#### A. STUDENTS

Pregnant students are entitled to breaks during class to express breast milk, breastfeed, or attend to health needs associated with pregnancy or related conditions, including eating, drinking, or using the restroom; intermittent absences to attend medical appointments; access to online or homebound education; changes in schedule or course sequence; extensions of time for coursework and rescheduling of tests and examinations; sitting, standing, carrying or keeping water nearby; counseling; changes in physical space or supplies (for example, access to a larger desk or a footrest); elevator access; or other changes to policies, practices, or procedures.

Pregnant students are also entitled to leaves of absence for pregnancy and related conditions. Students are allowed to voluntarily take a leave of absence from their *education program or activity* to cover, at minimum, the period of time deemed medically necessary by the student's licensed healthcare provider. A longer period of time may be available to the extent a student qualifies for leave under any NJCU policy that allows for a greater period of time than the medically necessary period. When the student returns to their *education program or activity*, the student will be reinstated to the academic status and as practicable, to the extracurricular status that the student held when the voluntary leave began.

For the purposes of this Policy, supporting documentation is not necessary including, but not limited to, when the student's need for a specific action is obvious, such as when a student who is pregnant needs a bigger uniform, or when the reasonable modification because of pregnancy or related conditions at issue requires a student to carry or keep water nearby and drink, use a bigger desk, sit or stand, or take breaks to eat, drink, or use the restroom; when the student has lactation needs; or when the specific action is available to students for reasons other than pregnancy or related conditions without submitting supporting documentation.

In addition, NJCU will treat pregnancy or related conditions the same manner and under the same policies as any other temporary medical conditions with respect to any medical or

hospital benefit, service, plan, or policy that NJCU administers, operates, offers, or participates in with respect to admitted students.

Finally, NJCU will not require a student who is pregnant or has related conditions to provide certification from a healthcare provider or any other person that the student is physically able to participate in a class, program, or extracurricular activity unless: (1) the certified level of physical ability or health is necessary for participation in the class, program, or extracurricular activity; (2) NJCU requires such certification of all students participating in the class, program, or extracurricular activity; and (3) the information obtained is not used as a basis for discrimination prohibited by the Policy.

#### *B. EMPLOYEES*

Pregnancy or related conditions will be treated as any other temporary medical condition for all job-related purposes, including commencement, duration and extensions of leave; payment of disability income; accrual of seniority and any other benefit or service; and reinstatement; and under any fringe benefit offered to employees by virtue of employment.

In the case of an employee with insufficient leave or accrued employment time to qualify for leave, NJCU will treat pregnancy or related conditions as a justification for a voluntary leave of absence without pay for a reasonable period of time, at the conclusion of which the employee will be reinstated to the status held when the leave began or to a comparable position, without decrease in rate of compensation or loss of promotional opportunities, or any other right or privilege of employment.

Employees requesting accommodation based on pregnancy, childbirth, or a related medical condition should contact the Office of Human Resources at their school, college, or unit. The employee and the Director of Human Resources, or a designee, will engage in an interactive process, also called a cooperative dialogue, which may include a consideration of a number of factors, such as the employee's limitations and the job functions and requirements, with the goal of finding an acceptable accommodation.

The Director of Human Resources, or a designee, will initiate a cooperative dialogue even when an employee does not make an accommodation request when the school, college, or unit has: (1) knowledge the employee's performance at work has been affected or that their behavior at work could lead to an adverse employment action; and (2) a reasonable basis to believe that the issue is related to pregnancy, childbirth, or a related medical condition.

Reasonable accommodations may include, but are not limited to, granting frequent bathroom breaks, providing the employee with a specialized chair, granting leaves of absence, changing work schedules to accommodate doctor's visits, temporary shift reassignments, providing light duties or assistance with manual labor for a period of time, or temporarily reassigning the employee to a vacant position for which the employee is qualified. A grant or denial of the employee's request will be made as soon as practicable,

taking into account the urgency of the request, and sent to the employee in writing, either stating the accommodation, or for denials, the reason the request was denied.

Employees may be required to submit medical documentation when requesting: (1) time away from work, including for medical appointments, other than the presumptive six (for a vaginal delivery) to eight (for a caesarian section) week period following childbirth for recovery from childbirth; or (2) to work from home, either on an intermittent or a long-term basis. This requirement does not affect medical documentation requirements related to leave taken pursuant to the Family Medical Leave Act or other disability plans or policies.

Employees seeking accommodations for pregnancy, childbirth, or a related medical condition should also consult the following policies or laws:

- Pregnant Workers Fairness Act, <https://www.eeoc.gov/statutes/pregnant-workers-fairness-act>
- The New Jersey Pregnancy Act, [https://pub.njleg.gov/bills/2012/PL13/220\\_.PDF](https://pub.njleg.gov/bills/2012/PL13/220_.PDF)



## APPENDIX D

### **OBLIGATIONS OF CONFIDENTIAL EMPLOYEES**

Confidential Employees will, in response to an individual informing them of conduct that may reasonably constitute *sex-based misconduct* under this Policy: (1) inform the individual of the Confidential Employee's status if the Confidential Employee is operating in that role when informed; (2) provide the individual the contact information for the Title IX Coordinator; (3) explain that the individual can file a complaint with the Title IX Coordinator if they choose to do so; and (4) explain that the Title IX Coordinator could provide the individual with supportive measures, provide them access to the informal resolution process, or conduct an investigation into the conduct.

All Confidential Employees will also disclose if there are any federal, state, or local laws obligating the Confidential Employee to report an incident to law enforcement.

## **APPENDIX E: SANCTION RANGES**

Sanction Ranges The following sanction ranges apply for *sex-based misconduct* under this Policy. Sanctions can be assigned outside of the specified ranges based on aggravating or mitigating circumstances, or the respondent's cumulative conduct record.

- Sex Discrimination: warning through expulsion or termination.
- Quid Pro Quo Harassment: warning through expulsion or termination.
- Hostile Environment Harassment: warning through expulsion or termination.
- Rape: suspension through expulsion or termination.
- Fondling: warning through suspension (termination for employees).
- Incest: warning through probation.
- Statutory Rape: warning through suspension (termination for employees).
- Stalking: probation through expulsion or termination.
- Dating/Domestic Violence: probation through expulsion or termination.
- Sexual Exploitation: warning through expulsion or termination.
- Retaliation: warning through expulsion or termination.
- Unauthorized Disclosure: warning through expulsion or termination.
- Failure to Comply/Process Interference: warning through expulsion or termination.