

## **Title IX – Sexual Harassment Policy**

*These policies and procedures are implemented on an interim basis. Should a court strike, either temporarily or permanently, any terms or provisions of these policies and procedures, the University reserves the right to make immediate modifications to the policies and procedures that take effect upon publication on our website. Further, should any court deem any portion of the 2020 Title IX Regulations (34 C.F.R. Part 106) to be unlawful, or should they be ordered suspended or withdrawn, the University reserves the right to withdraw these interim policies and procedures and immediately reinstate previous policies and/or procedures or revise them accordingly.*

Gonzaga recognizes the inherent dignity of all individuals and promotes respect for all people in its activities and programs and in the relationships it shares with students, faculty, staff and the public. Further, Gonzaga expects all community members to promote dignity and respect in their daily interactions with each other.

Harassment, discrimination, and sexual misconduct will not be tolerated at Gonzaga. Such acts are counter to our mission, values, Student Code of Conduct and are against Gonzaga policy. Acts of harassment, discrimination, and/or sexual misconduct interfere with an individual's ability to benefit from the Gonzaga experience. Gonzaga is committed to taking all appropriate steps to eliminate harassment, discrimination, and sexual misconduct, prevent its recurrence and address its effects.

Gonzaga seeks to cultivate a campus culture of prevention and awareness surrounding harassment, discrimination and/or sexual misconduct. All members of the Gonzaga community are encouraged to report any incident of harassment, discrimination, or sexual misconduct. Gonzaga will take steps to resolve complaints promptly and equitably. Gonzaga does this by providing counseling and support services for individuals and groups who have been affected by harassment, discrimination, and/or sexual misconduct, by holding individuals who violate this policy accountable, and by providing education and training to the Gonzaga community.

It is a violation of Gonzaga policy to threaten, intimidate or retaliate in any way against an individual for raising allegations of harassment or discrimination, participating in an investigation, complaint process or hearing, filing a complaint alleging harassment or discrimination, or encouraging others to report. Retaliation includes, but is not limited to, any form of intimidation, reprisal, or harassment. Gonzaga will take immediate and responsive action to any retaliation. Anyone found to have acted in a retaliatory manner may be subject to appropriate disciplinary action up to and including termination of employment.

Title IX of the Education Amendments of 1972 (Title IX) prohibits discrimination on the basis of sex in any federally funded education program or activity. Depending on the circumstances, sexual harassment can be a form of discrimination prohibited by Title IX. Gonzaga University will not tolerate any sexual harassment or any retaliation against any individual making a report or participating in the investigation of such harassment.

### **1. Scope of Policy**

This Policy applies to all members of the Gonzaga University community, including students, whether engaged in credit or non-credit bearing course work, faculty, staff, administrators, Board members, and other third parties, consultants, vendors who have a formal relationship with the University. The University has jurisdiction to take disciplinary action against a Respondent who is a current student or employee of the University, or a Respondent who was a former student or employee of the University at the time of the alleged sexual harassment, as defined below. Each member of the University community is responsible for conducting themselves in accordance with this Policy and other University policies and procedures.

This Policy addresses the prohibition of **“sexual harassment” as defined by Title IX**. Under Title IX, sexual harassment is defined as conduct on the basis of sex that satisfies one or more of the following:

- An employee conditioning the provision of an aid, benefit, or service on an individual's participation in unwelcome sexual conduct (i.e., quid pro quo);
- Unwelcome conduct determined by a reasonable person to be so severe and pervasive and objectively offensive that it effectively denies a person equal access to an education program or activity (i.e., hostile environment); or
- Sexual assault (as defined in the Clery Act), dating violence, domestic violence, or stalking as defined in the Violence Against Women Act (VAWA).

**This Policy is specific to such sexual harassment that occurs against a person in the United States and within the University's education program or activity, which includes locations, events, or circumstances over which the University exercises substantial control over the accused harasser and the context in which the sexual harassment occurred. This includes off-campus conduct that effectively deprives someone of the University's educational program. This may also extend to online conduct when the Title IX Coordinator determines that the conduct affects a substantial University interest.**

**The University also prohibits sexual harassment outside the scope of Title IX, such as conduct that occurs during a study abroad program or conduct that occurs outside a University education program or activity, as discussed in its other policies, including but not limited to the Harassment and Non-Discrimination Policy, the Student Code of Conduct, and the Faculty Handbook.**

**When the University receives a report of sexual harassment, gender-based harassment, discrimination, or sexual misconduct, it will determine whether the report falls within the scope of this policy and the procedures outlined below, or whether it falls within the scope of another University policy and procedure, including but not limited to the University's Harassment and Non-Discrimination Policy or the Student Code of Conduct. Such determinations will be made on a case-by-case basis and will take into account various factors, including, but not limited to, the nature of the report and the location of the alleged incident(s).**

The University will not condone or tolerate any sexual harassment from any member of the University community. The University will respond according to the severity and pervasiveness of the offense and the threat it poses to the community. Individuals who are found responsible under this Policy may face disciplinary sanctions up to and including expulsion from the University for students, and/or termination of employment for University employees or faculty.

The University community has a responsibility to maintain an environment free from sexual harassment. The University is committed to taking all appropriate steps to eliminate sexual harassment, prevent its recurrence and address its effects. The University is committed to fostering a climate free from sex and gender-based harassment, sexual assault, stalking, intimate partner violence and/or retaliation through clear and effective policies, coordinated education and prevention programs and prompt and equitable procedures for resolution that are accessible to all. The University encourages all members of the University community to participate in the process of creating a safe, welcoming and respectful campus environment.

The University will not tolerate retaliation against an individual who makes a report of sexual harassment or participates in an investigation. Community members engaging in reprisals or retaliation related to a sexual harassment report will be subject to disciplinary action, whether such acts are implicit or explicit, or committed directly or indirectly.

## **2. Examples, Definitions and Prohibited Conduct**

**Sexual harassment** can take many forms, including (but not limited to) the following:

- Can occur between equals (e.g., student to student, employee to employee) or between persons of unequal power status (e.g., supervisor to subordinate, professor to student, coach to student-athlete).
- Can be committed by an individual or may be a result of the actions of an organization or group. It can be committed against an individual, an organization or a group.
- Can be committed by an acquaintance, a stranger or someone with whom the Complainant has an intimate or sexual relationship.
- Can occur by any individual against any individual. This policy prohibits gender-based sexual harassment against Gonzaga community members of any sex, gender identity or sexual orientation.
- Demeaning sexist statements, humor or jokes about sex or gender-specific traits, crude sexual remarks, offensive stories, remarks of a sexual nature about a person's clothing or body, remarks about sexual activity or experiences, sexual innuendo or other suggestive comments, offensive notes, sexual propositions, or insults and threats, that an individual communicates are unwanted and unwelcome.
- Hazing as defined by Student Code of Conduct.
- Display or circulation of written materials or pictures degrading to an individual(s) or gender group.
- Engaging in demeaning verbal and other expressive behavior of a sexual or gendered nature in instructional settings.
- Inappropriate or unwelcome physical contact or suggestive body language, such as touching, patting, pinching, hugging, kissing, or brushing against an individual's body.
- Undue and unwanted attention, such as repeated inappropriate flirting, compliments about clothing or physical attributes, staring or making sexually oriented gestures.
- Pressuring an individual to become involved in sexual activity.
- Making a student's work or an employee's job more difficult because of that person's sex, gender identity or sexual orientation.
- Using a position of power and authority to: 1) threaten or punish, either directly or by implication, for refusing to tolerate harassment or submit to sexual activity or for reporting harassment; 2) promise rewards in return for sexual favors.
- Sexually assaulting an individual.

In addition to the range of behaviors identified above as sexual harassment, the following conduct is specifically prohibited by this policy:

### **Sexual assault:**

- Related to Attempted or Actual Penetrations: Engaging, or attempting to engage in 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 that victim. Such sexual assault may be also be non-forcible, but still prohibited, if it occurs with a person who is under the statutory age of consent or between persons who are related to each other within the degrees of marriage wherein prohibited by law.
- Related to Fondling and Other Forms of Sexual Contact: The touching or attempted touching of the private body part of another person for the purpose of sexual gratification, forcibly and/or against that person's consent; or not forcibly or against the person's consent where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.

**Consent:** Consent occurs when the parties exchange affirmative words, actions, or behavior indicating their agreement to freely participate in mutual sexual activity. Consent must be informed, knowing and voluntary, and freely and actively given. As a general rule, a person will be considered unable to give valid consent if

she/he cannot appreciate the "who, what, when, where, why and how" of a sexual interaction. The following further clarifies the definition of consent:

- Each participant in a sexual encounter is expected to obtain and give consent to each act of sexual activity.
- If at any time it is reasonably apparent either party is hesitant, confused or unsure, both parties should stop and obtain mutual verbal consent before continuing such activity.
- Consent may be withdrawn by either party at any time. Withdrawal of consent must also be outwardly demonstrated by words or actions which clearly indicate a desire to end sexual activity. Once withdrawal of consent has been expressed, sexual activity must cease.
- Relying on non-verbal communication can lead to misunderstandings. Consent should not be inferred from silence, passivity, lack of resistance or lack of an active response alone. A person who does not physically resist or verbally refuse sexual activity is not necessarily giving consent.
- Individuals with a previous or current intimate relationship do not automatically give either initial or continued consent to sexual activity.
- An individual who is physically incapacitated from alcohol or other drug consumption (voluntarily or involuntarily), or is unconscious, unaware or otherwise physically helpless is considered unable to give consent. For example, one who is asleep or passed out cannot give consent.
- An individual in a blackout state may appear to act normally but may not have later recall of the events in question. The extent to which a person in this state affirmatively gives words or actions indicating a willingness to engage in sexual activity and the other person is unaware – or reasonably could not have known – of the alcohol consumption or blackout, must be evaluated in determining whether consent could be considered as having been given.
- Alcohol and other drugs impair a person's decision-making capacity, awareness of the consequences and ability to make judgments, and can create an atmosphere of confusion over whether consent has been freely and clearly sought or given.
- Being intoxicated or impaired by drugs or alcohol is never an excuse for sexual harassment, discrimination, and/or sexual misconduct and does not diminish one's responsibility to obtain consent.

**Coercion:** The use, attempted use or threat of force, immediate or future harm, or the use of physical, severe or pervasive emotional intimidation to cause another person to engage in or submit to certain activities. Coercion also includes administering a drug, intoxicant or similar substance which impairs the person's ability to give consent.

**Incapacitation:** An individual who is incapacitated cannot consent to sexual activity. An individual is incapacitated if he/she is physically helpless, unconscious, or unaware, due to drug or alcohol consumption (voluntarily or involuntarily) or for some other reason. Where alcohol is involved, incapacitation is a state beyond drunkenness or intoxication. Some indicators of incapacitation may include, but are not limited to, lack of control over physical movements, being unaware of circumstances or surroundings, or being unable to communicate for any reason

**Sexual-based Communication:** Speaking to, or directing any kind of communication, words, or images of a sexual nature at another person which is not welcomed by the receiving party. If the communication is unwelcome, that is, if it occurs without the other person's consent or participation it may create a hostile learning and living environment. Sexual-based communication can include interactions in person, by phone, social media, electronic messages and photos and written words or images such as graffiti.

**Sexual Exploitation:** Taking sexual advantage of another for the Respondent's advantage or benefit, or for the benefit or advantage of anyone other than the Reporting Party. Examples of sexual exploitation include creating images (including video or still photography) of another person of a sexual nature via web-cam, camera, Internet exposure, etc., without knowledge and consent of all persons; knowingly exposing a person

who has not consented to the risk to Human Immunodeficiency Virus (HIV) or any other Sexually Transmitted Diseases (STD); inducing incapacitation for the purpose of making the other person vulnerable to sexual assault; and voyeurism.

**Stalking:** Engaging in a course of conduct directed at a specific person which would cause a reasonable person to fear for their safety or the safety of others or suffer substantial emotional distress. Stalking includes cyber-stalking, a particular form of stalking in which electronic media such as the internet, social networks, blogs, cell phones, texts or other similar devices or forms of contact are used to pursue, harass or make unwelcome contact with another person.

**Domestic Violence:** Violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of Washington State, or by any other person against an adult or a youth victim who is protected under Washington State Law.

**Dating Violence:** Violence committed by a person who is or has been in a social relationship of a romantic nature with the victim; and where the existence of such a relationship shall be determined based on the consideration of the following factors: the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

**Prohibited Relationships:** Romantic or sexual relationships between two members of the Gonzaga community when one person in that relationship has actual or apparent authority to supervise, evaluate, counsel, educate, employ or otherwise make decision(s) or recommendation(s) regarding the other person in respect to the other person's employment, education or instruction at Gonzaga, or as to his/her advancement, participation, benefits or privileges in the educational or employment context. Although relationships between "unequal" persons may not necessarily constitute sexual harassment, an inherent conflict of interest and may give rise to sexual harassment/discrimination, or allegations thereof. Refer to the Gonzaga Certain Relationships by Persons in Authority policy for more information.

### **3. Title IX Coordinator**

The staff identified below are specially trained to work with individuals who report or are accused of sexual harassment as discussed in this Policy. They have knowledge about on- and off-campus resources, services, and options – including the availability of interim measures.

#### **Title IX Coordinator**

Contact: Stephanie Thomas

Location: Business Services Center, Office 101A, 102 E. Boone Ave.

Phone: 509.313.6910

Email: thomassn@gonzaga.edu

#### **Deputy Title IX Coordinators**

Contact: Eric Baldwin (Vice President Student Well-Being and Healthy Living)

Location: College Hall 120

Phone: 509.313.4135

Email: baldwine@gonzaga.edu

Contact: Chris Purviance (Assistant Director, Human Resources)

Location: Business Services Center, Office 009, 102 E. Boone Ave.

Phone: 509.313.5858

Email: [purviance@gonzaga.edu](mailto:purviance@gonzaga.edu)

Contact: Heather Gores (Associate Athletic Director, Athletics)

Location: McCarthey Athletic Center, Office 315, 801 N. Cincinnati St.

Phone: 509.313.3599

Email: [gores@gonzaga.edu](mailto:gores@gonzaga.edu)

Individuals may contact and/or submit complaints to the Title IX Coordinator and Deputy Coordinators via the information above or submit a report online at:

[https://cm.maxient.com/reportingform.php?GonzagaUniv&layout\\_id=3](https://cm.maxient.com/reportingform.php?GonzagaUniv&layout_id=3)

#### **4. Campus and Community Resources**

- Health and Safety

The first priority for any individual who has been assaulted is to get to a safe place and call 911 or the Campus Public Safety and Security (509-313-2222).

An individual's physical well-being should be addressed as soon as possible, whether or not that individual wishes to make a report to Gonzaga or local law enforcement. A medical provider can facilitate and provide:

- 1) Emergency or follow-up medical services. The medical exam has two goals: first, to treat the full extent of any injury of physical trauma and to consider the possibilities of sexually transmitted disease or pregnancy; and second, to properly collect and preserve evidence as part of a "rape kit"/sexual assault examination for potential criminal prosecution (provided only by a trained provider in a hospital).
  - **IMPORTANT:** do not shower, bathe, douche, brush your teeth, drink or change your clothing, as you may be destroying evidence you will need if you decide to prosecute.
- 2) STD and HIV testing (available through Gonzaga Health Center or another off- campus provider)
- 3) Pregnancy testing (available through Gonzaga Health Center or another off- campus provider)
- 4) Health care concerns related to the incident may be discussed with the hospital emergency staff, a personal physician or Gonzaga Health Center staff, who can also provide referrals to off-campus providers
- 5) Gonzaga Health Center can also advise an individual about the complaint processes under this policy.

- Confidential Resources

Gonzaga recognizes not every individual will be prepared to make a formal report to Gonzaga or to local law enforcement. Individuals seeking to talk to someone about an incident of sexual harassment or misconduct in a confidential manner without making a report to Gonzaga or triggering any investigation or action by Gonzaga or the police can access confidential resources as outlined in this policy.

## Campus and Local Resources for STUDENTS

### Where to go for Gender-based Harassment, Discrimination, and/or Sexual Misconduct Incidents and Support Services

Confidential Reporting	Non-Confidential Reporting
Health & Counseling Center – 509-313-4052	Campus Security & Public Safety – 509-313-2222
On-campus Lutheran Social Services Advocate – 509-313-6119	SART First Responder – 509-313-2222 Center for Cura Personalis – 509-313-4009
SAFeT – 509-624-7273	Title IX Coordinator – 509-313-6910
Any Priest serving as a sacramental confessor or any ordained religious serving in the sacred confidence role.	Any Gonzaga Staff or Faculty Member
<u>Anonymous</u> report completed online at <a href="http://www.gonzaga.edu/sexualmisconductform">www.gonzaga.edu/sexualmisconductform</a>	Spokane Police Dept. – 509-456-2233 (non-emergency)
Whistleblower website <a href="http://www.gonzaga.ethicspoint.com">www.gonzaga.ethicspoint.com</a>	Report completed online at <a href="http://www.gonzaga.edu/sexualmisconduct">www.gonzaga.edu/sexualmisconduct</a>

Emergency Response	Health and Safety Resources in Spokane Community	Gonzaga Campus Assistance
911	Spokane Police Dept. – 509-456-2233 (non-emergency)	Campus Security & Public Safety – 509-313-2222
	Sacred Heart Medical Center – 509-474-3131	SART (Sexual Assault First Responder) – 509-313-2222
	Deaconess Hospital – 509-458-5800	Safe Transportation (Campus Public Safety – 509-313-2222
	Holy Family Hospital – 509-482-0111	Health & Counseling Center – 509-313-4052
	SAFeT (Sexual assault crisis agency) 509-624-7273	Center for Cura Personalis – 509-313-4009
	Spokane Crime Victim Service Center – 866-751-	Office of Disability Access (Student Disability Resources) – 509-313-4134
	YWCA of Spokane Alternatives to Domestic Violence – 509-326- 2255	Title IX Coordinator – 509-313-6910
	First Call for Help – 509-838-4428	
	Lutheran Community Services – 509-747-8224	

Services offered 24 hrs./day, 365/yr.

## Campus and Local Resources for EMPLOYEES

### Where to go for Gender-based Harassment, Discrimination, and/or Sexual Misconduct Incidents and Support Services

Confidential Reporting	Non-Confidential Reporting
On-campus Lutheran Social Services Advocate – 509-313-6119	Campus Security & Public Safety – 509-313-2222 Title IX Coordinator – 509-313-6910
SAFeT – 509-624-7273	Any Gonzaga Administrator or Supervisor
Any Priest serving as a sacramental confessor or any ordained religious serving in the sacred confidence	Human Resources Office – 509-313-5858; 509-313-6909
<u>Anonymous</u> report completed online at <a href="http://www.gonzaga.edu/sexualmisconductform">www.gonzaga.edu/sexualmisconductform</a>	Spokane Police Dept. – 509-456-2233 (non-emergency)
Whistle blower website <a href="http://www.gonzaga.ethicspoint.com">www.gonzaga.ethicspoint.com</a>	Report completed online at <a href="http://www.gonzaga.edu/sexualmisconductform">www.gonzaga.edu/sexualmisconductform</a>

Emergency Response	Health and Safety Resources in Spokane Community	Gonzaga Campus Assistance
911	Spokane Police Dept. – 509-456-2233 (non-emergency)	Campus Security & Public Safety – 509-313-2222
	Sacred Heart Medical Center – 509-474-3131	Safe Transportation (Campus Public Safety – 509-313-2222
	Deaconess Hospital – 509-458-5800	Title IX Coordinator – 509-313-6910
	Holy Family Hospital – 509-482-0111	Human Resources Office – 509-313-5858; 509-313-6909
	SAFeT (Sexual assault crisis agency) 509-624-7273	Human Resources Disability Accommodations (staff and faculty) – 509-313-5852
	YWCA of Spokane Alternatives to Domestic Violence – 509- 326-2255	Employee Assistance Program (confidential for staff and faculty) – 877-595-5284 or <a href="http://www.gonzaga.edu/eap">http://www.gonzaga.edu/eap</a>
	Spokane Crime Victim Service Center -- 866-751-7119	
	First Call for Help – 509-838-4428	
	Lutheran Community Services – 509-747-8224	

Services offered 24 hrs./day, 365/yr.



## 5. Reporting Sexual Harassment to the University

The University encourages the prompt reporting of sexual harassment so that all involved parties can get the care and support they need, and so that our broader community can remain safe. There is no time limit for reporting an incident of sexual harassment. However, the University encourages reports be made as soon as possible after any incident.

If the Respondent is no longer subject to the University's jurisdiction and/or significant time has passed, the ability to investigate, respond, and provide remedies may be more limited or impossible. Members of the University community who believe they have experienced sexual harassment have the right to choose whether or not to report the incident to the University or law enforcement, and have the right to choose whether to engage with the University once the University receives a report. The information below is for individuals who wish to report incidents of sexual harassment.

An individual who has experienced sexual harassment may choose to report the incident to the University. Anyone wishing to make a report of sexual harassment may do so in person, by email, by regular mail, by phone, or electronically as explained below in Section 5 of this Policy.

### **a. Participant Roles as Discussed in this Policy**

- A **Complainant** is an individual who is a victim of alleged sexual harassment and has chosen to participate in the complaint resolution process.
- A **Respondent** is an individual who has been reported to be the perpetrator of alleged sexual harassment.
- The **Parties** include the Complainant(s) and Respondent(s), collectively.
- A **Navigator** is a trained University staff member who is available to provide general information to the Parties about the complaint resolution process, such as information regarding procedures and timelines. The same Navigator will not provide information to both Parties. Navigators *will not* advocate on behalf of any Party or represent any Party and should not be confused with *Advisors*, described below.
- An **Advisor** is an individual chosen by a Party to accompany the Party to meetings related to the resolution process, advise the Party on that process, and conduct questioning during the hearing. The University will also offer to assign a trained Advisor for any Party if the Party so chooses, for the limited purpose of conducting questioning during the hearing. Parties also have the right to choose not to have an Advisor in the initial stages of the resolution process, prior to the hearing.
- The **Investigator** is the individual(s) assigned by the University to gather facts about an alleged violation of this Policy, assess relevance and credibility, analyze the evidence, and compile the information into an investigation report and file of directly-related evidence.
- The **Hearing Officer** is the individual who has the decision-making authority, and sanctioning authority (including the authority to impose and/or recommend sanctions on students, refer adverse determinations regarding employees for sanctioning by appropriate

University officials, and take action to restore access to educational programs) within the University Formal Grievance Process, outlined below.

**b. Privacy**

Every effort is made by the University to preserve the privacy of reports. The University will not share the identity of any individual who has made a report or complaint of harassment; any Complainant, any individual who has been reported to be the perpetrator of sexual harassment or retaliation, any Respondent, or any witness, except: as permitted by the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g; FERPA regulations, 34 CFR part 99; or as required by law; or to carry out the purposes of 34 CFR Part 106, including the conducting of any investigation, hearing, or grievance proceeding arising under these policies and procedures.

The University reserves the right to determine which University officials have a legitimate educational interest in being informed about incidents that fall within this policy, pursuant to the Family Educational Rights and Privacy Act (FERPA).

Information will be shared as necessary with Investigators, the Hearing Officer, witnesses, and the parties. The circle of people with this knowledge will be kept as tight as possible to preserve the parties' rights and privacy.

The University may contact parents/guardians to inform them of situations in which there is a significant and articulable health and/or safety risk but will usually consult with the student first before doing so.

**c. Supportive Measures**

The University will offer and implement appropriate and reasonable supportive measures to the Parties upon notice of alleged sexual harassment.

Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Parties to restore or preserve access to the University's education program or activity, including measures designed to protect the safety of all Parties or the University's educational environment, and/or deter sexual harassment.

The Title IX Coordinator promptly makes supportive measures available to the Parties upon receiving notice or a complaint. At the time that supportive measures are offered, the University will inform the Complainant, in writing, that they may file a Formal Complaint with the University either at that time or in the future, if they have not done so already.

The Title IX Coordinator works with the Complainant to ensure that their wishes are considered with respect to the supportive measures that are planned and implemented.

The University will maintain the privacy of the supportive measures, provided that privacy does not impair the University's ability to provide the supportive measures. The University will act to ensure as minimal an academic/occupational impact on the Parties as possible.

The University will implement measures in a way that does not unreasonably burden the other Party.

These actions may include, but are not limited to:

- **Contact/Communication Directives:** The Complainant or Respondent may request, or Gonzaga may impose, even if not requested, communication and contact restrictions to prevent further potentially harmful interaction. Any such request shall be made to the investigator. Upon request the investigator assigned to the case will inform the Reporting Party or Respondent of options and will endeavor to accommodate the requested changes if they are reasonably available.

In some cases, an individual may wish to consider a protection/anti-harassment order issued by the appropriate court of the State of Washington. This is a civil proceeding independent of Gonzaga. If a court order is issued Gonzaga will, to the extent possible, assist the protected person in benefitting from the restrictions imposed by the court and will also facilitate on-campus compliance with the order. The court enforces the order through law enforcement. Gonzaga does not enforce the order but does enforce its own rules.

- **Academic, Employment or Living Arrangements:** A Complainant or Respondent may request, or Gonzaga may impose, even if not requested, a change in academic, employment or living situation after a report of sexual misconduct, harassment or discrimination. Upon request Gonzaga will inform the Complainant or Respondent of the options and will endeavor to accommodate the requested changes if they are reasonably available. Interim changes may include:
  - Class or work schedule changes
  - Limiting access to certain Gonzaga facilities or activities
  - Leave of Absence
  - Campus Security escorts across campus
  - Academic support services
  - Other remedies which can be tailored to the involved parties to achieve the goals of this policy
- **Emotional Support:** Gonzaga provides counseling services through the Health and Counseling Center for students, or the Employee Assistance Plan (EAP) for staff and faculty. These resources also provide referrals to off campus agencies.
- Other actions deemed appropriate by the Title IX Coordinator.

#### **d. Emergency Removal of Student Respondent**

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

Where deemed necessary and appropriate, a risk analysis may be performed by the Title IX Coordinator using standard objective violence risk assessment procedures. The Resolution Center for Student Conduct and Conflict or the University's Behavior Intervention Team (BIT) may also be consulted before suspension and/or removal.

In all cases in which an emergency removal is imposed, the student Respondent will be given notice of the action and the option to request to meet with the Title IX Coordinator or other University Administrator prior to such action/removal being imposed, or as soon thereafter as reasonably

possible, to show cause why the action/removal should not be implemented or should be modified (“the show cause meeting”).

When a show cause meeting is not requested within five (5) business days, objections to emergency removal will be deemed waived.

A Complainant and their Advisor may be permitted to participate in this meeting if the Title IX Coordinator determines it is equitable to do so.

This section also applies to any restrictions that a coach or athletic administrator may place on a student-athlete arising from allegations related to Title IX. There is no appeal process for emergency removal decisions.

A Respondent may be accompanied by an Advisor of their choice when meeting with the Title IX Coordinator for the show cause meeting. The Respondent will be given access to a written summary of the basis for the emergency removal prior to the meeting to allow for adequate preparation.

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

The University will implement the least restrictive emergency actions possible in light of the circumstances and safety concerns. As determined by the Title IX Coordinator, these actions could include, but are not limited to: removing a student from a residence hall, temporarily re-assigning an employee, restricting a student’s or employee’s access to or use of facilities or equipment, allowing a student to withdraw or take grades of incomplete without financial penalty, authorizing an administrative leave, and suspending a student’s participation in extracurricular activities, student employment, student organizational leadership, or intercollegiate/intramural athletics.

At the discretion of the Title IX Coordinator, alternative coursework options may be pursued to ensure as minimal an academic impact as possible on the parties.

Where the Respondent is an employee, existing provisions for interim action are applicable.

#### **e. Mandatory Reporting**

All staff, faculty, and student workers, with the exception of the Confidential Resources listed above, are considered to be “Mandatory Reporters.” Mandatory Reporters must report actual or suspected sexual harassment to appropriate officials immediately.

Employees must also promptly share with the Title IX Coordinator all details of behaviors under this policy that they observe or have knowledge of, even if not reported to them by a Complainant or third-party.

Complainants may want to carefully consider whether they share personally identifiable details with non-confidential Mandatory Reporters, as those details must be shared with the Title IX Coordinator.

Generally, disclosures in climate surveys, human subjects research, or at events such as “Take Back the Night” marches or speak-outs do not provide notice that must be reported to the Coordinator by Mandatory Reporters, unless the Complainant clearly indicates that they desire a report to be made or a seek a specific response from the University.

Supportive measures may be offered as a result of such disclosures without formal University action.

Failure of a Mandatory Reporter, as described above in this section, to report an incident of sexual harassment or retaliation of which they become aware is a violation of University policy and can subject a Mandatory Reporter to disciplinary action for failure to comply.

When a Mandatory Reporter has engaged in harassment or other violations of this policy, they have a duty to report their own misconduct, though the University is technically not on notice when a harasser is also a Mandatory Reporter unless the harasser does in fact report themselves.

Finally, it is important to clarify that a Mandatory Reporter who is themselves a target of harassment or other misconduct under this policy is not required to report their own experience, though they are, of course, encouraged to do so.

## **6. Resolution Process for a Complaint of Sexual Harassment**

The procedures below outline the process the University follows when it receives a complaint alleging a violation of this Policy by current students, faculty, staff members, and third parties who have a formal relationship with the University. Visitors to campus who are not participating in a University education program or activity over whom the University does not have substantial control but who are accused of sexual harassment are not subject to the process set forth in this Policy. The University's Title IX Coordinator and Deputy Coordinators are responsible for handling reports alleging sexual harassment. The University may notify the employer of or organization associated with an accused Respondent who is not a student or employee of the University of the alleged violation.

The process described below is the University's process to determine whether this Policy was violated. It is not a court system. As such, the University's process does not use the same rules of procedure and evidence as those used by courts or law enforcement. **A person who has experienced sexual harassment or any crime has the right to simultaneously file and pursue a criminal complaint with law enforcement and a complaint with the University if they choose, and to be assisted by the University in notifying law enforcement authorities if they choose, or to decline to notify such authorities.** Parties may also have options to file civil actions in court.

Because allegations of sexual misconduct can sometimes raise challenging new issues not specifically addressed in Department of Education regulations or guidance, the University reserves discretion to take reasonable actions to address those issues in a manner consistent with the spirit of this Policy and this process, while preserving fairness for both Parties and maintaining the integrity of the resolution process.

### **a. Complaint of Sexual Harassment**

Complaints of sexual harassment may be made by:

- 1) Submitting a complaint with, or giving verbal notice, to the Title IX Coordinator or Deputy Coordinators. Such a complaint may be made at any time (including during non-business hours) by telephone, email, or mail, listed for the Title IX Coordinator.

- 2) Submitting a complaint online, at:  
[https://cm.maxient.com/reportingform.php?GonzagaUniv&layout\\_id=3](https://cm.maxient.com/reportingform.php?GonzagaUniv&layout_id=3)

A Formal Complaint is a document submitted or signed by the Complainant or signed by the Title IX Coordinator alleging a policy violation by a Respondent and requesting that the University investigate the allegation(s). If a complaint is submitted in a form that is not signed or does not request that the University investigate the allegation(s), the Title IX Coordinator will contact the Complainant to ensure that it is submitted correctly.

The Title IX Coordinator will respond by:

- Promptly contacting Complainant to discuss the availability of supportive measures;
- Consider complainant's wishes with respect to supportive measures;
- Inform Complainant of availability of supportive measures with or without filing a Formal Complaint; and
- Explain to complainant the Formal Grievance Process for filing a formal complaint.

The University uses the Formal Grievance Process<sup>1</sup> to determine whether or not the Policy has been violated. If so, the University will promptly implement effective remedies designed to ensure that it is not deliberately indifferent to sexual harassment, any potential recurrence, or effects.

Under Washington State Law, the University must, within forty-eight hours of receiving a report of alleged sexual assault of an individual under the age of eighteen (18), make a report or cause a report to be made to Child Protective Services or local law enforcement. An appropriate Gonzaga professional will notify the reporting party of Gonzaga's mandatory reporter requirements.

- Coordination with Law Enforcement

Notifying Law Enforcement may result in the reporting party, Complainant and/or Respondent being contacted by a police officer. The police department determines if a criminal investigation will occur and if the case will be referred for prosecution. A case not referred for criminal prosecution may receive a Gonzaga response.

An act not criminally prosecuted may violate Gonzaga policy. To the extent permitted or required by law, Gonzaga will cooperate with outside investigators. Gonzaga encourages reporting to both Gonzaga and to an outside law enforcement agency, if the alleged gender-based harassment, discrimination, and/or sexual misconduct may also be a crime.

Gonzaga process and the criminal justice process are two separate and independent courses of action. If an individual wants to file a report with Law Enforcement, a Gonzaga professional staff member is available to assist. Gonzaga generally will not file a police report on behalf of an individual, unless circumstances warrant.

Gonzaga's response to a report is not impacted by the filing of a criminal complaint or by the outcome of the criminal investigation.

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<sup>1</sup> The Formal Grievance Process described in and specific to this Policy is different from and should not be confused with the employee grievance processes which are separate processes applicable only to faculty and staff.

- Amnesty

It is Gonzaga's goal that all individuals report all incidents of sexual misconduct so that those affected can receive the support and resources needed. Therefore, violations of Gonzaga's alcohol and drug policies by a reporting party or a Complainant may be exempt from disciplinary action in situations where gender-based harassment, discrimination, and/or sexual misconduct also occurs. However, Gonzaga may initiate an educational discussion about the use of alcohol or drugs and their impact.

- False Reports

Submission of a complaint, concern or report of harassment will not affect the reporting party's or Complainant's employment, grades, academic standing or work assignments.

### **b. Initial Inquiry**

Following receipt of notice or a Formal Complaint of a violation of this Policy, the Title IX Coordinator engages in an initial inquiry, typically within one (1) to five (5) business days. The steps in an initial inquiry can include:

- The Title IX Coordinator seeking to determine if an individual providing notice of alleged sexual harassment wishes to make a Formal Complaint, and will assist them to do so, if desired.
  - The University will defer to the Complainant's wishes as to whether to pursue an investigation, but if the University determines that not pursuing an investigation would be deliberately indifferent (or that pursuing an investigation is necessary for community safety or similar reasons), the Title IX Coordinator may sign the complaint.
- If a Formal Complaint is received, the Title IX Coordinator assessing its sufficiency and works with the Complainant to make sure it is correctly completed.
- The Title IX Coordinator reaching out to the Complainant to offer supportive measures.
- The Title IX Coordinator working with the Complainant to ensure they are aware of the right to have an Advisor.
- The Title IX Coordinator working with the Complainant to determine whether the Complainant prefers a supportive and remedial response, an informal resolution option, or a formal investigation and grievance process.

### **i. Violence Risk Assessment**

In many cases, the Title IX Coordinator may determine that a Violence Risk Assessment should be conducted by the University Behavior Intervention Team of the initial assessment. A Violence Risk Assessment may help determine the following:

- Emergency removal of a Respondent on the basis of immediate threat to physical health/safety;

- Whether the Title IX Coordinator should pursue/sign a formal complaint absent a willing/able Complainant;
- Whether to put the investigation on the footing of incident and/or pattern and/or climate;
- To help identify potential predatory conduct;
- To help assess/identify grooming behaviors;
- Whether it is reasonable to try to resolve a complaint through informal resolution, and what modality may be most successful;
- Whether to permit a voluntary withdrawal by the Respondent;
- Whether to impose transcript notation or communicate with a transfer University about a Respondent;
- Assessment of appropriate sanctions/remedies (to be applied post-hearing); and/or
- Whether notices to students and employees of crime or misconduct should be issued and/or trespass orders should be sought.

A Violence Risk Assessment assesses the risk of actionable violence, often with a focus on targeted/predatory escalations, and is supported by research from the fields of law enforcement, criminology, human resources, and psychology.

If a Violence Risk Assessment is required by the Title IX Coordinator, a Respondent's refusal to cooperate may result in a charge of failure to comply within the appropriate student or employee conduct process.

### **c. Dismissal**

The University must dismiss a Formal Complaint or any allegations therein if, at any time during the investigation or hearing, it is determined that:

- 1) The conduct alleged in the Formal Complaint does not constitute sexual harassment as defined above, even if proved; and/or
- 2) The conduct did not occur in an educational program or activity controlled by the University (including buildings or property controlled by recognized student organizations), and/or the University does not have control of the Respondent; and/or
- 3) The conduct did not occur in the United States; and/or
- 4) At the time of filing a Formal Complaint, a complainant is not participating in or attempting to participate in the education program or activity of the University.<sup>2</sup>

The University may, in its sole discretion, dismiss a formal complaint or any allegations therein if, at any time during the investigation or hearing:

- 1) A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations therein; or
- 2) The Respondent is no longer enrolled in or employed by the University; or

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<sup>2</sup> Such a Complainant is still entitled to supportive measures, but the formal grievance process will not apply.



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

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

This dismissal decision is appealable by any party under the procedures for appeal below. A Complainant who decides to withdraw a complaint may later request to reinstate it or refile it.

#### **d. Counterclaims**

The University is obligated to ensure that the grievance process is not abused for retaliatory purposes. The University permits the filing of counterclaims but uses an initial assessment, described above, to assess whether the allegations in the counterclaim are made in good faith. Counterclaims by a Respondent may be made in good faith, but are, on occasion, also made for purposes of retaliation. When counterclaims are not made in good faith, they will be considered retaliatory and may constitute a violation of this Policy and/or other University policies.

Counterclaims determined to have been reported in good faith will be processed using the grievance process below. Investigation of such claims may take place after resolution of the underlying initial allegation, in which case a delay may occur.

Counterclaims may also be resolved through the same investigation as the underlying allegation, at the discretion of the Title IX Coordinator and/or University.

#### **e. Right to an Advisor**

Each Party may have an Advisor of their choice present with them for all meetings, interviews, and hearings within the resolution process, if they so choose. Advisors should not be confused with *Navigators*, who are trained University staff members available to provide general information to the Parties about the complaint resolution process. Navigators *will not* advocate on behalf of any Party or represent any Party.

The Advisor may be a friend, mentor, family member, attorney, or any other individual who was not involved in the conduct alleged in the Formal Complaint who a Party chooses to advise, support, and/or consult with them throughout the resolution process. The Parties may select whoever they wish to serve as their Advisor, as long as the Advisor is eligible and available.

The University will also offer to assign a trained Advisor for any Party if the Party so chooses, for the limited purpose of conducting questioning during the hearing described. Parties also have the right to choose not to have an Advisor in the initial stages of the resolution process, prior to a hearing.

##### **i. Advisor's Role in Meetings and Interviews**

Parties may be accompanied by their Advisor in all meetings and interviews at which the Party is entitled to be present, including intake and interviews.

##### **ii. Advisor's Role in Hearings**

Under U.S. Department of Education Title IX regulations a form of indirect questioning is permitted during the hearing but all questioning by the Parties must be conducted by the Parties' Advisors.

The Parties are not permitted to directly question each other or any witnesses. If a Party does not have an Advisor for a hearing, the University will appoint a trained Advisor for the limited purpose of conducting any questioning of the other Party and witnesses.

At least 10 business days prior to a scheduled hearing, each Party should inform the University if it needs the University to appoint an Advisor for a hearing.

The University cannot assure that the Parties' Advisors will be of equal skill level or ability. This means, for example, that if one party selects an Advisor who is an attorney, but the other party does not or cannot afford an attorney, the University is not obligated to provide an attorney. Similarly, even if both Parties hire attorneys to serve as their Advisors, one may have a higher level of skill and/or ability than the other.

A Party may reject this appointment and choose their own Advisor, but they may not proceed without an Advisor for purposes of cross examination. The Hearing Officer may also conduct questioning of the Parties and witnesses during the hearing.

#### **f. Informal Resolution of Formal Complaints**

The University may facilitate informal resolution of Formal Complaints if it obtains voluntary, written confirmation that all Parties wish to resolve the matter through informal resolution.

Prior to implementing Informal Resolution, the University will provide the parties with written notice of the reported allegations, the requirements of the informal resolution process, and any consequences from participating in the process, including information regarding any records that will be maintained or shared by the University.

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

The University will not offer or facilitate an informal resolution process to resolve allegations that a University employee sexually harassed a student.

#### **g. Formal Grievance Process**

##### **i. Written Notice of Investigation and Allegations**

The [Title IX] Coordinator will provide written notice of the investigation and allegations to the Respondent as part of the Formal Grievance Process to allow the Respondent to prepare for the interview and to identify and choose an Advisor to accompany them. A copy of this written notice will also be provided to the Complainant, along with advance notice of when the written notice will be delivered to the Respondent. The notice will contain the following:

- Notice of the grievance process, including any informal resolution process.
- Notice of the allegations of sexual harassment potentially constituting sexual harassment, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview.

- Sufficient details include the identities of the Parties involved in the incident, if known, the conduct allegedly constituting sexual harassment, and the date and location of the alleged incident, if known.
- A statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.
- A statement that informs the Parties that they may have an Advisor of their choice, who may be, but is not required to be, an attorney, and who may inspect and review evidence.
- A statement that informs the Parties that the University's Student Code of Conduct prohibits dishonesty, forgery or fraud, which includes knowingly making false statements or knowingly submitting false information during a grievance process.

Amendments and updates to the written notice may be made as the investigation progresses and more information becomes available.

The written notice will be delivered in person, by mail, or emailed to the Parties' University-issued email or designated accounts.

## **ii. The Investigation Process and the Investigation Report**

The University will strive to conduct investigations in a thorough, impartial, prompt, and fair manner. Investigations may involve interviews with all relevant parties and witnesses, obtaining available, relevant evidence, and identifying sources of expert information, if applicable. The Parties will have the opportunity to suggest witnesses and questions, provide evidence and expert witnesses, and fully review and respond to all evidence.

Although in-person interviews for Parties and all potential witnesses are ideal, circumstances (e.g., study abroad, summer break) may require individuals to be interviewed remotely. Skype, Zoom, FaceTime, WebEx, or similar technologies may be used for interviews if the Investigator determines that timeliness or efficiency dictate a need for remote interviewing. The University will take appropriate steps to reasonably ensure the security/privacy of remote interviews. Neither the Investigator nor any witness, Party or Advisor may record an interview, except by taking typed or handwritten notes, unless both the Investigator and witness consent to the recording.

Witnesses may also provide written statements in lieu of interviews or choose to respond to written questions, if deemed appropriate by the Investigator, though not preferred. If a witness submits a written statement but does not intend to be and is not present for cross examination at a hearing, their written statement may not be used as evidence.

Within 15 business days of completing all information gathering during the investigation, the Investigator will also write a comprehensive investigation report fully summarizing the investigation, all witness interviews, and addressing all relevant evidence. If appropriate under the circumstances due to the nature of the allegations or investigation, this time frame may be extended by a reasonable amount of time. Written notice of such an extension will be provided to the Parties.

Prior to the conclusion of the investigation, the Investigator will provide the Parties and their respective Advisors (if so desired by the Parties) a secured electronic or hard copy of the draft

investigation report and the opportunity to inspect and review all of the evidence obtained as part of the investigation that is directly related to the reported misconduct, including evidence upon which the University does not intend to rely in reaching a determination, for a ten (10) business day review and comment period so that each Party may meaningfully respond to the evidence. The Parties may choose to waive the full 10 calendar days.

The Investigator may choose to respond in writing in the investigation report to the Parties' submitted responses and/or to share the responses between the Parties for additional responses. The Investigator will incorporate relevant elements of the Parties' written responses into the final investigation report, include any additional relevant evidence, make any necessary revisions, and finalize the report.

The final investigation report will be shared with all Parties and their Advisors through secure electronic transmission or hard copy at least ten (10) business days before a hearing. The Investigator will also provide the Parties with a file of any directly-related evidence that was not included in the report.

Prior to the conclusion of the investigation, the Investigator will provide the Parties and their respective Advisors (if so desired by the Parties) with a list of witnesses whose information will be used to render a finding.

### **iii. The Hearing**

If the Formal Complaint is not resolved through Informal Resolution, once the final investigation report is shared with the Parties, the Title IX Coordinator will refer the matter for a hearing.

The hearing will not be held less than ten (10) calendar days from the conclusion of the investigation – when the final investigation report is transmitted to the parties and the Hearing Officer – unless all Parties and the Hearing Officer agree to an expedited timeline.

#### *1. The Hearing Officer*

The University will select an appropriate Hearing Officer who will not have had any previous involvement with the investigation of the Formal Complaint at issue. The Hearing Officer will act as the decision-maker and reach a determination regarding responsibility as to the allegations presented by the Complainant. The Investigator(s) of the Formal Complaint at issue will not be allowed to serve as the Hearing Officer. Likewise, any individuals serving as Advisors for any Party involved in the Formal Complaint at issue may not be a Hearing Officer for the hearing. The Hearing Officer selected may be an external third party who is not employed by with the University.

The Title IX Coordinator may not serve as a Hearing Officer in the matter but may serve as an administrative facilitator of the hearing if their previous role(s) in the matter do not create a conflict of interest. Otherwise, the Title IX Coordinator may designate another individual to fulfill this role.

#### *2. Evidentiary Considerations*

Any evidence that the Hearing Officer determines is relevant and credible may be considered.

The Hearing Officer will not consider: 1) incidents not directly related to the possible violation, unless they evidence a pattern; 2) the character of the parties; or 3) questions and evidence about

the Complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

Previous disciplinary action of any kind involving the Respondent may be considered in determining an appropriate sanction upon a determination of responsibility, assuming the University uses a progressive discipline system. This information is only considered at the sanction stage of the process and is not shared until then.

The Parties may each submit a written impact statement prior to the hearing for consideration by the Hearing Officer. The Hearing Officer will consider this statement at the sanction stage of the process when a determination of responsibility is reached.

After post-hearing deliberation, the Hearing Officer renders a determination based on the preponderance of the evidence; whether it is more likely than not that the Respondent violated the Policy as alleged.

### *3. Notice of Hearing*

No less than ten (10) business days prior to the hearing, the Title IX Coordinator will send notice of the hearing to the parties. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

The notice will provide to a party whose participation is invited or expected written notice of the date, time, location, participants, and purpose of all hearings with sufficient time for the party to prepare to participate.

The notice may also contain, at the University's discretion:

- A description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable procedures, and a statement of the potential sanctions/responsive actions that could result.
- Any technology that will be used to facilitate the hearing.
- Information about the option for the live hearing to occur with the parties located in separate rooms using technology that enables the Hearing Officer and Parties to see and hear a Party or witness answering questions.
- A list of all those who will attend the hearing, along with an invitation to object to any Hearing Officer on the basis of demonstrated bias.
- Information on how the hearing will be recorded and on access to the recording for the parties after the hearing.
- A statement that if any Party or witness does not appear at the scheduled hearing, the hearing may be held in their absence, and the Party's or witness's testimony and any statements given prior to the hearing will not be considered by the Hearing Officer. For compelling reasons, the Title IX Coordinator may reschedule the hearing.
- Notification that the Parties may have the assistance of an Advisor of their choosing at the hearing and will be required to have one present for any questions they may desire to ask. The Party should notify the Title IX Coordinator at least ten (10) business days before the hearing if they do not have an Advisor, and the University

will appoint one for the limited purpose of conducting questioning during the hearing.

- An invitation to each party to submit to an impact statement pre-hearing that the Hearing Officer will review during any sanction determination.
- An invitation to contact the Title IX Coordinator to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing, at least seven (7) business days prior to the hearing.
- Whether Parties can bring mobile phones/devices into the hearing.

Hearings for possible violations that occur near or after the end of an academic term (assuming the Respondent is still subject to this Policy) and are unable to be resolved prior to the end of term will typically be held within a reasonably prompt time frame.

If the Respondent is a graduating student, a hold may be placed on graduation and/or official transcripts until the matter is fully resolved (including any appeal). A student alleged to have violated this Policy is not in good standing to graduate.

#### *4. Alternative Hearing Participation Options*

If a Party or Parties prefer not to attend or cannot attend the hearing in person, the Party should request alternative arrangements from the Title IX Coordinator or the hearing facilitator at least five (5) business days prior to the hearing.

The Title IX Coordinator can arrange to use technology to allow remote testimony without compromising the fairness of the hearing. Remote options may also be needed for witnesses who cannot appear in person. Any witness who cannot attend in person should let the Title IX Coordinator or the Hearing Officer know at least five (5) business days prior to the hearing so that appropriate arrangements can be made.

#### *5. Pre-Hearing Preparation*

The Title IX Coordinator or other designated hearing facilitator after any necessary consultation with the Parties or Investigator, will provide the names of persons who will be participating in the hearing, all pertinent documentary evidence, and the final investigation report to the parties at least ten (10) business days prior to the hearing.

Any witness scheduled to participate in the hearing must have been first interviewed by the Investigator or have proffered a written statement or answered written questions, unless all Parties and the Hearing Officer agree to the witness's participation in the hearing. The same holds for any evidence that is first offered at the hearing. If the Parties and Hearing Officer do not assent to the admission of evidence newly offered at the hearing, the Hearing Officer may delay the hearing and instruct that the investigation needs to be re-opened to consider that evidence.

The Parties will be given the name of the Hearing Officer in advance of the hearing. All objections to any Hearing Officer must be raised in writing, detailing the rationale for the objection, and must be submitted to the Title IX Coordinator as soon as possible and no later than five (5) business days following receipt of the Hearing Officer's name. A Hearing Officer will only be removed if the Title IX Coordinator concludes that their bias or conflict of interest precludes an impartial hearing of the allegation(s).

The Title IX Coordinator will give the Hearing Officer a list of the names of all parties, witnesses, and Advisors at least five (5) business days in advance of the hearing. Any Hearing Officer who cannot make an objective determination must recuse themselves from the proceedings when notified of the identity of the parties, witnesses, and Advisors in advance of the hearing. If a Hearing Officer is unsure of whether a bias or conflict of interest exists, they must raise the concern to the Title IX Coordinator as soon as possible.

During the ten (10) business day period prior to the hearing, the Parties have the opportunity for continued review and comment on the final investigation report and available evidence. That review and comment can be shared with the Hearing Officer at the pre-hearing meeting or at the hearing and will be exchanged between each party by the Hearing Officer.

#### *6. Pre-Hearing Meetings*

The Hearing Officer may convene a pre-hearing meeting(s) with the Parties and/or their Advisors to invite them to submit the questions or topics they (the Parties and/or their Advisors) wish to ask or discuss at the hearing, so that the Hearing Officer can rule on their relevance ahead of time to avoid any improper evidentiary introduction in the hearing or provide recommendations for more appropriate phrasing. However, this advance review opportunity does not preclude the Advisors from asking a question for the first time at the hearing or from asking for a reconsideration based on any new information or testimony offered at the hearing. The Hearing Officer must document and share with each party their rationale for any exclusion or inclusion at a pre-hearing meeting.

The Hearing Officer, only with full agreement of the Parties, may decide in advance of the hearing that certain witnesses do not need to be present if their testimony can be adequately summarized by the Investigator in the investigation report or during the hearing.

At each pre-hearing meeting with a Party and their Advisor, the Hearing Officer will consider arguments that evidence identified in the final investigation report as relevant is, in fact, not relevant. Similarly, evidence identified as directly related but not relevant by the Investigator may be argued to be relevant.

The Hearing Officer may rule on these arguments pre-hearing and will exchange those rulings between the Parties prior to the hearing to assist in preparation for the hearing.

The pre-hearing meeting(s) will not be recorded.

#### *7. Hearing Procedures*

At the hearing, the Hearing Officer has the authority to hear and make determinations on all allegations of sexual harassment.

Participants at the hearing will include the Hearing Officer, the hearing facilitator (if applicable), the Parties, Advisors to the Parties, any called witnesses, and anyone providing authorized accommodations or assistive services.

The Hearing Officer will allow witnesses who have relevant information to appear at a portion of the hearing in order to respond to specific questions from the Hearing Officer and the Parties and will then be excused.

In hearings involving more than one Respondent or in which two (2) or more Complainants have accused the same individual of substantially similar conduct, the procedure will be to hear the allegations jointly, unless the University permits the investigation and/or hearings pertinent to each Respondent to be conducted separately because there is a compelling reason to do so. In joint hearings, separate determinations of responsibility will be made for each Respondent with respect to each alleged policy violation.

*a. Testimony and Questioning*

The Parties and witnesses may provide relevant information in turn, beginning with the Complainant, and then in the order determined by the Hearing Officer. The Parties/witnesses will submit to questioning by the Hearing Officer, if applicable, and then by the Parties through their Advisors. This process is known as cross-examination.

All questions are subject to a relevance determination by the Hearing Officer. The Advisor, who will remain seated during questioning, will pose the proposed question orally, the proceeding will pause to allow the Hearing Officer to consider it (and state it if it has not been stated aloud), and the Hearing Officer will determine whether the question will be permitted, disallowed, or rephrased.

The Hearing Officer may invite explanations or persuasive statements regarding relevance with the Advisors, if the Hearing Officer so chooses. The Hearing Officer will then state their decision on the question for the record and advise the Party/witness to whom the question was directed, accordingly. The Hearing Officer will explain any decision to exclude a question as not relevant, or to reframe it for relevance.

The Hearing Officer will limit or disallow questions on the basis that they are irrelevant, unduly repetitious (and thus irrelevant), or abusive. Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the Complaint's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent. The Hearing Officer has the final determination of whether questions may be asked and whether they are relevant.

If a Party's Advisor of choice refuses to comply with the University's established rules of decorum as determined by the Hearing Officer for the hearing, the University may require the party to use a different Advisor. If a University-provided Advisor refuses to comply with the rules of decorum, the University may provide that Party with a different Advisor to conduct cross-examination on behalf of that Party.

*b. Refusal to Submit to Cross-Examination*

If a Party or witness chooses not to submit to cross-examination at the hearing, either because they do not attend the meeting, or they attend but refuse to participate in questioning, then the Hearing Officer may nevertheless rely on any prior statement made by that party or witness at the hearing (including those contained in the investigation report) in the ultimate determination of responsibility. ~~However, the Hearing Officer may still consider available evidence to reach a determination.\*~~



*\*Modification is effective as of August 24, 2021. It replaces a provision in prior versions of this Policy that prohibited reliance on such statements. That provision was based on a regulatory requirement of the U.S. Department of Education that has since been vacated by a federal court and that is no longer enforced by the Office for Civil Rights. See Suzanne B. Goldberg, Acting Assistant Secretary for Civil Rights, U.S. Department of Education, "Letter to Students, Educators, and other Stakeholders re Victim Rights Law Center et al. v. Cardona," p.1 (August 24, 2021).*

The Hearing Officer may not draw any inference solely from a Party's or witness's absence from the hearing or refusal to answer cross-examination. However, if a Party or witness refuses to answer a Hearing Officer's questions, the Hearing Officer may rely on that Party or witness's statements.

#### *c. Recording Hearings*

Hearings will be recorded by the University for purposes of review in the event of an appeal. The Parties may not record the proceedings and no other unauthorized recordings are permitted. The recording will be available to the Parties for inspection and review. No person will be given or be allowed to make a copy of the recording without permission of the Title IX Coordinator.

#### *8. Decision-Making*

The Hearing Officer will determine whether the Respondent is responsible or not responsible for the policy violation(s) in question. The preponderance of the evidence standard of proof is used.

When there is a finding of responsibility on one or more of the allegations, the Hearing Officer may then consider the previously submitted Party impact statements in determining appropriate sanction(s).

The Hearing Officer will ensure that each of the parties has an opportunity to review any impact statement submitted by the other Party(ies). The Hearing Officer may consider the statements, but they are not binding.

The Hearing Officer will determine the appropriate sanction(s), and in the process of doing so, may consult with other appropriate administrators.

#### *9. Written Determination*

After reaching a decision, the Hearing Officer will prepare a written determination which will include the following in a Written Determination:

- Identification of the allegations potentially constituting sexual harassment as defined in this Policy;
- Description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notification to parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, hearings held;
- Findings of facts supporting the determination
- Conclusions regarding the application of the University's policy to the facts;

- Statement of and rationale for the result as to each allegation, including a determination regarding responsibility, any sanctions [or recommendations for sanctions] to be imposed, and whether remedies designed to restore or preserve equal access to the University's education program or activity will be provided; and
- The University's procedures and permissible bases for any appeal.

This statement must be submitted to the Title IX Coordinator within a reasonable time after deliberation, unless the Title IX Coordinator grants an extension. If an extension is granted, the Title IX Coordinator will notify the Parties.

The Written Determination will then be shared with the Parties simultaneously. Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official University records, or emailed to the Parties' University-issued email or otherwise approved account.

#### iv. Sanctions

The following are the usual sanctions that may be imposed upon students singly or in combination:

- **Conduct Probation:** A status for a specified period in which a student's conduct is under review. Violations of University expectations and policies while on Conduct Probation may result in suspension or expulsion.
- **Housing Probation:** A status for a specified period in which a student's on-campus housing status is under review. Violations of University expectations and policies while on Housing Probation may result in residential restrictions or removal.
- **Policy Review:** Written notification of policy reminders.
- **Warning:** Written notice to a student that their behavior is incongruent with University standards of conduct. Future misconduct may result in an elevated University response.
- **Ban:** Excluding a student from University premises or specific University facilities, events, or ceremonies.
- **Educational Program or Workshop:** Assignment to an educational program or participation in a workshop.
- **Civic Service:** Community service.
- **Educational Project:** Research project, reflection prompt, reading, or other assigned learning experience.
- **Meetings:** Scheduled meetings or other conversations
- **Expulsion:** Permanent separation of a student from the University
- **Revocation of Admission and/or Degree:** Revocation of admission to or a degree awarded from the University.
- **Suspension:** Separation of a student from the University for a specified period, with associated conditions for readmission.
- **Withholding Degree:** Withholding a degree pending completion of student conduct proceedings, including the completion of all sanctions imposed, if any. The University reserves the right to withhold a degree permanently.

The following are the usual sanctions that may be imposed upon faculty and staff singly or in combination:

- Informal discussions
- Education
- Verbal or written notice of expectations
- Leave of absence
- Transfer
- Demotion
- Resignation
- Dismissal

In addition to or in place of the above sanctions, the University may assign any other sanctions as deemed appropriate, in its sole discretion.

Factors considered when determining a sanction/responsive action may include, but are not limited to:

- The nature of the conduct at issue;
- The impact of the conduct on the Complainant;
- The impact of the conduct on the community or the University;
- Prior misconduct by the Respondent, including the Respondent's disciplinary history;
- Whether, and to what extent, the Respondent has accepted responsibility for the conduct;
- The necessity of any specific action in order to eliminate the conduct, prevent its recurrence, and remedy its effects on the complainant or other University community members; and
- Any other mitigating, aggravating, or compelling circumstances.

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

#### **h. Appeals**

Any Party may file a Request for Appeal, but it must be submitted in writing to the Title IX Coordinator within five (5) business days of the delivery of the Written Determination.

An appeal should be addressed to:

#### **Title IX Coordinator**

Contact: Stephanie Thomas

Location: Business Services Center, Office 101A, 102 E. Boone Ave.

Phone: 509.313.6910

Email: thomassn@gonzaga.edu

A single Appeal Decision-maker will handle the appeal. No Appeal Decision-maker will have been involved in the process previously. The University will notify the non-appealing Party in writing that an appeal has been filed.

### **i. Grounds for Appeal**

An appeal must be in writing and specify the basis for appeal. The original finding is presumed to have been decided reasonably and appropriately by a preponderance of the evidence. The only grounds for appeal are as follows:

- Procedural irregularity that affected the outcome of the matter;
- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
- The Title IX Coordinator, investigator(s), or hearing officer 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.

If any of the grounds in the Request for Appeal do not meet the grounds in this Policy, an appeal request will be denied and the Parties and their Advisors will be notified in writing of the denial and the rationale.

If any of the grounds in the Request for Appeal meet the grounds in this Policy, then the Party(ies) and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigators and/or the original Hearing Officer will be mailed, emailed, and/or provided a hard copy of the request with the approved grounds and then be given five (5), business days to submit a response to the portion of the appeal that was approved and involves them. All responses will be forwarded to all Parties for review and comment.

A non-appealing Party may also choose to raise a new ground for appeal at this time. If so, that will be reviewed to determine if it meets the grounds in this Policy and either denied or approved. If approved, it will be forwarded to the Party who initially requested an appeal, the Investigator(s) and/or original Hearing Officer, as necessary, who will submit their responses in five (5), business days, which will be circulated for review and comment by all parties.

Neither Party may submit any new requests for appeal after this time period. All decisions will apply the preponderance of the evidence standard.

A Written Decision on Appeal will be sent to all parties simultaneously, which will include the decision on each approved ground and rationale for each decision. The Written Decision on Appeal may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official institutional records, or emailed to the parties' University-issued email or otherwise approved account.

### **ii. Sanctions Status During the Appeal**

Any sanctions imposed as a result of the hearing are stayed during the appeal process. Supportive measures may be reinstated, subject to the same supportive measure procedures above.

If any of the sanctions are to be implemented immediately post-hearing, but pre-appeal, then emergency removal procedures (detailed above) for a hearing on the justification for doing so must be permitted within 48 hours of implementation.

University may still place holds on official transcripts, diplomas, graduations, and course registration pending the outcome of an appeal when the original sanctions included separation.

### **i. Remedies**

In addition to any sanctions imposed, the Title IX Coordinator may implement additional remedies or actions with respect to the Parties and/or the University community that are intended to stop sexual harassment, remedy the effects and prevent reoccurrence.

These remedies/actions are designed to restore or preserve equal access to the University's education program or activity and may include, but are not limited to:

- Referral to counseling and health services
- Referral to the Employee Assistance Program
- Education to the individual and/or the community
- Permanent alteration of housing assignments
- Permanent alteration of work arrangements for employees
- Provision of campus safety escorts
- Climate surveys
- Policy modification and/or training
- Provision of transportation accommodations
- Implementation of long-term contact limitations between the parties
- Implementation of adjustments to academic deadlines, course schedules, etc.

At the discretion of the Title IX Coordinator, certain long-term support or measures may also be provided to the Parties even if no policy violation is found.

When no policy violation is found, the Title IX Coordinator will address any remedies that may be provided by the University to the Respondent to ensure no effective denial of educational access.

The University will maintain the privacy of any long-term remedies/actions/measures, provided privacy does not impair the University's ability to provide these services.

### **i. Recordkeeping**

The University will maintain for a period of at least seven years, records of:

- Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required under federal regulation;
- Any disciplinary sanctions imposed on the Respondent;
- Any remedies provided to the Complainant designed to restore or preserve equal access to the University's education program or activity;
- Any appeal and the result therefrom;
- Any informal resolution and the result therefrom;
- All materials used to train Title IX Coordinators, Investigators, Hearing Officer, and

- any person who facilitates an Informal Resolution process. The University will make these training materials publicly available on University's website; and
- Any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment, including:
    - The basis for all conclusions that the response was not deliberately indifferent;
    - Any measures designed to restore or preserve equal access to the University's education program or activity; and
    - If no supportive measures were provided to the Complainant, document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

The University will also maintain any and all records in accordance with state and federal laws.