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<b>Policy Identification Number</b>	46
<b>Policy Title</b>	Nondiscrimination, Anti-Harassment, and Equal Opportunity Policy and Complaint Procedures
<b>Classification</b>	Medical University of South Carolina
<b>Effective Date</b>	August 14, 2020
<b>Approval Authority</b>	University Title IX Coordinator; Executive Vice President for Academic Affairs and Provost; and Executive Vice President for Finance and Operations
<b>Responsible Entity</b>	University Title IX Coordinator
<b>Policy Owner</b>	University Title IX Coordinator

## **I. Policy Statement**

The Medical University of South Carolina (“MUSC” or the “University”) is committed to fostering an open and supportive community that promotes learning, discovery, and healing. This commitment includes maintaining an educational and working environment, as well as other benefits, programs, and activities, that are free from discrimination, harassment, and retaliation (collectively, “Prohibited Conduct”). To ensure compliance with federal and state civil rights laws and regulations, and to affirm its commitment to fairness and equity, MUSC has developed internal policies and procedures that will provide a prompt, fair, and impartial process for those involved in an allegation of discrimination, harassment or retaliation. MUSC values and upholds the equal dignity of all members of its community and strives to balance the rights of the parties in what is often a difficult time for those involved.

## **II. Scope**

This Policy is applicable whenever the Respondent is a member of the MUSC community regardless of the status of the Complainant. The MUSC community includes, but is not limited to, students (defined as any individual who has accepted an offer of admission, or who is registered or enrolled for credit or non-credit bearing coursework, and who maintains an ongoing relationship with MUSC), residents, postdoctoral fellows, faculty, administrators, staff, guests, independent contractors, vendors, visitors, invitees, and campers. When an alleged violation of this Policy is reported, the allegations are subject to grievance procedures using “Process A” or “Process B,” as determined by the Title IX Coordinator, and as detailed below.

### **A. Jurisdiction**

This Policy applies to the education program and activities of the Medical University of South Carolina, to conduct that occurs on campus or on property owned or controlled by MUSC, at MUSC-sponsored events, or in buildings owned or controlled by recognized student organizations.

This Policy can also be applicable to the effects of off-campus misconduct that deprive someone of access to MUSC's education program. MUSC may also extend jurisdiction to off-campus and/or to online conduct when the Title IX Coordinator determines that the conduct affects a substantial University interest.

Regardless of where the conduct occurred, MUSC will address reports of Prohibited Conduct to determine whether the conduct occurred in the context of its employment or education program or activity and/or has continuing effects on campus or in an off-campus sponsored program or activity. A substantial MUSC interest includes:

- 1) Any action that constitutes a criminal offense as defined by law. This includes, but is not limited to, single or repeat violations of any local, state, or federal law;
- 2) Any situation in which it is determined that the Respondent poses an immediate threat to the physical health or safety of any student or other individual;
- 3) Any situation that significantly impinges upon the rights, property, or achievements of oneself or others or significantly breaches the peace and/or causes social disorder; and/or
- 4) Any situation that is detrimental to the educational interests or mission of the University.

If the Respondent is unknown or is not a member of the MUSC community, the Title IX Coordinator will assist the Complainant in identifying appropriate campus and local resources and support options and/or, when criminal conduct is alleged, in contacting local or campus law enforcement if the individual would like to file a police report. Further, even when the Respondent is not a member of MUSC's community, supportive measures, remedies, and resources may be accessible to the Complainant by contacting the Title IX Coordinator. In addition, MUSC may take other actions as appropriate to protect the Complainant against third parties, such as barring individuals from MUSC property and/or events.

All vendors serving MUSC through third-party contracts are subject to the policies and procedures of their employers.

When the Respondent is enrolled in or employed by another institution, the Title IX Coordinator can assist the Complainant in liaising with the appropriate individual at that institution, as it may be possible to allege violations through that institution's policies. Similarly, the Title IX Coordinator may be able to advocate for a Complainant who experiences discrimination in an externship, study abroad program, or other environment where the harassment or nondiscrimination policies of the external organization may give recourse to the Complainant.

## **B. Time Frame For Reporting**

Reports under this Policy may be made at any time regardless of how much time has elapsed since the incident(s) in question. However, individuals are encouraged to report violations of this Policy as soon as possible to maximize MUSC's ability to respond promptly and effectively.

If the Respondent is no longer subject to MUSC's jurisdiction and/or significant time has passed, the University's ability to investigate, respond, and provide remedies may be limited. In such

circumstances, MUSC may still provide support to the Complainant and take appropriate steps to end the discrimination or harassment, prevent its recurrence, and address its effects. Acting on allegations significantly impacted by the passage of time is at the discretion of the Title IX Coordinator. When notice of Prohibited Conduct is affected by a significant time delay, MUSC will apply the policy in place at the time of the alleged misconduct and the procedures in place at the time of the notice.

### **III. Approval Authority**

The University Chief Diversity Officer and Title IX Coordinator, the Executive Vice President for Academic Affairs and Provost, and the Executive Vice President for Finance and Operations are the approval authorities for this Policy.

### **IV. Purpose Of This Policy**

The purpose of this Policy is to prohibit all forms of discrimination, harassment, and retaliation pursuant to MUSC's mission and in accordance with all applicable federal and state laws and regulations. Sometimes, discrimination involves exclusion from activities, such as admission to programs or employment advancement. Other times, discrimination takes the form of harassment or, in the case of sex-based discrimination, encompasses gender-based harassment, sexual violence, stalking, sexual exploitation, or intimate partner violence. This Policy serves to further MUSC's commitment to a safe, inclusive, and non-discriminatory learning and working environment.

### **V. Who Should Be Knowledgeable About This Policy**

All members of the MUSC community.

### **VI. Policy**

Because of the length of this Policy, the substantive content begins on Page 5 of this document.

### **VII. Special Situations**

N/A

### **VIII. Sanctions For Non-Compliance**

Individuals who are found responsible for violating this Policy will face sanctions as determined through the grievance procedures (Process A or Process B).

### **IX. Related Information**

This Policy addresses MUSC's response to reports of harassment, discrimination, and retaliation. Reports of misconduct that do not meet the definitions of Prohibited Conduct may be governed by

other MUSC policies, including the **Standards of Professional Behavior Policy** and **Treatment of Students Policy**.

In addition, the conduct of students and employees are governed by the **Code of Conduct, Student Handbooks, Human Resource policies, Faculty Handbook**, and the **Graduate Medical Education Handbook**. This Policy supersedes any conflicting information contained in those policies with respect to the definitions and procedures relating to the Prohibited Conduct defined here. Where conduct may be a violation of both this Policy and other MUSC policies, MUSC may investigate any or all incidents in accordance with the procedures set forth in this Policy.

In implementing this Policy, records of all allegations, investigations, formal and informal resolutions, and hearings will be maintained by Title IX Coordinator. MUSC will also retain all materials used to train Title IX Coordinators, investigators, and decision- makers.

#### **X. Communication Plan**

This Policy will be published in the Bulletin, on MUSC’s website, and will be included in new student and employee orientation materials (e.g., MyQuest modules, Handbooks, etc.). Senior administration will communicate the Policy to their teams and units using normal communication channels.

#### **XI. Definitions**

Please refer to the *Definitions of Prohibited Conduct* and the *Important Policy Terms and Concepts* Sections of the Policy.

#### **XII. Review Cycle**

This Policy will be reviewed on at least an annual basis.

#### **XIII. Approval History**

<i>Approval Authority</i>	<i>Action</i>	<i>Date</i>
University Chief Diversity Officer and Title IX Coordinator	Reviewed	8/14/2020
Executive Vice President for Academic Affairs and Provost		
Executive Vice President for Finance and Operations		

#### **IX. Approval Signatures**



Lisa P. Montgomery, MHA  
Executive Vice President for Finance and Operations



Lisa K. Saladin, PT, PhD  
Executive Vice President for Academic Affairs and Provost



Willette Burnham-Williams, PhD  
University Chief Diversity Officer and Title IX Coordinator

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## 1. **Statement of Nondiscrimination**

The Medical University of South Carolina (“MUSC” or the “University”) complies with all federal and state civil rights laws and regulations prohibiting discrimination in public institutions of higher education. MUSC does not discriminate against any employee, applicant for employment, student, or applicant for admission on the basis of age, color, disability, citizenship status, ethnicity, gender identity, gender expression, national origin (including ancestry), parenting status, pregnancy, race, religion, sex, sexual orientation, veteran or military status, or any other protected category under applicable local, state, and federal law. MUSC also prohibits retaliation against those who oppose discrimination or participate in any resolution process on campus or with an external human rights agency.

The Nondiscrimination, Anti-Harassment, and Equal Opportunity Policy (the “Policy”) covers nondiscrimination in both employment and education. Therefore, any member of the MUSC community who acts to deny, deprive, or limit the educational or employment access, benefit or opportunity of another member of the MUSC community, guest, or visitor based on their actual or perceived membership in a protected class is in violation the Policy. When brought to the attention of MUSC’s Title IX Coordinator, any such discrimination will be promptly and fairly addressed and remedied according to the resolution processes described in the Policy.

## 2. **Important Policy Terms and Concepts**

- **Advisor:** person chosen by a party or appointed by the University to accompany the party to meetings related to the resolution process, to advise the party on that process, and to conduct cross-examination for the party at the hearing, if any.
- **Complainant:** the person who is alleged to be the victim of conduct that could constitute harassment or discrimination based on a protected class; or retaliation for engaging in a protected activity.
- **Confidential Resource:** employees who are available to provide individuals with assistance, support, and additional information and are prohibited from disclosing confidential information with limited exceptions as explained further in Section 5.C.
- **Directly Related Evidence:** evidence that is connected to the complaint, but is neither inculpatory (tending to prove a violation) nor exculpatory (tending to disprove a violation) and will not be relied upon by the investigation report.
- **Education program or activity:** locations, events, or circumstances where MUSC exercises substantial control over both the Respondent and the context in which the sexual harassment or discrimination occurs and also includes any building owned or controlled by a student organization that is officially recognized by MUSC.
- **Final Determination:** a conclusion by preponderance of the evidence that the alleged conduct did or did not violate the Policy.
- **Formal Complaint:** a document submitted or signed by a Complainant or signed by the Title IX Coordinator alleging harassment or discrimination based on a protected class; or retaliation for engaging in a protected activity.
- **Formal Grievance Process:** “Process A,” a method of formal resolution designated by MUSC to address conduct that falls within the policies included below, and which complies with the requirements of the Title IX regulations (34 CFR §106.45).

- **Grievance Process Pool:** any investigators, hearing panelists, and appeal officers, who may perform any or all of these roles (though not at the same time or for the same case).
- **Hearing Panel:** those who have decision-making and sanctioning authority within MUSC's Formal Grievance process.
- **Investigator:** the person or persons charged by MUSC with gathering facts about an alleged violation of this Policy, assessing relevance and credibility, synthesizing the evidence, and compiling this information into an investigation report and file of directly related evidence.
- **Notice:** when someone informs the Title IX Coordinator or other Official with Authority of the alleged occurrence of harassing, discriminatory, and/or retaliatory conduct.
- **Official with Authority (OWA):** an employee explicitly vested with the responsibility to implement corrective measures for harassment, discrimination, and/or retaliation on behalf of MUSC.
- **Parties:** the Complainant(s) and Respondent(s), collectively.
- **Preponderance of the Evidence:** the evidentiary standard used to determine whether the Policy was violated. It means that it is more likely than not that the conduct occurred.
- **Process A:** the Formal Grievance Process detailed in Appendix A and defined above.
- **Process B:** the administrative resolution procedures detailed in Appendix B that apply only when Process A does not, as determined by the Title IX Coordinator.
- **Relevant Evidence:** evidence that tends to prove or disprove an issue in the complaint.
- **Remedies:** post-finding actions directed to the Complainant and/or the community as mechanisms to address safety, prevent recurrence, and restore access to MUSC's educational program.
- **Respondent:** person who has been reported to be the perpetrator of conduct that could constitute harassment or discrimination based on a protected class; or retaliation for engaging in a protected activity.
- **Responsible Employee:** employee who is obligated by policy to share knowledge, notice, and/or reports of harassment, discrimination, and/or retaliation with the Title IX Coordinator.
- **Sanction:** a consequence imposed by MUSC on a Respondent who is found to have violated this policy.
- **Sexual Harassment:** the umbrella category including the offenses of sexual harassment, sexual assault, stalking, and dating violence and domestic violence.
- **Supportive Measures:** non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or Respondent before or after the filing of a Formal Complaint or where no Formal Complaint has been filed. Such measures are designed to restore or preserve access to MUSC's education or employment program or activity without unreasonably burdening the other party, including measures to protect the safety of all parties or MUSC's educational and employment environment, or deter harassment and discrimination on the basis of a protected class.
- **Title IX Coordinator:** at least one official designated by MUSC to ensure compliance with Title IX and the MUSC's Title IX program. References to the Coordinator throughout this policy may also encompass a designee of the Coordinator.

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

The University Chief Diversity Officer serves as the Title IX Coordinator and oversees implementation of MUSC's Affirmative Action Plan, disability compliance, and the Nondiscrimination, Anti-Harassment, and Equal Opportunity Policy. The Title IX Coordinator has the primary responsibility for coordinating MUSC's efforts related to the intake, investigation, resolution, and implementation of supportive measures to stop, remediate, and prevent discrimination, harassment, and retaliation prohibited under this Policy. The Title IX Coordinator has multiple responsibilities including but not limited to:

- Oversight of the University's response to reports of Prohibited Conduct, which includes coordinating a prompt, thorough, and equitable investigation; implementing and overseeing supportive measures; and facilitating informal resolutions.
- Leading MUSC's education efforts relating to harassment and discrimination.
- Maintaining records of all reports, investigations, and resolutions to track and monitor patterns, trends and issues of concern.

Complaints or notices of alleged Policy violations, or inquiries or concerns regarding this Policy should be made to the University Title IX Coordinator or Deputy Title IX Coordinator:

Chief Diversity Officer and University Title IX Coordinator

Willette Burnham-Williams, PhD  
173 Ashley Avenue, MSC 502  
Basic Sciences Building, Suite 104  
Charleston, SC 29425  
(843) 792-1072  
[titleix@musc.edu](mailto:titleix@musc.edu) or [burnham@musc.edu](mailto:burnham@musc.edu)

Deputy Title IX Coordinator

Daniela Sorokko Harris, JD  
173 Ashley Avenue, MSC 502  
Basic Sciences Building, Suite 104  
Charleston, SC 29425  
(843) 792-1282  
[titleix@musc.edu](mailto:titleix@musc.edu) or [harridan@musc.edu](mailto:harridan@musc.edu)

To raise a concern involving bias, conflict of interest, misconduct, or discrimination by the Title IX Coordinator, contact the University President ([coledj@musc.edu](mailto:coledj@musc.edu)). Concerns of bias, conflict of interest, misconduct or discrimination by any other Title IX Team member should be reported to the Title IX Coordinator.

The Title IX Coordinator manages the Title IX Team and acts with independence and authority free from bias and conflicts of interest. The Title IX Coordinator oversees all resolutions under this Policy. The members of the Title IX Team are vetted and trained to ensure they are not biased for or against any party in a specific case, or for or against Complainants or Respondents, generally.

Inquiries can be made externally to:

United States Department of Education  
Office for Civil Rights  
400 Maryland Avenue,  
SW Washington, D.C. 20202-1100  
Customer Service Hotline: (800) 421-3481  
Fax: (202) 453-6012  
TDD: (877) 521-2172  
Email: [OCR@ed.gov](mailto:OCR@ed.gov)

For complaints against a healthcare provider:  
United States Department of Health and Human Services  
Office for Civil Rights (regional office)  
Sam Nunn Atlanta Federal Center, Suite 16T70  
61 Forsyth Street, S.W.  
Atlanta, GA 30303-8909  
Customer Response Center: (800) 368-1019  
Fax: (202) 619-3818  
TDD :(800) 537-7697  
Email: [ocrmail@hhs.gov](mailto:ocrmail@hhs.gov)

For complaints involving employees:  
Equal Employment Opportunity Commission (regional office)  
7391 Hodgson Memorial Drive, Suite 200  
Savannah, GA 31406-2579  
Phone #: (800) 669-4000  
Fax: (912) 920-4484  
TTY: (800) 669-6820

#### **4. Definitions of Prohibited Conduct**

This Policy prohibits the following forms of conduct, including attempts to commit the conduct: Discriminatory Harassment, Sexual Harassment, and Retaliation. For specific examples of the types of conduct that may rise to the level of Prohibited Conduct, please refer to the [Office of the Title IX Coordinator website](#).

Conduct that violates this Policy may also violate the laws of the local jurisdiction in which the incident occurred and subject a Respondent to criminal prosecution and civil litigation. If the alleged Prohibited Conduct is a crime, a report should be made to MUSC's Department of Public Safety or other appropriate law enforcement agency if the incident occurred off campus. For definitions of crimes, and for detailed information about MUSC's obligations pursuant to the Clery Act, please see the [Crime Reporting Policy](#) and corresponding appendices.

## **A. Discriminatory Harassment**

Discriminatory harassment is defined as unwelcome conduct by any member or group of the MUSC community on the basis of actual or perceived membership in a class protected by policy or law.

MUSC does not tolerate discriminatory harassment of any employee, student, visitor, or guest. MUSC will act to remedy all forms of discriminatory harassment when reported, whether or not the harassment rises to the level of creating a “hostile environment.”

A hostile environment is one that unreasonably interferes with, limits, or denies an individual’s educational or employment access, benefits, or opportunities.<sup>1</sup> This discriminatory effect results from harassing verbal, written, graphic, or physical conduct that is severe or pervasive **and** objectively offensive. When discriminatory harassment rises to the level of creating a hostile environment, MUSC may also impose sanctions on the Respondent through application of Process B.

MUSC reserves the right to address offensive conduct and/or harassment that 1) does not rise to the level of creating a hostile environment, or 2) that is of a generic nature not based on a protected class. Addressing such conduct will not result in the imposition of discipline under this Policy, but may be addressed through respectful conversation, remedial actions, education, effective conflict resolution, and other informal resolution mechanisms. For assistance with conflict resolution and other informal resolutions, employees may contact the Director of Human Resources (faculty may also contact the Ombudsman) and students may contact the Dean for Student Affairs at their respective college.

## **B. Online Harassment and Misconduct**

Any online postings or other electronic communication by students, including cyber-bullying, cyber-stalking, cyber-harassment, etc., occurring completely outside of MUSC’s control (e.g., not on MUSC networks, websites, or between University email accounts) will only be subject to this Policy when such online conduct can be shown to cause a substantial on-campus disruption.

Otherwise, such communications are considered speech protected by the First Amendment. Supportive measures for Complainants will be provided, but protected speech cannot legally be subjected to discipline.

Off-campus discriminatory or harassing speech by employees, whether online or in person, may be regulated by MUSC only when such speech is made in an employee’s official or work-related capacity.

<sup>1</sup> This definition of hostile environment is based on Federal Register / Vol. 59, No. 47 / Thursday, March 10, 1994: [Department of Education Office for Civil Rights, Racial Incidents and Harassment Against Students At Educational Recipients Investigative Guidance.](#)

### C. Sexual Harassment

The Department of Education's Office for Civil Rights (OCR), the Equal Employment Opportunity Commission (EEOC), and the State of South Carolina regard Sexual Harassment, a specific form of discriminatory harassment, as an unlawful discriminatory practice. MUSC has adopted the following definition of Sexual Harassment in order to address the unique environment of an academic community. Acts of sexual harassment may be committed by any person upon any other person, regardless of the sex, sexual orientation, and/or gender identity of those involved.

Sexual Harassment, as an umbrella category, includes the offenses of **sexual harassment, sexual assault, domestic violence, dating violence, and stalking**, and is defined as: Conduct on the basis of sex/gender or that is sexual that satisfies one or more of the following:

Quid Pro Quo: an employee of MUSC, conditions (either implicitly or explicitly) the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct.

Sexual Harassment: 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 MUSC's education program or activity.<sup>2</sup>

### D. Dating Violence

Dating Violence is violence committed by a person, who is in or has been in a social relationship of a romantic or intimate nature with the Complainant. The existence of such a relationship shall be determined based on the Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition, dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating Violence does not include acts covered under the definition of domestic violence.

### E. Domestic Violence

Domestic Violence is violence 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 cohabitating 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 South Carolina, or by any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of South Carolina. To categorize an incident as Domestic Violence, the

<sup>2</sup> Unwelcomeness is subjective and determined by the Complainant (except when the Complainant is younger than the age of consent). Severity, pervasiveness, and objective offensiveness are evaluated based on the totality of the circumstances from the perspective of a reasonable person in the same or similar circumstances ("in the shoes of the Complainant"), including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

relationship between the Respondent and the Complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.

## F. Sexual Assault

Sexual Assault is defined as:

- Sex Offenses, Forcible: Any sexual act<sup>3</sup> directed against another person,<sup>4</sup> without the consent of the Complainant, including instances in which the Complainant is incapable of giving consent.
- Sex Offenses, Non-forcible:
  - Incest: Non-forcible sexual intercourse, between persons who are related to each other, within the degrees wherein marriage is prohibited by South Carolina law.
  - Statutory Rape: Non-forcible sexual intercourse, with a person who is under the statutory age of consent. (In South Carolina, the statutory age of consent is 16. However, individuals as young as 14 are able to consent to sex with a partner who is 18 years old or younger.)

## G. Stalking

Stalking is engaging in a course of conduct directed at a specific person, that would cause a reasonable person to fear for the person's safety or the safety of others; or suffer substantial emotional distress. For the purposes of this definition:

- Course of conduct means two or more acts, including, but not limited to, acts in which the Respondent directly, indirectly, or through third parties, by an action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
- Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant. Substantial emotional distress means significant

<sup>3</sup> A "sexual act" is specifically defined by federal regulations to include one or more of the following:

**Rape:** 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 Complainant.

**Sodomy:** Oral or anal sexual intercourse with another person, forcibly, and/or against that person's will (non-consensually), or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age<sup>#</sup> or because of temporary or permanent mental or physical incapacity.

**Sexual Assault with an Object:** The use of an object or instrument to penetrate, however slightly, the genital or anal opening of the body of another person, forcibly, and/or against that person's will (non-consensually), or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

**Fondling:** The touching of the private body parts of another person (buttocks, groin, breasts), for the purpose of sexual gratification, forcibly, and/or against that person's will (non-consensually), or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

<sup>4</sup> This would include having another person touch you sexually, forcibly, or without their consent.

mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

## **H. Force, Coercion, Consent, and Incapacitation**

As used in the offenses above, the following definitions and understandings apply:

**Force** is the use of physical violence and/or physical imposition to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent. Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced.

**Coercion:** Coercion is unreasonable pressure for sexual activity. When someone makes it clear that they do not want to engage in certain sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

**Consent** is knowing, voluntary, and clear permission by words or actions to engage in sexual activity. Since individuals may experience the same interaction in different ways, it is the responsibility of each party to determine that the other has consented before engaging in the activity.

Silence or the absence of resistance alone is not consent. Consent is not demonstrated by the absence of resistance. While resistance is not required or necessary, it is a clear demonstration of non-consent. Consent can also be withdrawn once given. If an individual clearly communicates a withdrawal of consent, that sexual activity should cease within a reasonable time. Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). A current or previous intimate relationship is not sufficient to constitute consent.

Proof of consent or non-consent is not a burden placed on either party involved in an incident. Instead, the burden remains on MUSC to determine whether its policy has been violated. 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, including the context in which the alleged incident occurred and any similar previous patterns that may be evidenced.

**Incapacitation:** Incapacitation occurs when someone cannot make a rational, reasonable decision because they lack the capacity to give informed consent. A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious for any reason, including by alcohol or other drugs.

A person violates this Policy if they engage in sexual activity with someone they know to be, or should know to be, physically or mentally incapacitated. Incapacitation is determined through consideration of all relevant indicators of an individual's state and is not synonymous with intoxication, impairment, blackout, and/or being drunk.

It is not an excuse that the Respondent was intoxicated and, therefore, did not realize the incapacity of the reporting party. The question of whether the Respondent should have known of the incapacity is an objective question about what a reasonable person exercising sober judgment would have known in the same or similar circumstances.

### **I. Other Civil Rights Offenses**

- **Threatening** or causing physical harm, extreme verbal, emotional, or psychological abuse, or other conduct which threatens or endangers the health or safety of any person.
- **Discrimination**, defined as actions that deprive, limit, or deny other members of the community of educational or employment access, benefits, or opportunities.
- **Intimidation**, defined as implied threats or acts that cause an unreasonable fear of harm in another.
- **Hazing**, defined as acts likely to cause physical or psychological harm or social ostracism to any person within the MUSC community, when related to the admission, initiation, joining, or any other group-affiliation activity.
- **Bullying**, defined as repeated or severe, aggressive behavior, likely to intimidate or intentionally hurt, control, or diminish another person physically or mentally, that is not speech or conduct otherwise protected by the First Amendment.

Violation of any other MUSC policies may constitute a Civil Rights Offense when a violation is motivated by actual or perceived membership in a protected class, and the result is a discriminatory limitation or denial of employment or educational access, benefits, or opportunities.

Sanctions for the above-listed Civil Rights Offenses range from reprimand to expulsion/termination.

### **J. Retaliation**

Protected activity under this policy includes reporting an incident that may implicate this Policy, participating in the grievance process, supporting a Complainant or Respondent, assisting in providing information relevant to an investigation, and/or acting in good faith to oppose conduct that constitutes a violation of this Policy.

Acts of alleged retaliation should be reported immediately to the Title IX Coordinator and will be promptly investigated. MUSC will take all appropriate and available steps to protect individuals who fear that they may be subjected to retaliation.

MUSC and any member of MUSC's community are prohibited from taking materially adverse action by intimidating, threatening, coercing, harassing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by law or policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to

participate in any manner in an investigation, proceeding, or hearing under this policy and procedure.

Filing a complaint within Process B could be considered retaliatory if those charges could be applicable under Process A, when the Process B charges are made for the purpose of interfering with or circumventing any right or privilege provided afforded within Process A that is not provided by Process B. Therefore, MUSC vets all complaints carefully to ensure this does not happen, and to assure that complaints are tracked to the appropriate process.

The exercise of rights protected under the First Amendment does not constitute retaliation.

Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this Policy and procedure does not constitute retaliation, provided that a determination regarding responsibility, alone, is not sufficient to conclude that any party has made a materially false statement in bad faith.

## **5. Reporting Options and Obligations**

Individuals have the right to report potential violations of this Policy to MUSC and, if the violations are also violations of law, to law enforcement. MUSC's policies and procedures operate independently of law enforcement investigations, although MUSC may coordinate information with the Department of Public Safety or other law enforcement agencies when required by law. Individuals who make a good faith report of Prohibited Conduct to MUSC will be provided with written information about available support and resources and will be protected from retaliation. University officials will assist individuals in notifying law enforcement authorities if the individual chooses. An individual does not need to decide whether they wish to request any particular course of action when they report an incident to MUSC.

### **A. Reporting to the Medical University of South Carolina**

Individuals can report violations of this Policy to MUSC in the following ways:

- File a complaint with, or give verbal notice to, the Title IX Coordinator or Deputy Title IX Coordinator. Such a report may be made at any time (including during non-business hours) by using the telephone number or email address, or by mail to the office address, listed for the Title IX Coordinator or any other official listed.
- Report online, using the reporting form posted at: [https://cm.maxient.com/reportingform.php?MedicalUnivofSC&layout\\_id=6](https://cm.maxient.com/reportingform.php?MedicalUnivofSC&layout_id=6)  
Anonymous reports are accepted but can give rise to a need to investigate. MUSC tries to provide Supportive Measures to all Complainants, which is impossible with an anonymous report. Because reporting carries no obligation to initiate a formal response, and as MUSC respects Complainant's requests to dismiss complaints unless there is a compelling threat to health and/or safety, the Complainant is largely in control and should not fear a loss of privacy by making a report that allows MUSC to discuss and/or provide supportive measures.

- Report to a Responsible Employee, as defined further in Section 5.B.

A Formal Complaint means 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). A complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail. As used in this paragraph, the phrase “document filed by a Complainant” means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by the University) that contains the Complainant’s physical or digital signature, or otherwise indicates that the Complainant is the person filing the complaint, and requests that the University investigate the allegations. If notice is submitted in a form that does not meet this standard, the Title IX Coordinator will contact the Complainant to ensure that it is filed correctly.

## **B. Reporting to Responsible Employees**

Certain MUSC employees are expected to immediately report actual or suspected Prohibited Conduct to appropriate University officials. Responsible Employees play an integral role in fostering a culture of accountability and helping MUSC to prevent and respond to Prohibited Conduct in a manner consistent with MUSC’s mission.

The following list includes all the employees who are designated as Responsible Employees by this Policy:

- All faculty members;
- All employees who evaluate another through the SuccessFactor performance evaluation system and/or approve timecards;
- All employees with “timekeeper” responsibilities in the Kronos system;
- All employees with responsibilities for providing departmental, divisional, or College-specific HR support;
- Student workers who have supervisory responsibility whenever they learn of Prohibited Conduct in the scope of their employment;
- All Campus Security Authorities,<sup>5</sup> as identified in [Appendix B to the Crime Reporting Policy](#).

Responsible Employees are expected to report<sup>6</sup> all known information, including the identities of the parties, the date, time and location, and any details about the reported incident to the Title IX Coordinator. Responsible Employees must maintain the privacy<sup>7</sup> of all individuals involved to the

<sup>5</sup> Campus Security Authorities (CSAs) are required to report Clery Act crimes to the Department of Public Safety for federal statistical reporting purposes. The [Crime Reporting Policy](#) provides further information about the responsibilities of CSAs.

<sup>6</sup> In addition to the above reporting responsibilities, all MUSC employees have an obligation to report suspected child abuse and neglect under the Abuse Identification Pediatrics Policy, and all health professionals have an obligation to report suspected abuse of adult patients by a caretaker under MUSC’s Abuse Identification Adults Policy and Vulnerable Patient Policy.

<sup>7</sup> *Privacy* means that information will be shared with a limited number of MUSC employees who “need to know” in order to assist in the assessment, investigation, and resolution of the complaint. MUSC reserves the right to determine

greatest extent possible and may provide support and assistance, but they cannot promise confidentiality or withhold information about Prohibited Conduct from the Title IX Coordinator. Failure by a Responsible Employee to report suspected Prohibited Conduct in a timely manner may subject them to appropriate discipline, including removal from a position or termination of employment.

Generally, disclosures in climate surveys, classroom writing assignments or discussions, 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 Title IX Coordinator by Responsible Employees, unless the Complainant clearly indicates that they desire a report to be made or a seek a specific response from MUSC. Supportive Measures may be offered as a result of such disclosures without formal University action.

Finally, it is important to clarify that a Responsible Employee 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.

### **C. Confidential Reportings**

If a Complainant would like the details of an incident to be kept confidential, they may speak with:

On-campus professional counselors and conflict resolution staff, including:

- [Employee Assistance Program \(EAP\)](#) • 51 Bee Street, Charleston, SC 29425 • (843) 792-2848
- [Counseling and Psychological Services \(CAPS\)](#) • (843) 792-4930 • [caps@musc.edu](mailto:caps@musc.edu)
- [Faculty Ombuds](#) • (843) 792-2618 • [univ-ombudsman@musc.edu](mailto:univ-ombudsman@musc.edu)
- [Hospital Chaplains](#) • (843) 792-9464

On-campus health service providers and staff, including:

- [Student Health Services](#) • 30 Bee Street, First Floor, Charleston, SC 29425 • (843) 792-3664
- [National Crime Victims Research and Treatment Center](#) • Department of Psychiatry and Behavioral Sciences • 67 President Street, 2nd Floor, IOP South Building, Charleston, SC 29425 • (843) 792-8209
- [Sexual Assault Nurse Examiners \(SANE\)](#) • 96 Jonathan Lucas Street (Adult Emergency Dep’t), Charleston, SC 29425 • (843) 792-3826

which officials have a legitimate educational interest in being informed about incidents that fall within this policy, pursuant to Family Educational Rights and Privacy Act (FERPA). All employees who are involved in MUSC’s response to violations of this Policy receive specific training and guidance about sharing and safeguarding private information in accordance with state and federal law. The privacy of student education records will be protected in accordance with FERPA. The privacy of employee records will be protected in accordance with Human Resource policies. *Confidentiality* exists in the context of laws that protect certain relationships, including those who provide services related to medical and clinical care, mental health providers, counselors, and ordained clergy.

§ The availability and cost of certain services may depend on the individual’s role in the organization (student, staff, or faculty). Please contact the identified resource directly for more information.

Off-campus (non-employees), including licensed professional counselors and other medical providers, local rape crisis counselors, domestic violence resources, local or state assistance agencies, clergy/chaplains, etc.

Additional information about confidential and non-confidential supportive services is available at <https://education.musc.edu/leadership/diversity/title-ix/resources>

Confidential Resources will maintain confidentiality when acting under the scope of their licensure, professional ethics, or professional credentials, except in extreme cases of immediacy of threat or danger or abuse of a minor or when required to disclose by law or court order.

If an individual who is a Confidential Resource receives information about Prohibited Conduct outside of their provision of professional services, the Confidential Resource is required to share that information with the Title IX Coordinator.

## **6. Written Notification About Available Options and Assistance**

Upon receipt of notice or a complaint, the Title IX Coordinator, as part of the Initial Assessment, will provide the Complainant<sup>9</sup> with a written explanation of available resources, options, and other important Policy information, including:

- Support and assistance available through University resources, including the option to seek Supportive Measures regardless of whether they choose to participate in a University or law enforcement investigation;
- The option to seek medical treatment and information on preserving potentially key forensic evidence and/or other potential evidence;
- The University's complaint resolution options and procedures;
- The right to an advisor of their choosing who may be, but is not required to be, an attorney;
- The University's prohibition of retaliation against the Complainant, the Respondent, the witnesses, and the reporting parties; how to report acts of retaliation; and that MUSC will take prompt action when retaliation is reported;
- The opportunity to discuss with the Title IX Coordinator or designee the individual's resources, rights, and options;
- A copy of or a link to the University's Policy on Nondiscrimination, Anti-Harassment, and Equal Opportunity and Complaint Procedures; and
- That parties and witnesses are prohibited from knowingly making false statements or knowingly submitting false information during the grievance process.

<sup>9</sup> If a Formal Complaint is filed, the Title IX Coordinator will also provide a written explanation of rights and options to the Respondent which, in addition to the rights of the Complainant, will include a written notice of the allegations.

## **7. Complainant's Request Not To Proceed**

If the Complainant does not wish for their name to be shared with the Respondent, does not wish for an investigation to take place, or does not want a Formal Complaint to be pursued, they may make such a request to the Title IX Coordinator, who will evaluate that request in light of the duty to ensure the safety of the campus and to comply with state or federal law.

The Title IX Coordinator has ultimate discretion over whether to initiate a grievance process when the Complainant does not wish to do so, and the Title IX Coordinator may sign a Formal Complaint to initiate a grievance process upon completion of an appropriate violence risk assessment.

The Title IX Coordinator's decision should be based on results of the violence risk assessment that show a compelling risk to health and/or safety that requires MUSC to pursue formal action to protect the community.

A compelling risk to health and/or safety may result from evidence of patterns of misconduct, predatory conduct, threats, abuse of minors, use of weapons, and/or violence. MUSC may be compelled to act on alleged employee misconduct irrespective of a Complainant's wishes.

The Title IX Coordinator must also consider the effect that non-participation by the Complainant may have on the availability of evidence and the University's ability to pursue a grievance process fairly and effectively.

When the Title IX Coordinator executes the written complaint, they do not become the Complainant. The Complainant is the individual who is alleged to be the victim of conduct that could constitute a violation of this policy.

When the University proceeds with a grievance process, the Complainant (or their advisor) may have as much or as little involvement in the process as they wish. The Complainant retains all rights of a Complainant under this Policy irrespective of their level of participation. Typically, when the Complainant chooses not to participate, the advisor may be appointed as proxy for the Complainant throughout the process, acting to ensure and protect the rights of the Complainant.

Note that the University's ability to remedy and respond to notice may be limited if the Complainant does not want the University to proceed with an investigation and/or grievance process. The goal is to provide the Complainant with as much control over the process as possible, while balancing the University's obligation to protect the MUSC community.

In cases in which the Complainant requests confidentiality/no formal action and the circumstances allow the Title IX Coordinator to honor that request, the Title IX Coordinator will offer informal resolution options (see below), Supportive Measures, and remedies to the Complainant and the community, but will not otherwise pursue formal action.

If the Complainant elects to take no action, they can change that decision if they decide to pursue a formal complaint at a later date. Upon making a formal complaint, a Complainant has the right,

and can expect, to have allegations taken seriously by the University, and to have the incidents investigated and properly resolved through these procedures.

## **8. Counterclaims**

Counterclaims by the Respondent may be made in good faith but are also sometimes made for purposes of retaliation. The University is obligated to ensure that any process is not abused for retaliatory purposes.

MUSC permits the filing of counterclaims, but uses the initial assessment, described above in the Policy section, to assess whether the allegations are made in good faith. If they are, the allegations will be processed using the resolution procedures below, typically after resolution of the underlying allegation.

A delay in the processing of counterclaims is permitted, accordingly. Occasionally, allegations and counterclaims can be resolved through the same investigation, at the discretion of the Title IX Coordinator. When counterclaims are not made in good faith, they will be considered retaliatory, and may constitute a violation of this Policy.

## **9. Violence Risk Assessment**

In some cases, the Title IX Coordinator may determine that a Violence Risk Assessment (VRA) should be conducted by the Department of Public Safety as part of the Initial Assessment. A VRA can aid in ten critical and/or required determinations, including:

- 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 institution about a Respondent;
- Assessment of appropriate sanctions/remedies (to be applied post-hearing); and/or
- Whether a Clery Act Timely Warning/Trespass Order/Persona Non-Grata is needed.

Threat assessment is the process of evaluating the actionability of violence by an individual against another person or group following the issuance of a direct or conditional threat. A VRA is a broader term used to assess any potential violence or danger, regardless of the presence of a vague, conditional, or direct threat.

## 10. Supportive Measures

MUSC will offer and implement appropriate and reasonable supportive measures to the parties upon notice of an alleged violation of the Policy on Nondiscrimination, Anti-Harassment, and Equal Opportunity. 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 MUSC'S education program or activity, including measures designed to protect the safety of all parties or the University's educational environment, and/or deter harassment, discrimination, and/or retaliation.

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 Title IX Coordinator 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 taken into account with respect to the Supportive Measures that are planned and implemented.

MUSC will maintain Supportive Measures provided to the Complainant or Respondent as confidential to the extent that maintaining such confidentiality would not impair MUSC's ability to provide the Supportive Measures. If it is necessary to disclose information about the Supportive Measures to a third party, the Title IX Coordinator will determine what information should be disclosed and to whom the information will be disclosed, and will inform the party prior to sharing any personally identifying information with a third party. MUSC will act to ensure as minimal an academic/employment impact on the parties as possible. It will implement measures in a way that does not unreasonably burden the other party.

These actions may include, but are not limited to:

- Referral to counseling, medical, and/or other healthcare services
- Referral to community-based service providers
- Referral to legal aid assistance
- Visa and immigration assistance
- Student financial aid counseling
- Education to the institutional community or community subgroup(s)
- Altering work arrangements for employees or student-employees
- Safety planning
- Providing campus safety escorts
- Providing transportation accommodations
- Implementing contact limitations (no-contact orders) between the parties
- Academic support, extensions of deadlines, or other program-related adjustments
- Timely warnings
- Class schedule modifications, withdrawals, or leaves of absence
- Changes to non-campus student lodging accommodations controlled by MUSC
- Increased security and monitoring of certain areas of the campus
- Providing information about obtaining a protective or restraining order from the courts
- Any other actions deemed appropriate by the Title IX Coordinator

## **11. Emergency Removal**

MUSC can act to remove a student or employee 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. This risk analysis is performed by the Title IX Coordinator in conjunction with the Department of Public Safety using its standard objective violence risk assessment procedures.

In all cases in which an emergency removal is imposed, the Respondent will be given notice of the action and the option to request a meeting with the Title IX Coordinator 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. This meeting is not a hearing on the merits of the allegation(s), but rather is an administrative process intended to determine solely whether the emergency removal is appropriate. When this meeting is not requested in a timely manner, objections to the emergency removal will be deemed waived. There is no appeal process for emergency removal decisions. 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.

MUSC 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: 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, temporarily re-assigning an employee, and suspending a student's participation in extracurricular activities, student employment, and student organizational leadership.

## **12. The Right to An Advisor<sup>10</sup>**

Each party may choose an advisor who is eligible and available to accompany them throughout the resolution process. The advisor can be anyone, including an attorney, but should not be someone who is also a witness in the process. A party may elect to change advisors during the process and is not obligated to use the same advisor throughout.

The parties are expected to inform the Investigators of the identity of their advisor at least two (2) business days before the date of their first meeting with the Investigator(s) (or as soon as possible if a more expeditious meeting is necessary or desired).

<sup>10</sup> This section contains general information about advisors. Appendices A and B contain additional information specific to the respective resolution processes.

The parties are expected to provide timely notice to the Investigator(s) and/or the Title IX Coordinator if they change advisors at any time.

Upon written request of a party, the Title IX Coordinator will copy the advisor on all communications between the University and the party. The advisor may be asked to sign a non-disclosure agreement (NDA) regarding private, sensitive records.

#### **A. Sharing Information with the Advisor**

MUSC expects that the parties may wish to have the Title IX Coordinator share documentation and evidence related to the allegations with their advisors. Parties may share this information directly with their advisor or other individuals if they wish. Doing so may help the parties participate more meaningfully in the resolution process.

The Title IX Coordinator also provides a consent form that authorizes the University to share such information directly with their advisor. The parties must either complete and submit this form to the Title IX Coordinator or provide similar documentation demonstrating consent to a release of information to the advisor before the Title IX Coordinator is able to share records with an advisor.

Advisors are expected to maintain the privacy of the records shared with them.

#### **B. Expectations of an Advisor**

MUSC generally expects an advisor to adjust their schedule to allow them to attend meetings when planned, but may change scheduled meetings to accommodate an advisor's inability to attend, if doing so does not cause an unreasonable delay.

The Title IX Coordinator may also make reasonable provisions to allow an advisor who cannot attend in person to attend a meeting by telephone, video conferencing, or other similar technologies as may be convenient and available.

#### **C. Assistance in Securing an Advisor**

MUSC has partnered with the Charleston School of Law to provide law students, supervised by law faculty, as advisors in the resolution process.

For representation, Respondents may wish to contact organizations such as:

- FACE (<http://www.facecampusequality.org>)
- SAVE (<http://www.saveservices.org>).

Complainants may wish to contact organizations such as:

- The Victim Rights Law Center (<http://www.victimrights.org>),

- The National Center for Victims of Crime (<http://www.victimsofcrime.org>), which maintains the Crime Victim’s Bar Association.
- The Time’s Up Legal Defense Fund: <https://nwlc.org/times-up-legal-defense-fund/>

### **13. Grievance Process Pool**

The resolution of complaints under both Process A and Process B relies on a pool of administrators (“the Pool”) to carry out the process. Members of the Pool are announced in an annual distribution of this policy to all students, parents/guardians of students, employees, prospective students, and prospective employees. They are also listed in the Annual Title IX Report published by the Title IX Office.

The list of Pool members and a description of the Pool can be found [here](#).

#### **A. Pool Member Roles**

Members of the Pool are trained annually, and can serve in in the following roles, at the discretion of the Title IX Coordinator:

- To provide appropriate intake of and initial guidance pertaining to complaints
- To serve in a facilitation role in Alternate Resolution if appropriately trained in appropriate resolution modalities (e.g., mediation, restorative practices)
- To perform or assist with initial assessment
- To investigate complaints
- To serve as a hearing facilitator (process administrator, no decision-making role)
- To serve as a decision-maker regarding the complaint
- To serve as an Appeal decision-maker

#### **B. Pool Member Appointment**

The Title IX Coordinator appoints the Pool, which acts with independence and impartiality. While members of the Pool are typically trained in a variety of skill sets and can rotate amongst the different roles listed above in different cases, the University can also designate permanent roles for individuals in the Pool, using others as substitutes or to provide greater depth of experience when necessary. This process of role assignment may be the result of particular skills, aptitudes, or talents identified in members of the Pool that make them best suited to particular roles. Individuals who are interested in serving in the Pool are encouraged to contact the Title IX Coordinator.

#### **C. Pool Member Training**

The Pool members receive annual training. This training includes, but is not limited to:

- The scope of the MUSC Policy on Equal Opportunity, Harassment, and Non-Discrimination

- How to conduct investigations and hearings that protect the safety of Complainants and Respondents, and promote accountability
- Implicit bias
- Disparate treatment and impact
- Reporting, confidentiality, and privacy requirements
- Applicable laws, regulations, and federal regulatory guidance
- How to implement appropriate and situation-specific remedies
- How to investigate in a thorough, reliable, and impartial manner
- How to uphold fairness, equity, and due process
- How to weigh evidence
- How to conduct questioning
- How to assess credibility
- Impartiality and objectivity
- How to render findings and generate clear, concise, evidence-based rationales
- The definitions of all offenses
- How to apply definitions used by MUSC with respect to consent (or the absence or negation of consent) consistently, impartially, and in accordance with policy
- How to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes
- How to serve impartially by avoiding prejudgment of the facts at issue, conflicts of interest, and bias
- Any technology to be used at a live hearing
- Issues of relevance of questions and evidence
- Issues of relevance to create an investigation report that fairly summarizes relevant evidence
- How to determine appropriate sanctions in reference to all forms of harassment, discrimination, and/or retaliation allegations

Specific training is also provided for Appeal decision-makers, intake personnel, and Chairs. All Pool members are required to attend these trainings annually. The materials used to train all members of the Pool are publicly posted [here](#).

#### **14. Sanctions**

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

- The nature, severity of, and circumstances surrounding the violation(s)
- The Respondent's disciplinary history
- Previous allegations or allegations involving similar conduct
- The need for sanctions/responsive actions to bring an end to the discrimination, harassment, and/or retaliation
- The need for sanctions/responsive actions to prevent the future recurrence of discrimination, harassment, and/or retaliation
- The need to remedy the effects of the discrimination, harassment, and/or retaliation on the Complainant and the community

- The impact on the parties
- Any other information deemed relevant by the hearing panel.

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

### **A. Student Sanctions**

The following are the usual sanctions that may be imposed upon students:

- *Warning*: A formal statement that the conduct was unacceptable and a warning that further violation of any MUSC policy, procedure, or directive will result in more severe sanctions/responsive actions.
- *Required Counseling*: A mandate to meet with and engage in either MUSC-sponsored or external counseling to better comprehend the misconduct and its effects.
- *Probation*: A written reprimand for violation of institutional policy, providing for more severe disciplinary sanctions in the event that the student is found in violation of any institutional policy, procedure, or directive within a specified period of time. Terms of the probation will be articulated and may include denial of specified social privileges, exclusion from co-curricular activities, exclusion from designated areas of campus, no-contact orders, and/or other measures deemed appropriate.
- *Suspension*: Termination of student status for a definite period of time not to exceed two years and/or until specific criteria are met. Students who return from suspension are automatically placed on probation through the remainder of their tenure as a student at MUSC.
- *Expulsion*: Permanent termination of student status and revocation of rights to be on campus for any reason or to attend MUSC-sponsored events. This sanction will be noted permanently as a Conduct Expulsion on the student's official transcript.
- *Withholding Diploma*: MUSC may withhold a student's diploma for a specified period of time and/or deny a student participation in commencement activities if the student has an allegation pending or as a sanction if the student is found responsible for an alleged violation.
- *Revocation of Degree*: MUSC reserves the right to revoke a degree previously awarded for fraud, misrepresentation, and/or other violation of MUSC policies, procedures, or directives in obtaining the degree, or for other serious violations committed by a student prior to graduation.

### **B. Employee Sanctions**

Responsive actions for an employee who has engaged in harassment, discrimination, and/or retaliation include:

- *Warning – Verbal or Written*
- *Performance Improvement/Management Process*

- *Required Counseling*
- *Required Training or Education*
- *Probation*
- *Loss of Annual Pay Increase*
- *Loss of Oversight or Supervisory Responsibility*
- *Demotion*
- *Suspension with pay*
- *Suspension without pay*
- *Termination*

### **15. Withdrawal or Resignation While Charges Pending**

Students: If a student has an allegation pending for violation of the Policy on Equal Opportunity, Harassment, and Nondiscrimination, MUSC may place a hold on a student’s ability to graduate and/or to receive an official transcript/diploma.

Should a student decide to not participate in the resolution process, the process proceeds absent their participation to a reasonable resolution. Should a student Respondent permanently withdraw from the University, the resolution process ends, as MUSC no longer has disciplinary jurisdiction over the withdrawn student.

However, MUSC will continue to address and remedy any systemic issues, variables that may have contributed to the alleged violation(s), and any ongoing effects of the alleged harassment, discrimination, and/or retaliation. The student who withdraws or leaves while the process is pending may not return to MUSC. A hold will be placed on their ability to be readmitted. They may also be barred from University property and/or events.

If the student Respondent only withdraws or takes a leave for a specified period of time (e.g., one semester or term), the resolution process may continue remotely and that student is not permitted to return to MUSC unless and until all sanctions have been satisfied.

During the resolution process, a hold may be placed on the student Respondent’s transcript that a disciplinary matter is pending.

Employees: Should an employee Respondent resign with unresolved allegations pending, the resolution process ends, as MUSC no longer has disciplinary jurisdiction over the resigned employee.

However, MUSC will continue to address and remedy any systemic issues, variables that contributed to the alleged violation(s), and any ongoing effects of the alleged harassment or discrimination.

### **16. Long-Term Remedies/Other Actions**

Following the conclusion of the resolution process, and in addition to any sanctions implemented, the Title IX Coordinator may implement additional long-term remedies or actions

with respect to the parties and/or the campus community that are intended to stop the harassment, discrimination, and/or retaliation, remedy the effects, and prevent reoccurrence.

These remedies/actions may include, but are not limited to:

- Referral to Counseling and Psychological Services (CAPS)
- Referral to the Employee Assistance Program (EAP)
- Education to the individual and/or the community
- 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 owed by the University to the Respondent to ensure no effective denial of educational access.

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

#### **17. Failure to Comply with Sanctions and/or Remedies and/or Responsive Actions**

All Respondents are expected to comply with the assigned sanctions, responsive actions, and/or corrective actions within the timeframe specified by the final decision-maker(s). Failure to abide by the sanction(s)/action(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanction(s)/action(s), including suspension, expulsion, and/or termination and may be noted on a student's official transcript. A suspension will only be lifted when compliance is achieved to the satisfaction of the Title IX Coordinator.

#### **18. Promptness**

All allegations are acted upon promptly by the University once it has received notice of Prohibited Conduct or a formal complaint. Complaints can take 60-90 business days to resolve, typically. There are always exceptions and extenuating circumstances that can cause a resolution to take longer, but MUSC will avoid all undue delays within its control.

Any time the general timeframes for resolution outlined in the procedures will be delayed, the Title IX Coordinator will provide written notice to the parties of the delay, the cause of the delay, and an estimate of the anticipated additional time that will be needed as a result of the delay.

## **19. Federal Timely Warning Obligations**

Parties reporting sexual assault, domestic violence, dating violence, and/or stalking should be aware that in accordance with the Clery Act, MUSC must issue timely warnings for incidents reported to them that pose a serious or continuing threat of bodily harm or danger to members of the campus community. MUSC will ensure that a Complainant's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger. Please refer to the Crime Reporting Policy for additional information about federal timely warnings.

## **20. Obligation to Cooperate and Provide Truthful Information**

All members of the MUSC community are expected to cooperate and participate in inquiries, investigations, and resolutions of reports of Prohibited Conduct under this Policy. When involved in a proceeding under this Policy, all members of the MUSC community are expected to provide truthful information. Deliberately false and/or malicious accusations under this Policy, as opposed to allegations which, even if erroneous, are made in good faith, are a serious offense and will be subject to appropriate disciplinary action.

Additionally, witnesses and parties knowingly providing false evidence, tampering with or destroying evidence after being directed to preserve such evidence, or deliberately misleading an official conducting an investigation can be subject to appropriate discipline.

## **21. Statement of the Rights of the Parties**

[See Appendix C](#)

## **22. Recordkeeping**

MUSC will maintain for a period of 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 MUSC'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, decision-makers, and any person who facilitates an Informal Resolution process. MUSC will make these training materials publicly available on its 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 MUSC'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.

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

### **23. Disabilities Accommodations in the Resolution Process**

MUSC is committed to providing reasonable accommodations and support to qualified students, employees, or others with disabilities to ensure equal access to the resolution process. Anyone needing such accommodations or support should contact the [Director of University Accessibility Services](#) (students) or University HR (employees), who will review the request and, in consultation with the person requesting the accommodation and the Title IX Coordinator, determine appropriate and necessary accommodations for full participation in the process.

### **24. Education and Prevention Programs**

MUSC is committed to offering educational programs to promote awareness and prevention of Prohibited Conduct. Educational programs include an overview of the University's policies and procedures; relevant definitions, including Prohibited Conduct; discussion of the impact of alcohol and illegal drug use; affirmative consent; safe and positive options for bystander intervention; review of resources and reporting options available for students, faculty, and staff; and information about risk reduction. Incoming first year students and new employees receive primary prevention and awareness programming as part of their orientation. Returning students and employees also have ongoing opportunities for training and education.

### **25. Revision of this Policy and Procedures**

This Policy and procedures supersede any previous policy(ies) addressing harassment, sexual misconduct, discrimination, and/or retaliation and will be reviewed and updated annually by the Title IX Coordinator. MUSC reserves the right to make changes to this document as necessary, and once those changes are posted online, they are in effect.

During the resolution process, the Title IX Coordinator may make minor modifications to procedures that do not materially jeopardize the fairness owed to any party, such as to accommodate summer schedules. The Title IX Coordinator may also vary procedures materially with notice (on the institutional website, with the appropriate effective date identified) upon determining that changes to law or regulation require policy or procedural alterations not reflected in this Policy and procedures.

If government laws or regulations change – or court decisions alter – the requirements in a way that impacts this document, this document will be construed to comply with the most recent government regulations or holdings. This document does not create legally enforceable protections beyond the protection of the background state and federal laws which frame such policies and codes, generally.

## **Appendix A: Complaint Procedures for Alleged Violations of Title IX (Process A)**

### **1. Overview**

The procedures below apply **only** to qualifying allegations of sexual harassment (including sexual assault, dating violence, domestic violence, and stalking, as defined above) involving students, staff, administrators, or faculty members.

For allegations of discriminatory harassment and other civil rights offenses, please see Appendix B for a description of the procedures applicable to the resolution of such offenses, known as “Process B.” Process B can also apply to sexual harassment (including sexual assault, dating violence, domestic violence, and stalking, as defined above) when jurisdiction does not fall within Process A, as determined by the Title IX Coordinator.

The procedures below may be used to address collateral misconduct arising from the investigation of or occurring in conjunction with reported misconduct (e.g., vandalism, physical abuse of another).

### **2. Notice/Complaint**

Upon receipt of a complaint or notice to the Title IX Coordinator of an alleged violation of the Policy, the Title IX Coordinator initiates a prompt initial assessment to determine the next steps the University needs to take.

The University will initiate at least one of three responses:

- 1) Offering supportive measures to the Complainant does not want to proceed formally; and/or
- 2) An informal resolution; and/or
- 3) A Formal Grievance Process including an investigation and a hearing.

The investigation and grievance process will determine whether the Policy has been violated. If so, MUSC will promptly implement effective remedies designed to ensure that it is not deliberately indifferent to harassment or discrimination, its potential recurrence, or its effects.

### **3. Initial Assessment**

Following receipt of notice or a complaint of an alleged violation of this Policy, the Title IX Coordinator<sup>11</sup> engages in an initial assessment, which is typically one to five business days in duration. The steps in an initial assessment can include:

- If notice is given, the Title IX Coordinator seeks to determine if the person impacted wishes to make a Formal Complaint, and will assist them to do so, if desired.

<sup>11</sup> If circumstances require, the President or Title IX Coordinator will designate another person to oversee the process below should an allegation be made about the Coordinator or the Coordinator be otherwise unavailable or unable to fulfill their duties.

- If they do not wish to do so, the Title IX Coordinator determines whether to initiate a complaint because a violence risk assessment indicates a compelling threat to health and/or safety.
- If a Formal Complaint is received, the Title IX Coordinator assesses its sufficiency and works with the Complainant to make sure it is correctly completed.
- The Title IX Coordinator works with the Complainant to ensure they are aware of the right to have an advisor.
- The Title IX Coordinator works 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.
  - If a supportive and remedial response is preferred, the Title IX Coordinator works with the Complainant to identify their wishes and then seeks to facilitate implementation. No Formal Grievance Process is initiated, though the Complainant can elect to initiate one later, if desired.
  - If an informal resolution option is preferred, the Title IX Coordinator assesses whether the complaint is suitable for informal resolution and may seek to determine if the Respondent is also willing to engage in informal resolution.
  - If a Formal Grievance Process is preferred, the Title IX Coordinator determines if the misconduct alleged falls within the scope of Title IX:
    - If it does, the Title IX Coordinator will initiate the formal investigation and grievance process, directing the investigation to address:
      - \* an incident, and/or
      - \* a pattern of alleged misconduct, and/or
      - \* a culture/climate issue, based on the nature of the complaint.
    - If it does not, the Title IX Coordinator determines that Title IX does not apply (and will “dismiss” that aspect of the complaint, if any), assesses which policies may apply, and refers the matter for resolution under Process B. Please note that dismissing a complaint under Title IX is just procedural, and does not limit the University’s authority to address a complaint with an appropriate process and remedies.

#### **4. Dismissal (Mandatory and Discretionary)**

The Title IX Coordinator must dismiss a formal complaint or any allegations therein if, at any time during the investigation or hearing, it is determined that:

- The conduct alleged in the Formal Complaint would not constitute sexual harassment as defined in this Policy, even if proved; and/or
- The conduct did not occur in an educational program or activity controlled by the Medical University of South Carolina (including buildings or property controlled by recognized student organizations), and/or the University does not have control of the Respondent; and/or
- The conduct did not occur against a person in the United States; and/or
- 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 MUSC.

The Title IX Coordinator may dismiss a formal complaint or any allegations therein if, at any time during the investigation or hearing:

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

Upon any dismissal, the Title IX Coordinator 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.

## **5. Right to an Advisor**

The parties may each have an advisor of their choice present with them for all meetings and interviews within the resolution process, if they so choose. The parties may select whoever they wish to serve as their advisor as long as the advisor is eligible and available.<sup>12</sup>

Choosing an advisor who is also a witness in the process creates potential for bias and conflict-of-interest. A party who chooses an advisor who is also a witness can anticipate that issues of potential bias will be explored by the hearing decision-makers.

### **A. Who Can Serve as an Advisor**

The advisor may be a friend, mentor, family member, attorney, or any other individual a party chooses to advise, support, and/or consult with them throughout the resolution process. The parties may choose advisors from inside or outside of the MUSC community.

The Title IX Coordinator will also offer to assign a trained advisor for any party if the party so chooses. If the parties choose an advisor from the pool available from MUSC, the advisor will be trained by the Title IX Coordinator and be familiar with MUSC's resolution process. If the parties choose an advisor from outside the pool of those identified by MUSC, the advisor may not have been trained by the Title IX Coordinator and may not be familiar with MUSC policies and procedures. Parties also have the right to choose not to have an advisor in the initial stages of the resolution process, prior to a hearing.

### **B. Advisors in Hearings/MUSC-Appointed Advisor**

Under U.S. Department of Education regulations applicable to Title IX, cross-examination is required during the hearing, but must be conducted by the parties' advisors. The parties are not

<sup>12</sup> "Available" means the party cannot insist on an advisor who simply doesn't have inclination, time, or availability. Also, the advisor cannot have institutionally conflicting roles, such as being a Title IX administrator who has an active role in the matter, or a supervisor who must monitor and implement sanctions.

permitted to directly cross-examine each other or any witnesses. If a party does not have an advisor for a hearing, the Title IX Coordinator will appoint a trained advisor for the limited purpose of conducting any cross-examination.

A party may reject this appointment and choose their own advisor, but they may not proceed without an advisor. If the party's advisor will not conduct cross-examination, the Title IX Coordinator will appoint an advisor who will do so thoroughly, regardless of the participation or non-participation of the advised party in the hearing itself. Extensive questioning of the parties and witnesses will also be conducted by the decision-makers during the hearing.

### **C. Advisor's Role**

The 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. Advisors should help the parties prepare for each meeting and are expected to advise ethically, with integrity, and in good faith.

MUSC cannot guarantee equal advisory rights, meaning that if one party selects an advisor who is an attorney, but the other party does not or cannot afford an attorney, MUSC is not obligated to provide an attorney.

### **D. Advisor Violations of MUSC's Policy**

All advisors are subject to the same policies and procedures, whether they are attorneys or not. Advisors are expected to advise the parties without disrupting proceedings.

The parties are expected to ask and respond to questions on their own behalf throughout the investigation phase of the resolution process. Although the advisor generally may not speak on behalf of their advisee, the advisor may consult with their advisee, either privately as needed, or by conferring or passing notes during any resolution process meeting or interview. For longer or more involved discussions, the parties and their advisors should ask for breaks to allow for private consultation.

Any advisor who oversteps their role as defined by this policy will be warned only once. If the advisor continues to disrupt or otherwise fails to respect the limits of the advisor role, the meeting will be ended, or other appropriate measures implemented. Subsequently, the Title IX Coordinator will determine how to address the advisor's non-compliance and future role.

## **6. Resolution Processes**

Resolution proceedings are private. All persons present at any time during the resolution process are expected to maintain the privacy of the proceedings in accordance with this Policy. While there is an expectation of privacy around what investigators share with parties during interviews, the parties have discretion to share their own knowledge and evidence with others if they so choose. MUSC encourages parties to discuss this with their advisors before doing so.

## **A. Informal Resolution**

Informal Resolution can include two different approaches:

- When the parties agree to resolve the matter through an alternate resolution mechanism;
- When the Respondent accepts responsibility for violating policy, and desires to accept a sanction and end the resolution process; or

To initiate Informal Resolution, a Complainant needs to submit a Formal Complaint, as defined above. If a Respondent wishes to initiate Informal Resolution, they should contact the Title IX Coordinator to so indicate.

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.

Prior to implementing Informal Resolution, the Title IX Coordinator will provide the parties with written notice of the reported misconduct and any sanctions or measures that may result from participating in such a process, including information regarding any records that will be maintained or shared by MUSC.

The Title IX Coordinator 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.

## **B. Alternate Resolution**

Alternate Resolution is an informal process, such as a mediation or a negotiated resolution, by which a mutually agreed upon resolution of an allegation is reached. All parties must consent to the use of Alternate Resolution.

The ultimate determination of whether Alternate Resolution is available or successful is to be made by the Title IX Coordinator. The Title IX Coordinator maintains records of any resolution that is reached, and failure to abide by the resolution agreement may result in appropriate responsive/disciplinary actions. Results of complaints resolved by Administrative Resolution are not appealable.

## **C. Respondent Accepts Responsibility for Alleged Violations**

The Respondent may accept responsibility for all or part of the alleged Policy violation(s) at any point during the resolution process. If the Respondent indicates an intent to accept responsibility for all of the alleged misconduct, the formal process will be paused, and the Title IX Coordinator will determine whether Informal Resolution can be used.

If Informal Resolution is applicable, the Title IX Coordinator will determine whether all parties and the University are able to agree on responsibility, sanctions, and/or remedies. If so, the Title IX Coordinator implements the accepted finding that the Respondent is in violation of the Policy

and implements agreed-upon sanctions and/or remedies, in coordination with other appropriate administrator(s), as necessary.

This result is not subject to appeal once all parties indicate their written assent to all agreed upon terms of resolution. When the parties cannot agree on all terms of resolution, the Formal Grievance Process will resume at the same point where it was paused.

When a resolution is accomplished, the appropriate sanction or responsive actions are promptly implemented in order 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.

## **7. Formal Grievance Process**

### **A. Notice of Investigation and Allegations**

The Title IX Coordinator will provide written notice of the investigation and allegations (the “NOIA”) to the Respondent upon commencement of the Formal Grievance Process. This facilitates the Respondent’s ability to prepare for the interview and to identify and choose an advisor to accompany them. The NOIA is also copied to the Complainant, who is to be given advance notice of when the NOIA will be delivered to the Respondent.

The NOIA will include:

- A meaningful summary of all of 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 implicated,
- A description of the applicable procedures,
- A statement of the potential sanctions/responsive actions that could result,
- A statement that the Medical University of South Carolina 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 to inspect and review all directly related and/or relevant evidence obtained during the review and comment period,
- A statement about MUSC’s policy on retaliation,
- Information about the privacy of the process,
- Information on the need for each party to have an advisor of their choice, and suggestions for ways to identify an advisor,
- A statement informing the parties that the Policy prohibits knowingly making false statements, including knowingly submitting false information during the resolution process,
- The name(s) of the Investigator(s), along with a process to identify, in advance of the interview process, to the Title IX Coordinator any conflict of interest that the

- Investigator(s) may have, and
- An instruction to preserve any evidence that is directly related to the allegations.

Amendments and updates to the NOIA may be made as the investigation progresses and more information becomes available regarding the addition or dismissal of various charges.

Notice 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(es) of the parties as indicated in official University records, or emailed to the parties' MUSC-issued email accounts. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

### **B. Resolution Timeline**

MUSC will make a good faith effort to complete the resolution process within a sixty-to-ninety (60-90) business day time period, including appeal, which can be extended as necessary for appropriate cause by the Title IX Coordinator, who will provide notice and rationale for any extensions or delays to the parties as appropriate, as well as an estimate of how much additional time will be needed to complete the process.

### **C. Appointment of Investigators**

Once the decision to commence a formal investigation is made, the Title IX Coordinator appoints Pool members to conduct the investigation (typically using a team of two Investigators), usually within two (2) business days of determining that an investigation should proceed.

### **D. Ensuring Impartiality**

Any individual materially involved in the administration of the resolution process, including the Title IX Coordinator, investigator(s), and decision-maker(s), may neither have nor demonstrate a conflict of interest or bias for a party generally, or for a specific Complainant or Respondent.

The Title IX Coordinator will vet the assigned investigator(s) to ensure impartiality by ensuring there are no actual or apparent conflicts of interest or disqualifying biases. The parties may, at any time during the resolution process, raise a concern regarding bias or conflict of interest, and the Title IX Coordinator will determine whether the concern is reasonable and supportable. If so, another Pool member will be assigned and the impact of the bias or conflict, if any, will be remedied. If the source of the conflict of interest or bias is the Title IX Coordinator, concerns should be raised with the President of MUSC.

The Formal Grievance Process involves an objective evaluation of all relevant evidence obtained, including evidence which supports that the Respondent engaged in a Policy violation and evidence which 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.

MUSC operates with the presumption that the Respondent is not responsible for the reported misconduct unless and until the Respondent is determined to be responsible for a policy violation by the applicable standard of proof.

### **E. Investigation Timeline**

Investigations are completed expeditiously, normally within thirty (30) business days, though some investigations may take weeks or even months, depending on the nature, extent, and complexity of the allegations, availability of witnesses, police involvement, etc.

MUSC will make a good faith effort to complete investigations as promptly as circumstances permit and will communicate regularly with the parties to update them on the progress and timing of the investigation.

### **F. Delays in the Investigation Process and Interactions with Law Enforcement**

MUSC may undertake a short delay in its investigation (several days to a few weeks) if circumstances require. Such circumstances include, but are not limited to, a request from law enforcement to temporarily delay the investigation, the need for language assistance, the absence of parties and/or witnesses, and/or accommodations for disabilities or health conditions.

The University will communicate in writing the anticipated duration of the delay and reason to the parties and provide the parties with status updates if necessary. The University will promptly resume its investigation and resolution process as soon as feasible. During such a delay, the Title IX Coordinator will implement supportive measures as deemed appropriate.

MUSC's action(s) are not typically altered or precluded on the grounds that civil or criminal charges involving the underlying incident(s) have been filed or that criminal charges have been dismissed or reduced.

#### **1. Steps in the Investigation Process**

All investigations are thorough, reliable, impartial, prompt, and fair. Investigations involve interviews with all relevant parties and witnesses; obtaining available, relevant evidence; and identifying sources of expert information, as necessary.

All parties have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence and expert witnesses, and to fully review and respond to all evidence on the record.

The investigator(s) typically take(s) the following steps, if not already completed (not necessarily in this order):

- In coordination with campus partners, initiate or assist with any necessary supportive measures

- Assist the Title IX Coordinator with conducting a prompt initial assessment to determine if the allegations indicate a potential policy violation
- Commence a thorough, reliable, and impartial investigation by identifying issues and developing a strategic investigation plan
- Meet with the Complainant to finalize their interview/statement, if necessary
- Prepare the initial Notice of Investigation and Allegation (NOIA). The NOIA may be amended with any additional or dismissed allegations
- Provide each interviewed party and witness an opportunity to review and verify the investigator's summary notes (or transcript) of the relevant evidence/testimony from their respective interviews and meetings
- Make good faith efforts to notify the parties of any meeting or interview involving the other party, in advance when possible
- When participation of a party is expected, provide that party with written notice of the date, time, location, and purpose of the meeting
- Interview all available, relevant witnesses and conduct follow-up interviews
- Allow each party the opportunity to suggest witnesses and questions they wish the Investigator(s) to ask of the other party and witnesses, and document in the report which questions were asked, with a rationale for any changes or omissions.
- Provide regular status updates to the parties throughout the investigation.
- Prior to the conclusion of the investigation, provide the parties and their respective advisors with a list of witnesses whose information will be used to render a finding
- Write a comprehensive investigation report fully summarizing the investigation, all witness interviews, and addressing all relevant evidence. Appendices including relevant physical or documentary evidence will be included
- Prior to the conclusion of the investigation, provide the parties and their respective advisors a secured electronic or hard copy of the draft investigation report as well as an 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 that will not be relied upon in reaching a determination, for a ten (10) business day review and comment period so that each party may meaningfully respond to the evidence. Each copy of the materials shared will be watermarked on each page with the role of the person receiving it.
- The Investigator(s) may elect 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(s) 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 Investigator(s) should document all rationales for any changes made after the review and comment period
- The final report is then shared with all parties and their Advisors through secure electronic transmission or hard copy at least ten (10) business days prior to a hearing. The parties are also provided with a file of any directly related evidence that was not included in the report

## **2. Role and Participation of Witnesses in the Investigation**

Witnesses (as distinguished from the parties) who are employees of MUSC are expected to cooperate with and participate in the University's investigation and resolution process. Failure of such witnesses to cooperate with and/or participate in the investigation or resolution process constitutes a violation of policy and may warrant discipline.

While in-person interviews for parties and all potential witnesses are ideal, circumstances may require individuals to be interviewed remotely. Skype, Zoom, FaceTime, WebEx, or similar technologies may be used for interviews if the investigator(s) determine that timeliness or efficiency dictate a need for remote interviewing. MUSC will take appropriate steps to reasonably ensure the security/privacy of remote interviews.

Witnesses may also provide written statements in lieu of interviews or choose to respond to written questions, if deemed appropriate by the investigator(s), 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.

## **3. Recording of Interviews**

No unauthorized audio or video recording of any kind is permitted during investigation meetings. If Investigator(s) elect to audio and/or video record interviews, all involved parties must be made aware of audio and/or video recording.

## **4. Evidentiary Considerations in the Investigation**

The investigation does not consider: 1) incidents not directly related to the possible violation, unless they evidence a pattern; 2) 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.

## **5. Referral for Hearing**

Provided that the 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 cannot be less than ten (10) business days from the conclusion of the investigation –when the final investigation report is transmitted to the parties and the decision-makers–unless all parties and the decision-maker agree to an expedited timeline.

## **6. Hearing Panel Composition**

The Title IX Coordinator will designate a three-member panel from the Pool. One of the three members will be appointed as Chair. The panelists will not have had any previous involvement

with the investigation. Those who have served as investigators will be witnesses in the hearing and therefore may not serve as panelists. Those who are serving as advisors may not serve as panelists in that matter. The Title IX Coordinator may not serve as a panelist or Chair in the matter. The hearing will convene at a time determined by the Chair.

## **7. Evidentiary Considerations in the Hearing**

Any evidence that the panelists determine is relevant and credible may be considered. The hearing does not consider: 1) incidents not directly related to the possible violation, unless they evidence a pattern; 2) 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.

The parties may submit a written impact statement prior to the hearing for the consideration of the panelists at the sanction stage when a determination of responsibility is reached.

After deliberation, the panelists render a determination based on the preponderance of the evidence: whether it is more likely than not that the Respondent violated the Policy as alleged.

## **8. Notice of Hearing**

No less than ten (10) business days prior to the hearing, the Title IX Coordinator or the Chair 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 contain:

- 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.
- The time, date, and location of the hearing and a reminder that attendance is mandatory, superseding all other campus activities.
- 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 Decision-maker(s) and parties to see and hear a party or witness answering questions. Such a request must be raised with the Title IX Coordinator at least five (5) business days prior to the hearing.
- A list of all those who will attend the hearing, along with an invitation to object to any Decision-maker on the basis of demonstrated bias. This must be raised with the Title IX Coordinator at least two (2) business days prior to the hearing.
- 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 panelists. For compelling reasons, the Chair may reschedule the hearing.

- Notification that the parties may have the assistance of an advisor of their choice at the hearing and will be required to have one present for any questions they may desire to ask. The party must notify the Title IX Coordinator if they do not have an advisor, and MUSC will appoint one. Each party must have an advisor present. There are no exceptions.
- A copy of all the materials provided to the panelists about the matter, unless they have been provided already.<sup>13</sup>
- An invitation to each party to submit to the Chair an impact statement pre-hearing that the panelists 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.

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 immediately after the end of the term or during the summer, as needed, to remain within the 60-90 business day goal for resolution.

In these cases, 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 facing charges under this Policy is not in good standing to graduate.

## **9. 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 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 know at least five (5) business days prior to the hearing so that appropriate arrangements can be made.

## **10. Pre-Hearing Preparation**

The Chair, after any necessary consultation with the parties, investigator(s) and/or Title IX Coordinator, 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.

<sup>13</sup> The final investigation report may be shared using electronic means that preclude downloading, forwarding, or otherwise sharing.

Any witness scheduled to participate in the hearing must have been first interviewed by the investigator(s) or have proffered a written statement or answered written questions, unless all parties and the Chair assent 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 Chair do not assent to the admission of evidence newly offered at the hearing, the Chair will delay the hearing and instruct that the investigation needs to be re-opened to consider that evidence.

The parties will be given a list of the names of the panelists at least five (5) business days in advance of the hearing. All objections to any panelist 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 one day prior to the hearing. Panelists 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 panelists a list of the names of all parties, witnesses, and advisors at least five (5) business days in advance of the hearing. Any panelist 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 panelist 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 Chair at the pre-hearing meeting or at the hearing and will be exchanged between each party by the Chair.

## **11. Pre-Hearing Meetings**

The Chair may convene a pre-hearing meeting(s) with the parties and their advisors to invite them to submit the questions or topics they wish to ask or discuss at the hearing, so that the Chair 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 for a reconsideration based on any new information or testimony offered at the hearing. The Chair must document and share their rationale for any exclusion or inclusion at this pre-hearing meeting.

The Chair, **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(s) in the investigation report or during the hearing.

At each pre-hearing meeting with a party and their advisor, the Chair 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(s) may be argued to be relevant. The Chair 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

Chair may consult with legal counsel and/or the Title IX Coordinator, or ask either or both to attend pre-hearing meetings.

## **12. Hearing Procedures**

At the hearing, the panel has the authority to hear and make determinations on all allegations of discrimination, harassment, and/or retaliation and may also hear and make determinations on any additional alleged policy violations that have occurred in concert with the discrimination, harassment, and/or retaliation, even though those collateral allegations may not specifically fall within the Policy on Equal Opportunity, Harassment, and Nondiscrimination.

Participants at the hearing will include the Chair, any additional panelists, the investigator(s) who conducted the investigation, the parties, advisors to the parties, any called witnesses, the Title IX Coordinator, the hearing facilitator, and anyone providing authorized accommodations or assistive services.

The Chair will answer all questions of procedure. Anyone appearing at the hearing to provide information will respond to questions on their own behalf.

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

## **13. Joint Hearings**

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 default procedure will be to hear the allegations jointly. However, the Title IX Coordinator may permit the investigation and/or hearings pertinent to each Respondent to be conducted separately if 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.

## **14. The Order of the Hearing – Introductions and Explanation of Procedure**

The Chair explains the procedures and introduces the participants. This may include a final opportunity for challenge or recusal of the panelists on the basis of bias or conflict of interest. The Chair will rule on any such challenge unless the Chair is the individual who is the subject of the challenge, in which case the Title IX Coordinator will review and decide the challenge.

At the hearing, recording, witness logistics, party logistics, curation of documents, separation of the parties, and other administrative elements of the hearing process are managed by a non-voting hearing facilitator appointed by the Title IX Coordinator. The hearing facilitator may attend to: logistics of rooms for various parties/witnesses as they wait; flow of parties/witnesses in and out of the hearing space; ensuring recording and/or virtual conferencing technology is working as intended; copying and distributing materials to participants, as appropriate, etc.

### **A. Investigator Presents the Final Investigation Report**

The investigator(s) will then present a summary of the final investigation report, including items that are contested and those that are not, and will be subject to questioning by the panel and the parties (through their Advisors). The investigator(s) will be present during the entire hearing process, but not during deliberations.

Neither the parties nor the panelists should ask the investigator(s) their opinions on credibility, recommended findings, or determinations, and the investigators, advisors, and parties will refrain from discussion of or questions about these assessments. If such information is introduced, the Chair will direct that it be disregarded.

### **B. Testimony and Questioning**

Once the investigator(s) present the report and are questioned, the parties and witnesses may provide relevant information in turn, beginning with the Complainant, and then in the order determined by the Chair. The parties/witnesses will submit to questioning by the panel and then by the parties through their advisors (“cross-examination”).

All questions are subject to a relevance determination by the Chair. The advisor will pose the proposed question orally, electronically, or in writing (orally is the default, but other means of submission may be permitted by the Chair upon request), the proceeding will pause to allow the Chair to consider it, and the Chair will determine whether the question will be permitted, disallowed, or rephrased.

The Chair may explore arguments regarding relevance with the advisors, if the Chair so chooses. The Chair will then state their decision on the question for the record and advise the party/witness to whom the question was directed, accordingly. The Chair will explain any decision to exclude a question as not relevant, or to reframe it for relevance.

The Chair will limit or disallow questions that are irrelevant, unduly repetitious (and thus irrelevant), or abusive. The Chair has final say on all questions and determinations of relevance, subject to any appeal. The Chair may consult with legal counsel on questions of admissibility. The Chair may ask advisors to frame why a question is or is not relevant but will not entertain argument from the advisors on relevance once the Chair has ruled on a question.

If the parties raise an issue of bias or conflict of interest of an investigator or panelist at the hearing, the Chair may elect to address those issues, consult with legal counsel, and/or refer them to the Title IX Coordinator, and/or preserve them for appeal. If bias is not in issue at the hearing, the Chair should not permit irrelevant questions that probe for bias.

### **C. Refusal to Submit to Cross-Examination and Inferences**

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 panel may not 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. The

panel must disregard that statement. Evidence provided that is something other than a statement by the party or witness may be considered.

If the party or witness attends the hearing and answers some cross-examination questions, only statements related to the cross-examination questions they refuse to answer cannot be relied upon. However, if the statements of the party who is refusing to submit to cross-examination or refuses to attend the hearing are the subject of the allegation itself (e.g., the case is about verbal harassment or a quid pro quo offer), then those statements are not precluded from admission. Similarly, statements can be relied upon when questions are posed by the panelists as distinguished from questions posed by advisors through cross-examination.

The panel may not draw any inference solely from a party's or witness's absence from the hearing or refusal to answer cross-examination or other questions.

If charges of policy violations other than sexual harassment are considered at the same hearing, the panel may consider all evidence it deems relevant, may rely on any relevant statement as long as the opportunity for cross-examination is afforded to all parties through their advisors, and may draw reasonable inferences from any decision by any party or witness not to participate or respond to questions.

If a party's advisor of choice refuses to comply with MUSC's established rules of decorum for the hearing, MUSC may require the party to use a different advisor. If a MUSC-provided advisor refuses to comply with the rules of decorum, MUSC may provide that party with a different advisor to conduct cross-examination on behalf of that party.

#### **D. Recording Hearings**

Hearings (but not deliberations) are 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 panel, the parties, their advisors, and appropriate University administrators will be permitted to listen to the recording in a controlled environment determined by the Title IX Coordinator. No person will be given or be allowed to make a copy of the recording without permission of the Title IX Coordinator.

#### **E. Deliberation, Decision-making, and Standard of Proof**

The panel will deliberate in closed session to determine whether the Respondent is responsible or not responsible for the policy violation(s) in question. A simple majority vote is required to determine the finding. 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 panel may then consider the previously submitted party impact statements in determining appropriate sanction(s).

The Chair will ensure that each of the parties has an opportunity to review any impact statement submitted by the other party(ies). The panel may – at their discretion – consider the statements, but they are not binding. The panel will review the statements and any pertinent conduct history provided by the Title IX Coordinator and will determine the appropriate sanction(s).

The Chair will then prepare a written deliberation statement and deliver it to the Title IX Coordinator, detailing the determination, rationale, the evidence used in support of its determination, the evidence disregarded, credibility assessments, and any sanctions. This report typically should not exceed three (3) to five (5) pages in length and must be submitted to the Title IX Coordinator within two (2) business days of the end of deliberations, unless the Title IX Coordinator grants an extension. If an extension is granted, the Title IX Coordinator will notify the parties.

#### **F. Notice of Outcome**

Using the deliberation statement, the Title IX Coordinator will work with the Chair to prepare a Notice of Outcome. The Notice of Outcome will then be reviewed by legal counsel. The Title IX Coordinator will then share the letter, including the final determination, rationale, and any applicable sanction(s) with the parties and their advisors within five (5) business days of receiving the decision-maker(s)' deliberation statement.

The Notice of Outcome 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' MUSC-issued email or otherwise approved account. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

The Notice of Outcome will include (1) the specific policy(ies) reported to have been violated, including the relevant policy section; (2) a description of the procedural steps taken from the receipt of the misconduct report to the determination, including any and all notifications to the parties, interviews with parties and witnesses, site visits, methods used to obtain evidence, and hearings held; (3) the findings of fact supporting each determination; (4) conclusions regarding the application of the relevant policy to the facts at issue; (5) a statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions MUSC imposes on the Respondent, and whether remedies designed to restore or preserve equal access to MUSC's education program or activity will be provided to the Complainant; and (6) the relevant procedures and permissible bases for the parties to appeal.

### **15. Appeals**

Any party may file a request for appeal ("Request for Appeal"), but it must be submitted in writing to the Title IX Coordinator within three (3) business days of the delivery of the Notice of Outcome. The appeal will be considered by a single Appeal decision-maker who was not previously involved in the process, including any dismissal appeal that may have been heard earlier in the process.

## A. Grounds for Appeal

Appeals are limited to the following grounds:

- (1) Procedural irregularity that affected the outcome of the matter;
- (2) 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
- (3) The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the specific 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, that request will be denied and the parties and their advisors will be notified in writing of the denial and the rationale.

The other party(ies) and their advisors, the Title IX Coordinator, and, when appropriate, the investigators and/or the original decision-maker(s) will be mailed, emailed, and/or provided a hard copy of the request with the approved grounds and then be given three (3) 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.

The non-appealing party (if any) may also choose to raise a new ground for appeal at this time. If so, that will be reviewed for standing by the Appeal decisionmaker 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 decision-maker(s), as necessary, who will submit their responses in three (3) 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.

The Appeal decisionmaker will render a decision in no more than five (5) business days, barring exigent circumstances. All decision apply the preponderance of the evidence standard.

A Notice of Appeal Outcome will be sent to all parties simultaneously including the decision on each approved ground and rationale for each decision. The Notice of Appeal Outcome will specify the finding on each ground for appeal, any specific instructions for remand or reconsideration, any sanctions that may result, and the rationale supporting the essential findings.

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 institutional records, or emailed to the parties' MUSC-issued email or otherwise approved account. Once mailed, emailed and/or received in-person, notice will be presumptively delivered.

## **B. 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.

## **C. Appeal Considerations**

Decisions on appeal are to be deferential to the original decision, making changes to the finding only when there is clear error and to the sanction(s)/responsive action(s) only if there is a compelling justification to do so.

Appeals are not intended to provide for a full re-hearing (de novo) of the allegation(s). In most cases, appeals are confined to a review of the written documentation or record of the original hearing and pertinent documentation regarding the specific grounds for appeal.

An appeal is not an opportunity for Appeal decision-maker to substitute their judgment for that of the original decision-maker(s) merely because they disagree with the finding or sanction(s).

The Appeal decision-maker may consult with the Title IX Coordinator on questions of procedure or rationale, for clarification. Documentation of all such consultations will be maintained.

Appeals granted based on new evidence should be remanded to the original investigator(s) and/or decision-maker(s) for reconsideration. Other appeals may be remanded at the discretion of the Title IX Coordinator or, in limited circumstances, decided on appeal.

Once an appeal is decided, the outcome is final: further appeals are not permitted, even if a decision or sanction is changed on remand (except in the case of a new hearing). In rare cases where a procedural or substantive error cannot be cured by the original decision-maker(s) (as in cases of bias), the appeal may order a new hearing with new decision-maker(s). The results of a remand to a decision-maker(s) cannot be appealed.

In cases in which the appeal results in reinstatement or resumption of privileges, all reasonable attempts will be made to restore the Respondent to their prior status, recognizing that some opportunities lost may be irreparable in the short term.

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## **Appendix B: Complaint Procedures for Allegations of Discriminatory Harassment and Other Non-Title IX Civil Rights Offenses (Process B)**

MUSC will act on any formal or informal allegation or notice of violation of the Policy on Nondiscrimination, Anti-Harassment, and Equal Opportunity by the Title IX Coordinator<sup>14</sup> or Responsible Employee, with the exception of Confidential Resources, as articulated in the Policy above.

The procedures described below apply to all allegations of harassment or discrimination on the basis of protected class status involving students, staff, faculty members, or third parties.

These procedures may also be used to address collateral misconduct arising from the investigation of or occurring in conjunction with harassing or discriminatory conduct (e.g., vandalism, physical abuse of another).

### **1. Initial Assessment**

Following intake, receipt of notice, or a complaint of an alleged violation of the Policy on Nondiscrimination, Anti-Harassment, and Equal Opportunity, the Title IX Coordinator<sup>15</sup> engages in an initial assessment, which is typically one to five business days in duration. The steps in an initial assessment can include:

- The Title IX Coordinator reaches out to the Complainant to offer supportive measures.
- The Title IX Coordinator works with the Complainant to ensure they have an advisor.
- The Title IX Coordinator works with the Complainant to determine whether the Complainant prefers a supportive response or a Formal Resolution.
  - If a supportive response is preferred, the Title IX Coordinator works with the Complainant to identify their wishes and then seeks to facilitate implementation. The Formal Resolution process is not initiated, though the Complainant can elect to initiate it later, if desired.
  - If an Informal Resolution option is preferred, the Title IX Coordinator assesses whether the complaint is suitable for informal resolution, and may seek to determine if the Respondent is also willing to engage in Informal Resolution.
  - If Formal Resolution is preferred, the Title IX Coordinator initiates the investigation process and determines whether the scope of the investigation will address:
    - Incident, and/or
    - A potential pattern of misconduct, and/or
    - A culture/climate issue.

Based on the initial assessment, the Title IX Coordinator will initiate one of two responses:

- Alternate Resolution – typically used for less serious offenses and only when all parties

<sup>14</sup> All references herein to a Title IX Coordinator also include a designee of the Title IX Coordinator.

<sup>15</sup> If circumstances require, the President or Title IX Coordinator will designate another person to oversee the process below should an allegation be made about the Coordinator or the Coordinator be otherwise unavailable or unable to fulfill their duties.

agree to Informal Resolution, or when the Respondent is willing to accept responsibility for violating policy. This can also include a remedies-only response.

- Administrative Resolution – investigation of policy violation(s) and recommended finding, subject to a determination by the Title IX Coordinator and the opportunity to appeal.

The investigation and the subsequent Administrative Resolution determine whether the nondiscrimination policy has been violated. If so, the Title IX Coordinator will promptly implement effective remedies designed to end the discrimination, prevent recurrence, and address the effects.

The process followed considers the preference of the parties but is ultimately determined by the Title IX Coordinator. At any point during the initial assessment or formal investigation, if the Title IX Coordinator determines that reasonable cause does not support the conclusion that the Policy has been violated, the process will end, and the parties will be notified.

The Complainant may request that the Title IX Coordinator review the reasonable cause determination and/or re-open the investigation. This decision lies in the sole discretion of the Title IX Coordinator, but the request is usually only granted in extraordinary circumstances.

## **2. Advisors**

Parties whose advisors are disruptive or who do not abide by MUSC policies and procedures may face the loss of that advisor and/or possible Policy violations. Advisors are expected to consult with the parties without disrupting meetings or interviews. Advisors do not represent parties in the process; their role is only to advise.

## **3. Resolution Options**

Proceedings are private. All persons present at any time during the resolution process are expected to maintain the privacy of the proceedings in accord with MUSC Policy.

While there is an expectation of privacy around what is discussed during interviews, the parties have discretion to share their own experiences with others if they so choose, but are encouraged to discuss with their advisors first before doing so.

### **A. Alternate Resolution**

Alternate Resolution is applicable when the parties voluntarily agree to resolve the matter through informal processes, or when the Respondent accepts responsibility for violating Policy, or when the Title IX Coordinator can resolve the matter informally by providing remedies to resolve the situation. It is not necessary to pursue Alternate Resolution first in order to pursue Administrative Resolution, and any party participating in Alternate Resolution can stop the process at any time and request the Administrative Resolution process. Further, if an Alternate Resolution fails after the fact, Administrative Resolution may be pursued.

Alternate Resolution is an informal process, such as mediation or restorative practices, by which a mutually agreed upon resolution of an allegation is reached. It may be used for less serious, yet inappropriate, behaviors and is encouraged as an alternative to the Administrative Resolution process (described below) to resolve conflicts. The parties must consent to the use of Alternate Resolution.

The Title IX Coordinator determines if the Alternate Resolution is appropriate, based on the willingness of the parties, the nature of the conduct at issue, and the susceptibility of the conduct to Alternate Resolution.

In an Alternate Resolution meeting, a trained administrator facilitates a dialogue with the parties to an effective resolution, if possible. Institutionally-imposed sanctions are not possible as the result of the Alternate Resolution process, though the parties may agree to accepted sanctions and/or appropriate remedies. A trained administrator may also, with the consent of the parties, negotiate and implement any agreement to resolve the allegations that satisfies all parties and the University.

The Title IX Coordinator maintains records of any resolution that is reached, and failure to abide by the resolution can result in appropriate enforcement actions.

Alternate Resolution is not typically the primary resolution mechanism used to address reports of violent behavior of any kind or in other cases of serious violations of policy, though it may be made available after the Administrative Resolution process is completed should the parties and the Title IX Coordinator believe it could be beneficial. The results of Alternate Resolution are not appealable.

## **B. Respondent Accepts Responsibility for Alleged Violations**

The Respondent may accept responsibility for all or part of the alleged policy violations at any point during the resolution process. If the Respondent accepts responsibility, the Title IX Coordinator makes a determination that the individual is in violation of the Policy.

The Title IX Coordinator then determines appropriate sanction(s) or responsive actions, which are promptly implemented in order to effectively stop the harassment, discrimination, and/or retaliation; prevent its recurrence; and remedy the effects of the conduct, both on the Complainant and the community.

If the Respondent accepts responsibility for all of the alleged policy violations and the Title IX Coordinator or designee has determined appropriate sanction(s) or responsive actions, which are promptly implemented, the process is over. The Complainant will be informed of this outcome.

If the Respondent accepts responsibility for some of the alleged policy violations and the Title IX Coordinator has determined appropriate sanction(s) or responsive actions, which are promptly implemented, for those violations, then the remaining allegations will continue to be investigated and resolved. The Complainant will be informed of this outcome. The parties are

still able to seek Alternate Resolution on the remaining allegations, subject to the stipulations.

### **C. Administrative Resolution**

Administrative Resolution can be pursued for any behavior for which the Respondent has not accepted responsibility that constitutes conduct covered by the Nondiscrimination, Anti-Harassment, and Equal Opportunity Policy at any time during the process. Administrative Resolution starts with a thorough, reliable, and impartial investigation.

If Administrative Resolution is initiated, the Title IX Coordinator will provide written notification of the investigation to the parties at an appropriate time during the investigation. Typically, notice is given at least 48 hours in advance of an interview. Advanced notice facilitates the parties' ability to identify and choose an advisor, if any, to accompany them to the interview.

Notification will include a meaningful summary of the allegations, 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 MUSC records, or emailed to the parties' MUSC-issued or designated email account.

Once mailed, emailed, and/or received in-person, notice will be presumptively delivered. The notification should include the policies allegedly violated, if known at the time. Alternatively, the policies allegedly violated can be provided at a later date, in writing, as the investigation progresses, and details become clearer.

MUSC aims to complete all investigations within a sixty (60) business day time period, which can be extended as necessary for appropriate cause by the Title IX Coordinator, with notice to the parties as appropriate.

Once the decision is made to commence an investigation, the Title IX Coordinator appoints Pool members to conduct the investigation (typically using a team of two investigators), usually within two (2) days of determining that an investigation should proceed.

The Title IX Coordinator will vet the assigned investigator(s) to ensure impartiality by ensuring there are no conflicts of interest or disqualifying bias.

The parties may, at any time during the resolution process, raise a concern regarding bias or conflict of interest, and the Title IX Coordinator will determine whether the concern is reasonable and supportable. If so, another investigator will be assigned and the impact of the bias or conflict, if any, will be remedied. If the bias or conflict relates to the Title IX Coordinator, concerns should be raised with the President of MUSC.

Investigations are completed expeditiously, normally within 10-20 business days, though some investigations take weeks or even months, depending on the nature, extent, and complexity of the allegations, availability of witnesses, police involvement, etc.

MUSC will make a good faith effort to complete investigations as promptly as circumstances permit and will communicate regularly with the parties to update them on the progress and timing of the investigation.

MUSC may undertake a short delay in its investigation (several days to weeks, to allow evidence collection) when criminal charges based on the same behaviors that invoke the University's resolution process are being investigated by law enforcement. The University will promptly resume its investigation and resolution process once notified by law enforcement that the initial evidence collection process is complete.

University action(s) are not typically altered or precluded on the grounds that civil or criminal charges involving the underlying incident(s) have been filed or that criminal charges have been dismissed or reduced.

Investigations involve interviews with all relevant parties and witnesses, obtaining available, relevant evidence, and identifying sources of expert information, as necessary.

All parties have a full and fair opportunity, though the investigation process, to suggest witnesses and questions, to provide evidence, and to fully review and respond to all evidence, on the record.

#### **4. Investigation**

The investigators typically take the following steps, if not already completed (not necessarily in this order):

- Determine the identity and contact information of the Complainant
- Assist the Title IX Coordinator with conducting a prompt initial assessment to determine if the allegations indicate a potential policy violation
- In coordination with campus partners, initiate or assist with any necessary supportive measures
- Identify all policies implicated by the alleged misconduct
- If there is insufficient evidence to support reasonable cause, the process is closed with no further action
- Commence a thorough, reliable, and impartial investigation by identifying issues and developing a strategic investigation plan
- Meet with the Complainant to finalize their statement, if necessary
- Prepare the initial Notice of Investigation and Allegation (NOIA) on the basis of the initial assessment. Notice may be one step or multiple steps, depending on how the investigation unfolds, and potential policy violations may be added or dropped as more is learned. Investigators will update the NOIA accordingly and provide it to the parties.
- When formal notice is being given, it should provide the parties with a written 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

- Give an instruction to the parties to preserve any evidence that is directly related to the allegations
- Provide the parties and witnesses with an opportunity to review and verify the Investigator's summary notes from interviews and meetings with that specific party or witness
- Make good faith efforts to notify the parties of any meeting or interview involving the other party, in advance when possible
- Interview all relevant individuals and conduct follow-up interviews as necessary
- Allow each party the opportunity to suggest questions they wish the investigator(s) to ask of the other party and witnesses
- Complete the investigation promptly and without unreasonable deviation from the intended timeline
- Provide regular status updates to the parties throughout the investigation
- Prior to the conclusion of the investigation, summarize for the parties the list of witnesses whose information will be used to render a finding
- Write a comprehensive investigation report fully summarizing the investigation and all evidence
- Provide parties with a copy of the draft investigation report when it is completed, including all relevant evidence, analysis, credibility assessments, and recommended finding(s)
- Provide each party with a full and fair opportunity to respond to the report in writing within seven (7) business days and incorporate that response into the report
- Provide the final report to the Title IX Coordinator with a recommended determination, based on a preponderance of the evidence, of whether a policy violation is more likely than not to have occurred
- Provide the final report to the Title IX Coordinator. Recommend to the Title IX Coordinator a finding, based on a preponderance of the evidence (whether a policy violation is more likely than not).

## **5. Determination**

Within five (5) business days of receiving the investigator's recommendation, the Title IX Coordinator<sup>16</sup> reviews the report and all responses, and then makes the final determination on the basis of the preponderance of the evidence.

If the record is incomplete, the Title IX Coordinator may direct a re-opening of the investigation, or may direct or conduct any additional inquiry necessary, including informally meeting with the parties or any witnesses, if needed.

The recommendation of the investigation should be strongly considered but is not binding on the Title IX Coordinator. The Title IX Coordinator may invite and consider impact statements from the parties if and when determining appropriate sanction(s), if any.

<sup>16</sup> When the Title IX Coordinator is the investigator or has been heavily involved in the process prior to determination, a decision-maker should be designated from the Pool to ensure there is no conflict of interest.

The Title IX Coordinator then timely provides the parties with a written Notice of Outcome to include findings, any sanction(s), and a detailed rationale, delivered simultaneously (without undue delay) to the parties.

## **6. Additional Details of the Investigation Process**

### **A. Witness responsibilities**

Witnesses (as distinguished from the parties) who are faculty or staff are expected to cooperate with and participate in the investigation and resolution process. Failure of a witness to cooperate with and/or participate in the investigation or resolution process constitutes a violation of Policy and may be subject to discipline.

### **B. Remote processes**

Parties and witnesses may be interviewed remotely by phone, video conferencing, or similar technologies if the investigator(s) or decision-maker determine that timeliness or efficiency dictates a need for remote interviewing. Witnesses may also provide written statements in lieu of interviews, or respond to questions in writing, if deemed appropriate by the investigator(s), though this approach is not ideal. Where remote technologies are used, the University makes reasonable efforts to ensure privacy, and that any technology does not work to the detriment of any party or subject them to unfairness.

### **C. Recording**

No unauthorized audio or video recording of any kind is permitted during the resolution process. If the investigator(s) record interviews, all involved parties must be informed of the recording.

### **D. Evidence**

Any evidence that is relevant and credible may be considered, including an individual's prior misconduct history as well as evidence indicating a pattern of misconduct. The process should exclude irrelevant or immaterial evidence and may disregard evidence lacking in credibility or that is improperly prejudicial.

### **E. Sexual history/patterns**

Unless the Title IX Coordinator determines it is appropriate, the investigation and the finding do not consider: (1) incidents not directly related to the possible violation, unless they evidence a pattern; (2) the sexual history of the parties (though there may be a limited exception made with regard to the sexual history between the parties); or (3) the character of the parties.

### **F. Previous allegations/violations**

While previous conduct violations by the Respondent are not generally admissible as information supporting the current allegation, the investigator(s) may supply the Title IX Coordinator with

information about previous good faith allegations and/or findings, when that information suggests potential pattern and/or predatory conduct. Previous disciplinary action of any kind involving the Respondent may be considered in determining the appropriate sanction(s) in accordance with the University's progressive discipline system.

### **G. Character witnesses**

Neither the Title IX Coordinator nor the investigator(s) meet with character witnesses, but the investigator(s) may accept up to two (2) letters supporting the character of each of the parties. Such letters must be provided to the investigator(s) prior to the report being finalized; otherwise, the parties have waived their right to provide such letters.

### **H. Notification of outcome**

If the Respondent admits to the violation(s), or is found in violation, the Title IX Coordinator, in consultation with other administrators as appropriate, determines sanction(s) and/or responsive actions, which are promptly implemented in order to effectively to stop the Prohibited Conduct; prevent its recurrence; and remedy its effects on both the Complainant and the community.

The Title IX Coordinator simultaneously informs the parties of the determination within three business days of the resolution. Notifications are made in writing and may be delivered in person; mailed to the local or permanent address of the parties as indicated in official MUSC records; or emailed to the parties' MUSC-issued or designated email account. Once mailed, emailed, and/or received in-person, notice is presumptively delivered.

The Notification of Outcome specifies the finding for each alleged policy violation, any sanction(s) that may result which MUSC is permitted to share pursuant to state or federal law, and the rationale supporting the essential findings to the extent MUSC is permitted to share under state or federal law. The notice will detail when the determination is considered final and will detail any changes that are made prior to finalization.

## **7. Appeals**

- Faculty members found in violation can appeal the determination through the procedures established in the [Faculty Handbook](#) (Section 8.02).
- Staff members found in violation can appeal the determination through the procedures established in Human Resources Management Policy Grievance Procedure ([Policy 44](#)).
- Students found in violation can appeal the determination through the procedures established in the [Concerns and Complaints Policy](#).

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## Appendix C: Statement of Rights of the Parties

Whenever the University receives notice of an alleged violation of the Policy on Nondiscrimination, Anti-Harassment, and Equal Opportunity, the Title IX Coordinator will provide the Complainant with the following written statement of rights.<sup>17</sup> The Title IX Coordinator will issue the same written statement of rights to the Respondent whenever a Formal Complaint is filed:

- The right to a prompt, fair, and impartial investigation and resolution of all alleged violations of the Nondiscrimination, Anti-Harassment, and Equal Opportunity Policy.
- The right to timely written notice of all alleged violations, including the identity of the parties involved (if known), the precise misconduct being alleged, the date and location of the alleged misconduct (if known), the implicated policies and procedures, and possible sanctions.
- The right to timely written notice of any material adjustments to the allegations (e.g., additional incidents or allegations, additional Complainants, unsubstantiated allegations) and any attendant adjustments needed to clarify potentially implicated policy violations.
- The right not to have any personally identifiable information released to the public without consent provided, except to the extent permitted by law.
- The right to be treated with respect by MUSC officials.
- The right to have MUSC policies and procedures followed without material deviation.
- The right not to be pressured to mediate or otherwise informally resolve any reported misconduct involving violence, including sexual violence.
- The right not to be discouraged by MUSC officials from reporting sexual misconduct or discrimination to both on-campus and off-campus authorities.
- The right to be informed by MUSC officials of options to notify proper law enforcement authorities, including on-campus and local police, and the option(s) to be assisted by MUSC authorities in notifying such authorities, if the party so chooses. This also includes the right to decline to notify authorities and not to be pressured to report.
- The right to have allegations of violations of this Policy responded to promptly and with sensitivity by MUSC law enforcement and/or other University officials.
- The right to protective measures, such as no-contact order (or a no-trespass order against a non-affiliated third party) when a person has engaged in or threatens to engage in stalking, threatening, harassing, or other improper conduct that presents a danger to the welfare of the party or others, and the right to be informed of available assistance with orders of protection, restraining orders, or similar lawful orders issued by a criminal or civil court, or by the institution.
- The right to be informed of available supportive measures, such as counseling; advocacy; health care; legal, student financial aid, visa, and immigration assistance; or other services, both on campus and in the community.

<sup>17</sup> Additionally, whenever MUSC becomes aware that a crime of dating violence, domestic violence, sexual assault, or stalking has occurred, it will provide the Complainant (if known) with a written copy of the Victim's Bill of Rights, as identified in the [Policy on Crime Reporting](#).

- The right to be informed of available assistance in changing academic and/or working and/or housing situations after an alleged incident of discrimination, harassment, and/or retaliation, if such changes are reasonably available. No formal report, or investigation, either campus or criminal, needs to occur before this option is available. Such actions may include, but are not limited to:
  - Changing an employee’s work environment (e.g., reporting structure, office/workspace relocation)
  - Transportation accommodations
  - Exam, paper, and/or assignment rescheduling or adjustment
  - Receiving an incomplete in, or a withdrawal from, a class (may be retroactive)
  - Transferring class sections
  - Temporary withdrawal/leave of absence (may be retroactive)
  - Campus safety escorts
  - Alternative course completion options
  - Changes to non-campus student lodging accommodations controlled by MUSC
- The right to have the University maintain such actions for as long as necessary and for supportive measures to remain private, provided privacy does not impair the University’s ability to provide the supportive measures.
- The right to receive sufficiently advanced, written notice of any meeting or interview involving the other party, when possible.
- The right to ask the investigator(s) and decision-maker(s) to identify and question relevant witnesses, including expert witnesses.
- The right to provide the investigator(s)/decision-maker(s) with a list of questions that, if deemed relevant by the investigator(s)/Chair, may be asked of any party or witness.
- The right to have inadmissible prior sexual history or irrelevant character evidence excluded by the decision-maker.
- The right to know the relevant and directly related evidence obtained and to respond to that evidence.
- The right to fair opportunity to provide the investigator(s) with their account of the alleged misconduct and have that account be on the record.
- The right to receive a copy of the investigation report, including all factual, policy, and/or credibility analyses performed, and all relevant and directly related evidence available and used to produce the investigation report, subject to the privacy limitations imposed by state and federal law, prior to the hearing, and the right to have at least ten (10) business days to review the report prior to the hearing.
- The right to respond to the investigation report, including comments providing any additional relevant evidence after the opportunity to review the investigation report, and to have that response on the record.
- The right to be informed of the names of all witnesses whose information will be used to make a finding, in advance of that finding, when relevant.
- The right to regular updates on the status of the investigation and/or resolution.
- The right to have reports of alleged Policy violations addressed by investigators, Title IX Coordinators, and decision-maker(s) who have received relevant annual training.
- The right to preservation of privacy, to the extent possible and permitted by law.
- The right to meetings, interviews, and/or hearings that are closed to the public.

- The right to petition that any MUSC representative in the process be recused on the basis of disqualifying bias and/or conflict of interest.
- The right to have an advisor of their choice to accompany and assist the party in all meetings and/or interviews associated with the resolution process.
- The right to the use of the preponderance of the evidence standard to make a finding after an objective evaluation of all relevant evidence.
- The right to be present, including presence via remote technology, during all testimony given and evidence presented during any formal grievance hearing.
- The right to have an impact statement considered by the decision-maker(s) following a determination of responsibility for any allegation, but prior to sanctioning.
- The right to be promptly informed in a written Notice of Outcome letter of the finding(s) and sanction(s) of the resolution process and a detailed rationale therefor (including an explanation of how credibility was assessed), delivered simultaneously (without undue delay) to the parties. In the event either party is deceased, their next of kin will receive the notification upon request.
- The right to be informed in writing of when a decision by MUSC is considered final and any changes to the sanction(s) that occur before the decision is finalized.
- The right to be informed of the opportunity to appeal the finding(s) and sanction(s) of the resolution process, and the procedures for doing so in accordance with the standards for appeal established by MUSC.