

BOARD GOVERNANCE

INVICTUS LEADERSHIP ACADEMY TITLE IX SEXUAL -HARASSMENT POLICY AND GRIEVANCE PROCEDURES

Definitions

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

Actual knowledge means notice of sexual harassment or allegations of sexual harassment to the School's Title IX Coordinator or any official of the School who has authority to institute corrective measures on behalf of the School, or to any other employee. Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge. This standard is not met when the only official of the School with actual knowledge is the individual accused of harassment ("Accused"). The mere ability or obligation to report sexual harassment or to inform a student about how to report sexual harassment, or having been trained to do so, does not qualify an individual as one who has authority to institute corrective measures on behalf of the School. "Notice" as used in this paragraph includes, but is not limited to, a report of sexual harassment to the Title IX Coordinator as described in 34 C.F.R. § 106.8(a).

Complainant means an individual who is alleged to be the victim of conduct that could constitute sexual harassment.

"Education program or activity" includes locations, events, or circumstances over which the School exercised substantial control over both the accused and the context in which the sexual harassment occurs.

Formal complaint means a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against an accused and requesting that the School investigate the allegation of sexual harassment. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the School with which the formal complaint is filed. A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information required to be listed for the Title IX Coordinator, and by any additional method designated by the School.

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 School) that contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint. Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or otherwise a party.

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

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

(1) An employee of the School conditioning the provision of an aid, benefit, or service of the School on an individual's participation in unwelcome sexual conduct;

(2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the School's education program or activity; or

(3) "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30).

Supportive measures means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the accused before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the School's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the School's educational environment, or deter sexual harassment. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. The School must maintain as confidential any supportive measures provided to the complainant or accused, to the extent that maintaining such confidentiality would not impair the ability of the School to provide the supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

General Response to Sexual Harassment

If the School has actual knowledge of sexual harassment in an education program or activity of the School against a person in the United States, the School must respond promptly in a manner that is not deliberately indifferent. A School is deliberately indifferent only if its response to sexual harassment is clearly unreasonable in light of the known circumstances.

A School's response must treat complainants and respondents equitably by offering supportive measures to a complainant, and by following a grievance process that complies those processes identified herein before the imposition of any disciplinary sanctions or other actions that are not supportive measures against an accused.

The Title IX Coordinator must promptly contact the complainant to discuss the availability of supportive measures, consider the complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint.

Response to a Formal Complaint

In response to a formal complaint, a School must follow a grievance process outlined below. With or without a formal complaint, a School must comply with the School's General Response to Sexual Harassment process identified above.

Emergency Removal

The School may remove an accused from the School's education program or activity on an emergency basis, provided that the School undertakes an individualized safety and risk analysis, determines that an immediate threat to the physical health or safety of any student or other

individual arising from the allegations of sexual harassment justifies removal, and provides the accused with notice and an opportunity to challenge the decision immediately following the removal.

Administrative Leave

The School may place an accused non-student employee on administrative leave during the pendency of a grievance process identified below.

Grievance Process for Formal Complaints of Sexual Harassment

Discrimination on the Basis of Sex

The School's treatment of a complainant or an accused in response to a formal complaint of sexual harassment may constitute discrimination on the basis of sex under title IX.

Grievance Process Generally

The School shall treat complainants and those accused equitably by providing remedies to a complainant where a determination of responsibility for sexual harassment has been made against the accused, and by following a grievance process that complies with this policy before the imposition of any disciplinary sanctions or other actions that are not supportive measures against an accused. Remedies are to be designed to restore or preserve equal access to the School's education program or activity. Such remedies may include the same individualized services described above as “supportive measures”; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the accused.

The School shall require an objective evaluation of all relevant evidence—including both inculpatory and exculpatory evidence—and provide that credibility determinations may not be based on a person's status as a complainant, accused, or witness.

Title IX Coordinator: Any individual designated by the School as a Title IX Coordinator, investigator, decision-maker, or any person designated by the School to facilitate an informal resolution process, shall not have a conflict of interest or bias for or against complainants or those accused generally or an individual complainant or accused. The School shall ensure that Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, receive training on the definition of sexual harassment, the scope of the School's education program or activity, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias. The School shall ensure that decision-makers receive training on any technology to be used at a live hearing and on issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, as set forth below. The School also shall ensure that investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence, as set forth below. Any materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, must not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment.

Presumption: The School shall include a presumption that the accused is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.

Time Frames: The School shall include reasonably prompt time frames for conclusion of the grievance process, including reasonably prompt time frames for filing and resolving appeals and informal resolution processes if the School offers informal resolution processes, and a process that allows for the temporary delay of the grievance process or the limited extension of time frames for good cause with written notice to the complainant and the accused of the delay or extension and the reasons for the action. Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.

Disciplinary Sanctions and Remedies: Following the determination of responsibility, the following reflect the range of possible disciplinary sanctions and remedies the School may implement: suspension, expulsion, termination of employment, unpaid leave of absence, and these remedies may also be applied to those making false accusations

Standard of Evidence: For all formal complaints of sexual harassment against students, employees, and faculty, the standard of evidence to be used to determine responsibility is clear and convincing evidence standard.

Supportive Measures: The following supportive measures may be made available to complainants and those accused: extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.

Privileged Evidence: When making a determination of responsibility, the School will not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

Notice of allegations: When the School receives a formal complaint, the School will provide written notice to the parties who are known. Such written notice will contain the following:

- 1) Notice of the School's grievance process, including any informal resolution process;
- 2) Notice of the allegations of sexual harassment potentially constituting sexual harassment as defined above, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview.

Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting sexual harassment, and the date and location of the alleged incident, if known.

The written notice shall include a statement that the accused is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.

The written notice shall inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney, and may inspect and review evidence. The written notice

must inform the parties of any provision in the School's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

If, in the course of an investigation, the School decides to investigate allegations about the complainant or the accused that are not included in the notice provided above, the School must provide notice of the additional allegations to the parties whose identities are known.

Dismissal of a Formal Complaint:

The School shall investigate the allegations in a formal complaint. If the conduct alleged in the formal complaint would not constitute sexual harassment as defined above even if proved, did not occur in the School's education program or activity, or did not occur against a person in the United States, then the School must dismiss the formal complaint with regard to that conduct for purposes of sexual harassment under title IX and implemented regulations; such a dismissal does not preclude action under another provision of the School's code of conduct.

The School may dismiss the 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; the accused is no longer enrolled or employed by the School; or specific circumstances prevent the School from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

Upon a dismissal described above, the School must promptly send written notice of the dismissal and reason(s) therefor simultaneously to the parties.

Consolidation of Formal Complaints. A School may consolidate formal complaints as to allegations of sexual harassment against more than one accused, or by more than one complainant against one or more accused, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances. Where a grievance process involves more than one complainant or more than one accused, references in this policy to the singular "party," "complainant," or "respondent" include the plural, as applicable.

Investigation of a Formal Complaint. When investigating a formal complaint and throughout the grievance process, the School shall:

- 1) Ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on the School and not on the parties provided that the School cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the School obtains that party's voluntary, written consent to do so for a grievance process under this policy. If a student is under the age of 18, the School must obtain the voluntary, written consent of the student's parent/guardian/education rights holder.
- 2) Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.
- 3) Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.

- 4) Provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney, and not limit the choice or presence of advisor for either the complainant or the accused in any meeting or grievance proceeding.
- 5) Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate;
- 6) Provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which the School does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation. Prior to completion of the investigative report, the School must send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties must have at least 10 days to submit a written response, which the investigator will consider prior to completion of the investigative report. The School must make all such evidence subject to the parties' inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination; and
- 7) Create an investigative report that fairly summarizes relevant evidence and, at least 10 days prior to a hearing (if a hearing is required under this policy or otherwise provided) or other time of determination regarding responsibility, send to each party and the party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response.

Hearings.

After the School has sent the investigative report to the parties and before reaching a determination regarding responsibility, the decision-maker(s) must afford each party the opportunity to submit written, relevant questions that a party wants asked of any party or witness, provide each party with the answers, and allow for additional, limited follow-up questions from each party. Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the accused 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 accused and are offered to prove consent. The decision-maker(s) must explain to the party proposing the questions any decision to exclude a question as not relevant.

Determination Regarding Responsibility.

The decision-maker(s), who cannot be the same person(s) as the Title IX Coordinator or the investigator(s), must issue a written determination regarding responsibility applying the standard of evidence described above.

The written determination must include—

- 1) Identification of the allegations potentially constituting sexual harassment as defined above.

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

The School shall provide the written determination to the parties simultaneously. The determination regarding responsibility becomes final either on the date that the School provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

The Title IX Coordinator is responsible for effective implementation of any remedies.

Appeals.

The School shall offer both parties an appeal from a determination regarding responsibility, and from the School's dismissal of a formal complaint or any allegations therein, on the following bases:

- 1) Procedural irregularity that affected the outcome of the matter;
- 2) 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 a complainant or an accused generally or the individual complainant or accused that affected the outcome of the matter.

The School may offer an appeal equally to both parties on additional bases of previously unknown circumstances.

As to all appeals, the School shall:

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

6) Provide the written decision simultaneously to both parties.

Informal Resolution. The School may not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of formal complaints of sexual harassment consistent with this policy. Similarly, the School may not require the parties to participate in an informal resolution process under this policy and may not offer an informal resolution process unless a formal complaint is filed. However, at any time prior to reaching a determination regarding responsibility the School may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication, provided that the School—

1) Provides to the parties a written notice disclosing: The allegations, the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint, and any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared;

2) Obtains the parties' voluntary, written consent to the informal resolution process; and

3) Does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

Recordkeeping.

1) A School must maintain for a period of seven years records of—

(A) Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript of any hearing (if applicable), any disciplinary sanctions imposed on the accused, and any remedies provided to the complainant designed to restore or preserve equal access to the School's education program or activity;

(B) Any appeal and the result therefrom;

(C) Any informal resolution and the result therefrom; and

(D) All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process. The School must make these training materials publicly available on its website, or if the School does not maintain a website the School must make these materials available upon request for inspection by members of the public.

(ii) For each response to a formal complaint required by this policy, the School must create, and maintain for a period of seven years, records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment. In each instance, the School must document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the School's education program or activity. If a School does not provide a complainant with supportive measures, then the School must document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The documentation of certain bases or measures does not limit the School in the future from providing additional explanations or detailing additional measures taken.

Adopted: 5/5/2022