

Plymouth State University

Policy and Procedures Regarding
Equal Opportunity, Harassment, and
Nondiscrimination for all
Employees, Students, and Third Parties

Effective August 14, 2020

Plymouth State University Policy and Procedures Regarding Equal Opportunity, Harassment, and Nondiscrimination for all Employees, Students, and Third Parties

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Rationale, Purpose, and Jurisdiction

Rationale

Plymouth State University is committed to providing a workplace and educational environment, as well as other benefits, programs, and activities that are free from discrimination and harassment based on a protected category, and retaliation for engaging in protected activity. To ensure compliance with federal, state, and local civil rights laws and regulations, and to affirm its commitment to promoting the goals of fairness and equity in all aspects of the educational program or activity, PSU has developed policies and procedures that provide a prompt, fair, and impartial process for those involved in an allegation of discrimination or harassment on the basis of protected class status, and for allegations of retaliation. Plymouth State University values and upholds the equal dignity of all members of its community and strives to balance the rights of the parties in the grievance process during what is often a difficult time for all those involved.

Purpose and Scope

The core purpose of this policy is to advance Plymouth State University's commitment to prohibiting and promptly and effectively addressing all forms of discrimination. Sometimes, discrimination involves exclusion from activities, such as admission, athletics, or employment. At other times, discrimination takes the form of harassment or, in the case of sex-based discrimination, it can encompass sexual harassment, sexual assault, stalking, sexual exploitation, dating violence or domestic violence. When an alleged violation of this nondiscrimination policy is reported, the allegations are subject to resolution using Plymouth State University's Formal Grievance Process or informal resolution process as determined by the Title IX Coordinator, and as detailed below.

When the Respondent is a member of the PSU community, a formal complaint may be filed and a grievance process may be available regardless of the status of the Complainant, who may or may not be a member of the PSU community. The PSU community includes, but is not limited to, students, student organizations, faculty, administrators, staff, and third parties [such as guests, visitors, volunteers, vendors, contractors, invitees, and youth program participants]. The procedures below may be applied to incidents, to patterns, and/or to the campus climate, all of which may be addressed and investigated in accordance with this policy.

Jurisdiction

This Policy applies to the education program and activities of Plymouth State University and to conduct that takes place on the campus or on property owned or controlled by the University, at Plymouth State University sponsored events, and in buildings owned or controlled by PSU's recognized student organizations. The Respondent must be a member of the Plymouth State University community in order for an adjudication process to apply.

This Policy can also be applicable to the effects of off-campus misconduct that effectively deprive a person of access to PSU's educational program. The University may also extend jurisdiction to off-campus and/or to online conduct when the Title IX Coordinator determines that the conduct affects a substantial Plymouth State University interest.

Regardless of where the conduct occurred, the University will address notice/complaints to determine whether the conduct occurred in the context of its employment or educational program or activity and/or has continuing effects on campus or in an off-campus sponsored program or activity.

A substantial Plymouth State University interest includes:

- a. 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;
- b. Any situation in which it is determined that the Respondent poses an immediate threat to the physical health or safety of any student, employee, or other individual;
- c. 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
- d. Any situation that substantially interferes with the educational interests or mission of the University.

If the Respondent is unknown or is not a member of the PSU community, the Title IX Coordinator will assist the Complainant in identifying appropriate campus and local resources and support options. If criminal conduct is alleged, the University can assist with 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 the University community, supportive measures, remedies, and resources may be provided to the Complainant by contacting the Title IX Coordinator.

In addition, the University may take other actions as appropriate to protect the Complainant against third parties, such as banning individuals from PSU property and/or events.

All vendors serving the University through third-party contracts are subject to the policies and procedures of their employers and the policies and procedures to which their employer has agreed to be bound by their contracts with the University.

When the Respondent is enrolled in or employed by another institution, the Title IX Coordinator can assist the Complainant in contacting the appropriate individual at that institution, as it may be possible to allege violations through that institution's policies.

Similarly, the Title IX Coordinator is able to advocate for a student or employee Complainant who experiences discrimination in an externship, study abroad program, or other environment external to the University where sexual harassment or nondiscrimination policies and procedures of the facilitating or host organization may give recourse to the Complainant.

Glossary

Advisor means a person chosen by a party or appointed by the institution to accompany the party to meetings related to the resolution process, to advise the party on that process, and to conduct questioning for the party at an adjudicatory hearing, if any.

Amorous Relationship Policy is the University System of NH policy to prevent conflicts of interest that can occur when members of the USNH community engage in consensual amorous relationships, and especially when the parties' institutional roles place them in an uneven power dynamic (see USY V.D.3.6)

Complainant means an individual 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.

Complaint (formal) means a document filed/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 against a Respondent and requesting that the University investigate the allegation.

Confidential Resource means an employee who is not a mandated reporter (*Responsible Employee*) of notice of harassment, discrimination, and/or retaliation.

Day means a business day when Plymouth State University (PSU) is in normal operation.

Decision-maker is the person, panel, and/or Chair who hears evidence, determines relevance, and makes the final determination whether this Policy has been violated and/or assigns sanctions for violations of this Policy.

Directly Related Evidence is evidence connected to the complaint, but which is neither inculpatory (tending to prove a violation) nor exculpatory (tending to disprove a violation) and cannot be relied upon by the investigation report or Decision-maker. (compare to *Relevant Evidence*, below).

Education program or activity means locations, events, or circumstances where Plymouth State University exercises substantial control over both the Respondent and the context in which the sexual harassment, discrimination, and/or retaliation occurs and also includes any building owned or controlled by a student organization that is officially recognized by the University.

Final Determination is a conclusion by the preponderance of evidence that the alleged conduct occurred and whether it did or did not violate policy.

Finding: is a conclusion by the preponderance of the evidence that the conduct did or did not occur as alleged.

Formal Grievance Process means a method of formal resolution designated by PSU to address conduct that falls within the policies included below, and which complies with the requirements of Title IX regulations (34 CFR Section 106.45).

Grievance Process Pool includes any investigators, hearing panel/decision makers, appeal officers, and Advisors who may perform any or all of these roles (though not at the same time or with respect to the same case).

Hearing Decision-maker or Panel refers to those who have decision-making and sanctioning authority within the University's Formal Grievance process.

Investigator means the person or persons assigned by the University to gather facts and evidence about an alleged violation of this Policy, assess relevance and credibility, synthesize the evidence, and compile this information into an investigation report of relevant evidence and a file of directly related evidence.

Notice means that an employee, student, or third party 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) means an employee of Plymouth State University explicitly vested with the responsibility to implement corrective measures for harassment, discrimination, and/or retaliation on behalf of the University.

Parties include the Complainant(s) and Respondent(s), collectively.

Recipient means a postsecondary education program that is a recipient of federal funding.

Relevant Evidence is evidence that tends to prove (inculpatory) or disprove (exculpatory) an issue in the complaint.

Remedies are post-Finding actions directed to the Complainant and/or the community as mechanisms to address safety, prevent recurrence, and restore access to the University's educational program.

Respondent means an individual who has been alleged 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 means an employee of the University who is obligated by policy to share knowledge, notice, and/or reports of discriminatory harassment (including sexual harassment), discrimination, and/or retaliation with the Title IX Coordinator. While Responsible Employees have reporting obligations to the Title IX Coordinator, they are not considered Officials with Authority.

Resolution means the result of an informal or Formal Grievance Process.

Sanction means a consequence imposed by the University on a Respondent who is found to have violated policy.

Sexual Harassment is the umbrella category including the offenses of sexual harassment, sexual assault, stalking, and dating violence and domestic violence. (see Sexual Harassment section for greater detail).

Student is defined, for the purposes of this process, 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 the University.

Title IX Coordinator is the official designated by Plymouth State University to ensure compliance with federal and state civil rights laws including Title IX and PSU's Title IX program. References to the Coordinator throughout this policy may also encompass a designee of the Coordinator for specific tasks.

Title IX Team refers to the Title IX Coordinator, any deputy coordinators, and any member of the Grievance Process Pool.

Title IX Coordinator/Administrative Contact Information

Title IX Coordinator

The Title IX Coordinator serves as the Title IX Coordinator and ADA/504 Coordinator and oversees implementation of the University's policy on equal opportunity, harassment, and nondiscrimination. The Title IX Coordinator has the primary responsibility for coordinating PSU's efforts related to the intake, investigation, resolution, and implementation of supportive measures to stop, remedy, and prevent discrimination, harassment, and retaliation prohibited under this policy. Parties will be provided with a comprehensive brochure detailing options and resources, which the Title IX Coordinator is also available to review in person with parties and advisors, as appropriate.

Independence and Conflict-of-Interest

The Title IX Coordinator oversees the Title IX Team's work related to this policy and acts with independence and authority free from bias and conflicts of interest. The Title IX Coordinator oversees all resolutions under this policy and these procedures. The members of the Title IX Team are selected and trained to ensure they are not biased for or against any party in a specific case, or for or against Complainants and/or Respondents, generally.

To raise any concern involving bias or conflict of interest by the Title IX Coordinator, contact the Director of Human Resources, the Provost and Vice President for Academic Affairs, or the USNH Ethics and Compliance Hotline at 1-844-592-8455. Concerns of bias or a potential conflict of interest by any other Title IX Team member should be raised with the Title IX Coordinator.

Reports of misconduct or discrimination committed by the Title IX Coordinator should be reported to the USNH Ethics and Compliance Hotline at 1-844-592-8455. Reports of misconduct or discrimination committed by any other Title IX Team member should be reported to the Title IX Coordinator.

Administrative Contact Information

Complaints or notice of alleged policy violations, or inquiries about or concerns regarding this policy and procedures, may be made internally to the Title IX Coordinator or the Officials with Authority, listed below:

Janette Wiggett
 Title IX Coordinator
 Frost House
 MSC 65
 (603) 535-2206
 Email: jtwiggett@plymouth.edu

Web: <https://campus.plymouth.edu/titleIX-sexual-assault/>

Plymouth State University has determined that the following administrators are Officials with Authority to address and correct harassment, discrimination, and/or retaliation. The Officials with Authority listed below may also accept notice or complaints on behalf of PSU:

For employee matters:

Director, Human Resources
Associate Director, Human Resources

For student matters:

Dean of Students
Associate Director(s), Student Conduct

Plymouth State University has also classified all employees as *Responsible Employees* requiring mandatory reporting of any knowledge they have that a member of the community is experiencing harassment, discrimination, and/or retaliation. The section below on Reporting Responsibilities for Employees details which employees have this responsibility and their duties, accordingly.

Inquiries may be made externally to:

Office for Civil Rights (OCR)
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202-1100
Customer Service Hotline #: (800) 421-3481
Facsimile: (202) 453-6012
TDD#: (877) 521-2172
Email: OCR@ed.gov
Web: <http://www.ed.gov/ocr>

For complaints involving employees: [Equal Employment Opportunity Commission](#) or the New Hampshire Commission for Human Rights. Since they have differing time limits for filing, which are in some cases dependent on filing with another agency, Complainants are encouraged to obtain that information early in the process.

Notice/Initial Complaints of Discrimination, Harassment, and/or Retaliation

Notice or disclosures of discrimination, harassment, and/or retaliation may be made using any of the following options:

1. Report an initial complaint with, or give verbal notice to, the 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.

2. Report online, using the disclosure reporting form posted at <https://campus.plymouth.edu/titleIX-sexual-assault/reporting-an-incident/>. Reports may be made anonymously but may still give rise to a need to investigate to determine if the parties can be identified. If parties are unable to be identified, no further formal actions are taken, though measures intended to protect the community may be enacted. Plymouth State University seeks to provide supportive measures to all impacted parties/Complainants, which is not possible when the identity of an impacted party is not provided. Because initial reporting carries no obligation to initiate a formal response, and because PSU respects Complainant 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 confidentiality by making a report that allows the Title IX Coordinator to discuss options for proceeding and/or provide supportive measures.

Following an initial report or disclosure, an impacted party will be provided with information about filing a Formal Complaint. A Formal Complaint is a document filed and 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, by using the contact information in the section immediately above, or as described in this section. Complainants are encouraged to meet with the Title IX Coordinator to discuss resources and reporting options prior to submitting a written Formal Complaint.

Supportive Measures

Plymouth State University will offer and implement appropriate and reasonable supportive measures to the parties upon notice or disclosure of alleged harassment, discrimination, and/or retaliation.

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

The Title IX Coordinator will maintain the confidentiality of the supportive measures, provided that confidentiality does not impair the ability to provide those supportive measures and will act to ensure as minimal an academic impact on the parties as possible. Supportive measures implemented for one party may not unreasonably burden the other party. These actions may include, but are not limited to:

- Referral to confidential advocate from Voices Against Violence
- Referral to counseling, medical, and/or other healthcare services
- Referral to the Employee Assistance Program

- Referral to community-based service providers
- Visa and immigration assistance
- Translation/interpreter services
- Student financial aid counseling
- Education to the community or subgroup(s)
- Altering campus housing assignment(s)
- Altering work arrangements for employees
- Safety planning
- Providing campus safety escorts
- Providing transportation accommodations
- Implementing mutual administrative no contact orders (ANCO)
- Academic support, extensions of deadlines, or other course/program-related adjustments in consultation with faculty and Academic Student Advocate
- Trespass orders issued by University Police
- Timely warnings to campus by University Police
- Class schedule modifications, withdrawals, or leaves of absence in consultation with Academic Student Advocate
- Increased security and monitoring of areas of the campus
- Any other actions deemed appropriate by the Title IX Coordinator

Violations of administrative no contact orders or other restrictions will be referred to appropriate student or employee conduct processes for enforcement.

Emergency Removal

The University can act to remove a 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 person justifies removal. This risk analysis is coordinated by the Title IX Coordinator in conjunction with the Dean of Students (for student matters) or Director of Human Resources (for employee matters) using 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 rationale and the option to meet 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 is referred to as a show cause meeting.

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, objections to the emergency removal will be deemed waived. The show cause process also applies to any restrictions that a coach or athletic administrator may place on a student-athlete arising from allegations related to Title IX. There is no appeal process for emergency removal decisions.

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

The Title IX Coordinator has discretion under this policy to implement or overturn an emergency removal and to determine the conditions and duration. Violation of an emergency removal under this policy will be grounds for discipline within the student or employee conduct processes, which may include expulsion or termination.

The University will implement the least restrictive emergency actions possible in light of the circumstances and safety concerns. At the discretion of the Title IX Coordinator and in consultation with the Academic Student Advocate, alternative coursework options may be pursued to ensure as minimal an academic impact as possible on the parties.

For Non-Student Employees:

Administrative leave (with or without pay) and other interim actions pending investigation are subject to University personnel policies and/or applicable collective bargaining agreements.

Privacy, Promptness, and Time Limits on Reporting

Privacy

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

The University reserves the right to designate which PSU officials have a legitimate educational interest in being informed about incidents that fall within this policy, pursuant to FERPA.

Only a small group of officials who need to know will be told about the complaint. Information will be shared as necessary with those implementing supportive measures and emergency removals, including but not limited to Investigators, Hearing decision-makers, the parties, and their advisors. The circle of people with this knowledge will be kept as small as possible to preserve the parties' rights and privacy.

When reports of Sexual Harassment are made in which the Respondent is an employee, the University System Board of Trustees is informed by the President about the nature of the allegation and the status of the parties per Board policy. The identity of the parties is not shared as part of this report. See policy BOT.V.C.6.

Plymouth State University may contact parents/guardians of students to inform them of situations in which there is a significant, articulable health or safety risk to the student or other individuals.

Aggregated, anonymous data about disclosures, formal complaints, and incident resolution is shared annually with the University System Board of Trustees and the New Hampshire Department of Education (in accordance with NH RSA 188-H).

Confidentiality and mandated reporting are addressed more specifically below.

Promptness

All allegations are acted upon promptly by Plymouth State University once it has received notice or a formal complaint. Formal complaints can take up to 90 business days to resolve from submission of the complaint through appeal. There are always exceptions and extenuating circumstances that can cause a resolution to take longer, but the University will avoid all undue delays within its control.

Any time the general timeframes for resolution outlined in PSU's procedures will be delayed, PSU 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.

Time Limits on Reporting

There is no time limitation on providing notice/complaints to the Title IX Coordinator. However, if the Respondent is no longer subject to the PSU's jurisdiction and/or significant time has passed, the ability to investigate, respond, and provide remedies may be more limited or impossible. Acting on notice/complaints significantly impacted by the passage of time (including, but not limited to, the rescission or revision of policy) is at the discretion of the Title IX Coordinator, who may document allegations for future reference, offer supportive measures and/or remedies, and/or engage in informal or formal action, as appropriate.

When notice/complaint is affected by significant time delay, the University will typically apply the policy in place at the time of the alleged misconduct and the procedures in place at the time of notice/complaint.

Online Harassment and Misconduct

The policies of Plymouth State University are written and interpreted broadly to include online and cyber manifestations of any of the behaviors prohibited below, when those behaviors occur in or have an effect on the University's education program and activities or when they involve the use of PSU networks, technology, or equipment.

While PSU may not control websites, social media, and other venues through which harassing communications are made, when such communications are reported to the University, it will engage in a variety of means to address and mitigate the effects.

Members of the community are encouraged to be good digital citizens and to refrain from online misconduct, such as feeding anonymous gossip sites, sharing inappropriate content via Snaps or other social media, unwelcome sexting, revenge porn, breaches of privacy, or otherwise using the ease of transmission and/or anonymity of the Internet or other technology to harm another member of the PSU community.

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

Policy on Nondiscrimination

Plymouth State University adheres to all federal, state, and local civil rights laws and regulations prohibiting discrimination in public institutions of higher education.

Plymouth State University, in accordance with federal and state laws and regulations, does not discriminate on the basis of race, color, religion, national origin, gender, sex, sexual orientation, gender identity or expression, age, veteran's status, physical or mental disability, marital status, in admission or access to, treatment of or employment in its programs or activities.

This Policy covers nondiscrimination in both employment and access to educational opportunities. Therefore, any member of the PSU community whose acts deny, deprive, or limit the educational or employment access, benefits, and/or opportunities of any member of the PSU community, guest, or visitor on the basis of that person's actual or perceived membership in the protected classes listed above is in violation of the PSU policy on nondiscrimination.

When brought to the attention of the Title IX Coordinator, any such discrimination will be promptly and fairly addressed and remedied according to the appropriate grievance process described below.

Policy on Disability Discrimination and Accommodation

Plymouth State University is committed to full compliance with the Americans With Disabilities Act of 1990 (ADA), as amended, and Section 504 of the Rehabilitation Act of 1973, which prohibit discrimination against qualified persons with disabilities, as well as other federal and state laws and regulations pertaining to individuals with disabilities.

Under the ADA and its amendments, a person has a disability if they have a physical or mental impairment that substantially limits a major life activity.

The ADA also protects individuals who have a record of a substantially limiting impairment or who are regarded as disabled by the University, regardless of whether they currently have a disability. A substantial impairment is one that significantly limits or restricts a major life activity such as hearing, seeing, speaking, breathing, performing manual tasks, walking, or caring for oneself.

The Title IX Coordinator has been designated as PSU's ADA/504 Coordinator responsible for overseeing efforts to comply with these disability laws, including responding to grievances and conducting investigations of any allegation of noncompliance or discrimination based on disability.

Grievances related to disability status and/or accommodations will be addressed using the procedures below (see: Disabilities Accommodations in the Resolution Process).

Students with Disabilities

Plymouth State University is committed to providing qualified students with disabilities with reasonable accommodations and support needed to ensure equal access to the academic programs, facilities, and activities of the University.

All accommodations are made on an individualized basis. A student requesting any accommodation should first contact the Director of Campus Accessibility Services, who coordinates services for students with disabilities. Campus Accessibility Services reviews documentation provided by the student and, in consultation with the student, determines which accommodations are appropriate for the student's needs and academic program(s).

Employees with Disabilities

Pursuant to the ADA, Plymouth State University will provide reasonable accommodation(s) to all qualified employees with known disabilities when their disability affects the performance of their essential job functions, except when doing so would be unduly disruptive or would result in undue hardship to the University.

An employee with a disability is responsible for submitting a request for an accommodation to the Director of Human Resources and providing necessary documentation. The Director of Human Resources will work with the employee's supervisor to identify which essential functions of the position are affected by the employee's disability and what reasonable accommodations could enable the employee to perform those duties.

Policy on Discriminatory Harassment

Students, staff, administrators, and faculty are entitled to an employment and educational environment that is free of discriminatory harassment. This Policy is not meant to inhibit or prohibit educational content or discussions inside or outside of the classroom that include germane yet controversial or sensitive subject matters protected by academic freedom.

The sections below describe the specific forms of legally prohibited harassment that are also prohibited under PSU policy. When speech or conduct is protected by academic freedom and/or the First Amendment, it will not be considered a violation of PSU policy, though supportive measures will be offered to those impacted. All offense definitions encompass actual and/or attempted offenses.

Discriminatory Harassment

Discriminatory harassment constitutes a form of discrimination that is prohibited by Plymouth State University policy. Discriminatory harassment is defined as unwelcome conduct by any member or group of the community on the basis of actual or perceived membership in a class protected by policy or law.

PSU does not tolerate discriminatory harassment of any student, employee, visitor, or third-party. PSU will act to remedy all forms of 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 effectively denies an individual's educational or employment access, benefits, or opportunities. This discriminatory effect

results from harassing verbal, written, graphic, and/or physical conduct that is severe or pervasive *and* objectively offensive.

When discriminatory harassment rises to the level of creating a hostile environment, PSU may also impose sanctions on the Respondent through application of the appropriate grievance process below.

PSU 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 and not based on a protected status. 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 Alternate Resolution, and/or other informal resolution mechanisms.

For assistance with Alternative resolution techniques and approaches, individuals should contact the Title IX Coordinator.

Sexual Harassment

The Department of Education's Office for Civil Rights (OCR), the Equal Employment Opportunity Commission (EEOC), and the State of New Hampshire regard sexual harassment, a specific form of discriminatory harassment, as an unlawful discriminatory practice.

Plymouth State University has adopted the following definition of sexual harassment in order to address the unique environment of an academic community, which consists not only of employer and employees, but of students as well.

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 or that is sexual in nature that satisfies one or more of the following:

Quid pro quo:

- a. an employee of the recipient,
- b. conditions the provision of an aid, benefit, or service of the University,
- c. on an individual's participation in unwelcome sexual conduct;

Sexual harassment:

- a. unwelcome conduct,
- b. determined by a reasonable person,
- c. to be so severe, and
- d. pervasive, and,
- e. objectively offensive,
- f. that it effectively denies a person equal access to the University's education program or activity.

Sexual assault, defined as:

- a. Forcible Sex Offense:
 - Any sexual act directed against another person,
 - without the consent of the Complainant,
 - including instances in which the Complainant is incapable of giving consent.
- b. Forcible 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.
- c. Forcible 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 age⁷ or because of temporary or permanent mental or physical incapacity.
- d. 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.
- e. Forcible 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.
- f. Non-forcible Sex Offenses:
 - Incest:
 - Non-forcible sexual intercourse,
 - between persons who are related to each other,
 - within the degrees wherein marriage is prohibited by New Hampshire law.
 - Statutory Rape:
 - Non-forcible sexual intercourse,
 - with a person who is under the statutory age of consent of 16.

Dating violence, defined as:

- a. violence,

- b. on the basis of sex,
- c. committed by a person,
- d. 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.

Domestic violence, defined as:

- a. violence,
- b. on the basis of sex,
- c. committed by a current or former spouse or intimate partner of the Complainant, or
- d. by a person with whom the Complainant shares a child in common, or
- e. by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or
- f. by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of New Hampshire, or
- g. 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 New Hampshire.

*To categorize an incident as Domestic Violence, the 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.

Stalking, defined as:

- a. engaging in a course of conduct,
- b. on the basis of sex,
- c. 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 any 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 mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

Plymouth State University reserves the right to impose any level of sanction, ranging from a reprimand up to and including suspension or expulsion/termination, for any offense under this policy (see Sanctions: Student sanctions; Employee Outcomes). The most serious offenses are likely to result in suspension/expulsion/termination, where warranted.

Force, Coercion, Consent, and Incapacitation

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

Force:

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. 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.

Coercion:

Coercion is unreasonable pressure for sexual activity. Coercive conduct differs from seductive conduct based on factors such as the type and/or extent of the pressure used to obtain consent. When someone makes 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:

Consent is:

- knowing, and
- voluntary, and
- clear permission
- by word or action
- to engage in sexual activity.

Individuals may perceive and 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.

If consent is not clearly provided prior to engaging in the activity, consent may be ratified by word or action at some point during the interaction or thereafter, but clear communication from the outset is strongly encouraged.

For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Reasonable reciprocation can be implied. For example, if someone kisses you, you can kiss them back (if you want to) without the need to explicitly obtain *their* consent to being kissed back.

Consent can also be withdrawn once given, as long as the withdrawal is reasonably and clearly communicated. If consent is withdrawn, 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 the University 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 and previous patterns that may be evidenced.

Incapacitation:

A person cannot consent if they are unable to understand what is happening or is disoriented, helpless, asleep, or unconscious, for any reason, including by alcohol or other drugs. As stated above, a Respondent violates this policy if they engage in sexual activity with someone who is incapable of giving consent.

It is a defense to a sexual assault policy violation that the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated. "Should have known" is an objective, reasonable person standard which assumes that a reasonable person is both sober and exercising sound judgment.

Incapacitation occurs when someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the "who, what, when, where, why, and how" of their sexual interaction).

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.

This policy also covers a person whose incapacity results from a temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the consumption of incapacitating drugs.

Other Civil Rights Offenses

In addition to the forms of sexual harassment described above, which fall within the coverage of Title IX, Plymouth State University additionally prohibits the following offenses.

- Sexual Exploitation, defined as: and individual taking non-consensual or abusive sexual advantage of another for their own benefit or for the benefit of anyone other than the person being exploited, and that conduct does not otherwise constitute sexual harassment under this policy. Examples of Sexual Exploitation include, but are not limited to:
 - Sexual voyeurism (such as observing or allowing others to observe a person undressing or using the bathroom or engaging in sexual acts, without the consent of the person being observed)
 - Invasion of sexual privacy.

- Taking pictures, video, or audio recording of another in a sexual act, or in any other sexually-related activity when there is a reasonable expectation of privacy during the activity, without the consent of all involved in the activity, or exceeding the boundaries of consent (such as allowing another person to hide in a closet and observe sexual activity, or disseminating sexual pictures without the photographed person's consent), including the making or posting of revenge pornography
 - Prostituting another person
 - Engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or a sexually-transmitted disease (STD) or infection (STI), without informing the other person of the virus, disease, or infection
 - Causing or attempting to cause the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give consent to sexual activity, or for the purpose of making that person vulnerable to non-consensual sexual activity
 - Misappropriation of another person's identity on apps, websites, or other venues designed for dating or sexual connections
 - Forcing a person to take an action against that person's will by threatening to show, post, or share information, video, audio, or an image that depicts the person's nudity or sexual activity
 - Knowingly soliciting a minor for sexual activity
 - Engaging in sex trafficking
 - Knowing creation, possession, or dissemination of child pornography
- 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, including disparate treatment;
 - 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 PSU community, when related to the admission, initiation, pledging, joining, or any other group-affiliation activity (as defined further in the Hazing Policy);

Violation of any other Plymouth State University 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 through expulsion/termination (*see* Sanctions: Student sanctions; Employee Outcomes).

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. Plymouth State University is prepared to take appropriate steps to protect individuals who fear that they may be subjected to retaliation.

It is prohibited for PSU or any member of the PSU community to take 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.

Charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX, constitutes retaliation.

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 does not constitute retaliation, provided that the determination of responsibility, by itself, is not sufficient to conclude that any party has made a materially false statement in bad faith.

Reporting Responsibilities for Employees

Confidential Resources

A Complainant may speak with the following resources if they wish for details of an incident to be kept confidential:

- On-campus:
 - a counselor at the PSU Counseling Center
 - a provider at PSU Health Services
- Off-campus:
 - Advocates from Voices Against Violence, our local crisis services agency
 - Licensed professional counselors and other medical providers
 - Local or state legal assistance agencies
 - Clergy/Chaplains
 - Legal counsel, where there is an established attorney/client relationship

All of the above-listed individuals will maintain confidentiality when acting under the scope of their licensure, professional ethics, and/or professional credentials, except in cases of immediacy of threat or danger or abuse of a minor, or vulnerable adult with a disability, or when required to disclose by law or court order.

Counselors at the PSU Counseling Center (for students) and the Employee Assistance Program (for employees) are available to help on a confidential basis, free of charge.

PSU employees who provide confidential resources will, as directed by the Chief of University Police, timely submit anonymous statistical information for Clery Act purposes.

Employee Reporting Responsibilities

All employees of Plymouth State University (including live-in student employees/Community Advisors), with the exception of those who are designated as Confidential Resources, are considered *Responsible Employees* and must promptly share with the Title IX Coordinator all known details of a report of discrimination and/or discriminatory harassment (including Sexual Harassment) made to them in the course of their employment.

Employees are encouraged to promptly share all details of other behaviors under this policy that they observe or have knowledge of, even if not reported to them by a Complainant or third-party.

Complainants may want to carefully consider whether they share personally identifiable details with non-confidential employees, as details of Sexual Harassment and discrimination disclosures must be shared with the Title IX Coordinator.

Generally, disclosures in climate surveys, human subjects research, or at events such as “Take Back the Night” marches or speak-outs do not provide notice that must be reported to the Coordinator by employees, unless the Complainant clearly indicates that they desire a report to be made or seek a specific response from the University. Supportive measures may be offered as the result of such disclosures without formal University action.

Failure of a Responsible Employee, as described above in this section, to report an incident of harassment or discrimination, including Sexual Harassment, of which they become aware is a violation of PSU policy and may be subject to disciplinary action for failure to comply.

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.

When a Complainant Does Not Wish to Proceed

If a Complainant does not wish for an investigation to take place and/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 Plymouth State University proceeds when the Complainant does not wish to do so, and the Title IX Coordinator may sign a formal complaint to initiate a grievance process, usually upon completion of an appropriate violence risk assessment.

The Title IX Coordinator’s decision will be based on results of the violence risk assessment that show a compelling risk to health and/or safety that requires the University 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. The University 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 Formal 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 in this manner, the Complainant (and/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 its community.

In cases in which the Complainant requests confidentiality/no formal action and the circumstances allow the University to honor that request, the University may 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 (*see Time Limits on Reporting*).

Amnesty for Complainants and Witnesses

The Plymouth State University community encourages the reporting of misconduct and crimes by Complainants and witnesses. Sometimes, Complainants or witnesses are hesitant to report to Plymouth State University officials or participate in grievance processes because they fear that they may be in violation of certain policies, such as public health safety protocols, underage drinking, or use of illicit drugs at the time of the incident. Respondents may hesitate to be forthcoming during the process for the same reasons.

It is in the best interests of the PSU community that Complainants choose to report misconduct to PSU officials, that witnesses come forward to share what they know, and that all parties be forthcoming during the process.

To encourage reporting and participation in the process, PSU maintains a policy of offering parties and witnesses amnesty from minor policy violations – such as underage consumption of alcohol or the use of illicit drugs – related to the incident.

Amnesty does not apply to more serious allegations such as physical abuse of another or illicit drug distribution. The decision not to offer amnesty to a Respondent is based on neither sex nor gender, but on the fact that collateral misconduct is typically addressed for all students within a progressive discipline system, and the rationale for amnesty – the incentive to report serious misconduct – is rarely applicable to a Respondent.

Students: Sometimes, students are hesitant to assist others for fear that they may get in trouble themselves (for example, an underage student who has been drinking or using marijuana might hesitate to help take an individual who has experienced sexual misconduct to the University Police).

Plymouth State University maintains a policy of amnesty for students who offer help to others in emergent need. The University may provide purely educational options with no formal disciplinary finding, rather than punitive sanctions, to those who offer their assistance to others in emergent need.

Employees: Sometimes, employees are hesitant to report harassment or discrimination they have experienced for fear that they may get in trouble themselves. For example, an employee who has violated the amorous relationship policy and is then assaulted in the course of that relationship might hesitate to report the incident to University officials.

The University may, at its discretion, offer employee Complainants amnesty from such policy violations (typically more minor policy violations) related to the incident.

False Allegations and Evidence

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 discipline under appropriate Plymouth State University policies.

Federal Timely Warning and Statistical Reporting Obligations

Federal Timely Warning Obligations

Parties reporting sexual assault, domestic violence, dating violence, and/or stalking should be aware that under the Clery Act, Plymouth State University 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.

Plymouth State University 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.

Federal Statistical Reporting Obligations

Certain campus officials – those deemed Campus Security Authorities – have a duty to report the following for federal statistical reporting purposes (Clery Act):

- All “primary crimes,” which include homicide, sexual assault, robbery, aggravated assault, burglary, motor vehicle theft, and arson;
- Hate crimes, which include any bias motivated primary crime as well as any bias motivated larceny or theft, simple assault, intimidation, or destruction/damage/vandalism of property;
- VAWA-based crimes, which include sexual assault, domestic violence, dating violence, and stalking; and
- Arrests and referrals for disciplinary action for weapons-related law violations, liquor-related law violations, and drug abuse-related law violations.

All personally identifiable information is kept private, but statistical information must be passed along to the University Police Department regarding the type of incident and its general location (on or off-campus or in the surrounding area, but no addresses are given) for publication in the Annual Security Report and daily campus crime log.

Campus Security Authorities include: student affairs/student conduct staff, campus law enforcement, local police, coaches, athletic directors, residence life staff, student activities staff, human resources staff, advisors to student organizations, and any other official with significant responsibility for student and campus activities.

Instructions related to these reporting obligations are communicated annually by the Director of Public Safety/Chief of University Police.

Preservation of Evidence

Preservation of evidence in incidents of sexual assault is critical to potential criminal prosecution and to obtaining restraining orders, and is particularly time sensitive. The following measures may aid individuals in the preservation of evidence following sexual assault:

- Seek forensic medical assistance at Speare Memorial Hospital or nearest hospital, ideally within 72 hours of the incident. (An advocate from Voices Against Violence can aid in seeking medical assistance.)
- Avoid showering, bathing, washing hands or face if possible, but evidence may still be able to be collected even if you do.
- Try not to urinate.
- If oral sexual contact took place, refrain from smoking, eating, drinking, or brushing teeth.
- If clothing have been changed, placed clothes in a paper bag. (Plastic bags can destroy evidence).
- Seeking medical can be essential even if it is not for the purposes of collecting forensic evidence.

During an initial meeting between the Complainant and the Title IX Coordinator, the importance of taking these actions will be reiterated, if timely.

RESOLUTION PROCESS FOR ALLEGED VIOLATIONS OF THE POLICY ON EQUAL OPPORTUNITY, HARASSMENT, AND NONDISCRIMINATION

Resolution Process Overview

Plymouth State University will act on any formal or informal notice/complaint of violation of the policy on Equal Opportunity, Harassment, and Nondiscrimination (“the Policy”) that is received by the Title IX Coordinator¹¹ or any other Official with Authority by applying these procedures.

The procedures below apply to all allegations of harassment or discrimination on the basis of protected class status involving students, staff, administrators, or faculty members. A set of technical dismissal requirements within the Title IX regulations may apply as described below, but when a technical dismissal under the Title IX allegations is required, any remaining allegations will proceed using these same grievance procedures, clarifying which policies above are applicable. While the effect of the Title IX regulations can be confusing, these grievance procedures apply to all policies above.

Unionized/other categorized employees are subject to the terms of their agreements/employees’ rights to the extent those agreements do not conflict with federal or state compliance obligations.

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), when alleged violations of the Policy are being addressed at the same time. All other allegations of misconduct unrelated to incidents covered by this Policy will be addressed through procedures elaborated in the student code of conduct, PSU personnel policies, and USNH personnel policies.

Notice of Complaint and Initial Assessment

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 Title IX Coordinator will initiate at least one of three responses:

- 1) Offering supportive measures because 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 or not the Policy has been violated. If so, the Title IX Coordinator will promptly implement effective remedies designed to ensure that it is not deliberately indifferent to harassment or discrimination, their potential recurrence, and/or their effects.

Initial Assessment

Following receipt of notice or a complaint of an alleged violation of this Policy, the Title IX Coordinator 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 determines if the person impacted wishes to make a formal complaint.
- If the impacted person does not wish to make a formal complaint, the Title IX Coordinator determines whether to initiate a formal complaint because a violence risk assessment indicates a compelling threat to health and/or safety.
- The Title IX Coordinator offers supportive measures and provides impacted person with information about their rights and options for reporting and resolution.
- 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. If no Formal Grievance Process is initiated, the Complainant can elect to initiate one in the future.

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 based on a formal complaint, 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 the misconduct alleged does not fall within the scope of Title IX, 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, which resolution process is applicable, and will refer the matter accordingly. **Please note that dismissing a complaint under the 2020 Title IX regulations is solely a procedural requirement under Title IX, which does not limit the Plymouth State University’s authority to address a complaint with an appropriate process and remedies.**

Dismissal (Mandatory and Discretionary)

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

1. The conduct alleged in the formal complaint would not constitute Sexual Harassment as defined in the Policy herein above, even if proved; and/or
2. The conduct did not occur in an educational program or activity controlled by the Plymouth State University (including buildings or property controlled by recognized student organizations), and/or the University does not have control of the Respondent; and/or
3. The conduct did not occur against a person in the United States; and/or
4. At the time of filing a formal complaint, a Complainant is not participating in or attempting to participate in the education program or activity of the University.

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

1. A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations therein; or
2. The Respondent is no longer enrolled in or employed by the University; or
3. Specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

Upon any dismissal, the 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. The decision not to dismiss is also appealable by any party claiming that a dismissal is required or appropriate.

A Complainant who decides to withdraw a complaint may later request to reinstate it or refile it.

Violence Risk Assessment

The Title IX Coordinator may determine that a Violence Risk Assessment (VRA) should be conducted as part of the initial assessment and monitored throughout an investigation. A VRA can aid in ten critical and/or required determinations, including:

- Emergency removal of a Respondent on the basis of immediate threat to an individual or the community's physical health/safety;
- Whether the Title IX Coordinator should pursue/sign a formal complaint absent a willing/able Complainant;
- Whether the scope of the investigation should include an incident and/or pattern of misconduct, and/or climate of hostility/harassment;
- 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 if so, what approach may be most successful;
- Whether to permit a voluntary withdrawal by the Respondent;
- Whether to 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 is needed in collaboration with University Police.

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.

VRAs require specific training and are typically conducted by psychologists, clinical counselors, social workers, case managers, law enforcement officers, student conduct officers, and other Behavioral Intervention Team (BIT)/CARE team members. A VRA authorized by the Title IX Coordinator should occur in collaboration with the BIT/CARE team. Where a VRA is required by the Title IX Coordinator, a

Respondent refusing to cooperate may result in a charge of failure to comply within the appropriate student or employee conduct process.

Counterclaims

The Title IX Coordinator is obligated to ensure that the grievance process is not abused for retaliatory purposes. The University permits the filing of counterclaims but uses an initial assessment, described above, to assess whether the allegations in the counterclaim are made in good faith. Counterclaims by the Respondent may be made in good faith, but are, on occasion, also made for purposes of retaliation. Counterclaims made with retaliatory intent will not be permitted.

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

Counterclaims may also be resolved through the same investigation as the underlying allegation, at the discretion of the Title IX Coordinator. When counterclaims are not made in good faith, they will be considered retaliatory and may constitute a violation of this policy.

Right to an Advisor

The parties may each have up to two Advisors of their choice present with them for all meetings and interviews within the resolution process, if they so choose. The parties may select whomever they wish to serve as their Advisor as long as the Advisor is eligible and available.

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-maker(s).

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 campus community.

The Title IX Coordinator will also offer to assign a trained Advisor to any party if the party so chooses. If the parties choose an Advisor from the pool available from the University, the Advisor will have been trained and be familiar with the University's resolution process.

If the parties choose an Advisor from outside the pool of those identified by the University, the Advisor may not have been trained by the University and may not be familiar with University's 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.

Advisors in Hearings/Plymouth State University-Appointed Advisor

Under U.S. Department of Education regulations for Title IX, a form of indirect questioning is required during the hearing but must be conducted by the parties' Advisors. The parties are not permitted to directly question each other or any witnesses. If a party does not have an Advisor for a hearing, the University will appoint a trained Advisor for the limited purpose of conducting any questioning of the other party(ies) and witnesses.

Advisor's Role in Meetings and Interviews

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.

The University 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, the University is not obligated to provide an attorney.

Pre-Interview/Process Overview Meetings

Advisors may request to meet with the administrative officials conducting interviews/meetings in advance of these interviews or meetings. This pre-meeting allows Advisors to clarify and understand their role and PSU's policies and procedures.

Advisor Violations of Plymouth State University Policy

All Advisors are subject to the same PSU policies and procedures, whether they are attorneys or not, and whether they are selected by a party or assigned by the University. Advisors are expected to advise their advisees without disrupting proceedings. Advisors should not address University officials in a meeting or interview unless invited to (e.g., asking procedural questions). The Advisor may not make a presentation or represent their advisee during any meeting or proceeding and may not speak on behalf of the advisee to the Investigator(s) or other Decision-maker(s) except during a hearing proceeding during questioning.

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/interview/hearing 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.

Sharing Information with the Advisor

The parties may share documentation and evidence related to the allegations with their Advisors. Doing so may help the parties participate more meaningfully in the resolution process.

The University also provides a consent form that authorizes the Title IX Coordinator to share certain information directly with a party's Advisor(s). 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 information is shared with the Advisor.

Privacy of Records Shared with Advisor

Advisors are expected to maintain the privacy of the records shared with them. These records may not be shared with third parties, disclosed publicly, or used for purposes not explicitly authorized by PSU. The University may seek to restrict the role of any Advisor who does not respect the sensitive nature of the process or who fails to abide by PSU's privacy expectations.

Expectations of an Advisor

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

The University 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.

Expectations of the Parties with Respect to Advisors

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 provide timely notice to the Title IX Coordinator if they change Advisors at any time. It is assumed that if a party changes Advisors, consent to share information with the previous Advisor is terminated, and a release for the new Advisor should be secured. Parties are expected to inform the Title IX Coordinator of the identity of their hearing Advisor at least two (2) business days before the hearing.

As a public entity, PSU fully respects and accords the Weingarten rights of employees. For parties who are entitled to union representation, the University will allow the unionized employee to have their union representative (if requested by the party) as well as an Advisor of their choice present for all resolution-related meetings and interviews. To uphold the principles of equity, the other party (regardless of union membership) will also be permitted to have two Advisors. Witnesses are not permitted to have union representation or Advisors in grievance process interviews or meetings.

Assistance in Securing an Advisor External to University

If a party wishes to select an advisor that is from outside of the trained Pool or outside of the University, they may refer to the resources below.

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.

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 University 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, with the exception of information the parties agree not to disclose as part of an Informal Resolution. PSU encourages parties to discuss sharing information with others with their Advisors before doing so.

The Formal Grievance Process is the University's primary resolution approach, unless Informal Resolution is elected by all parties and the University. Options for Informal Resolution are detailed in this section, and the Formal Grievance Process is detailed in the following section.

Informal Resolution

Informal Resolution can include three different approaches:

- When the parties agree to resolve the matter through an alternate resolution mechanism [including mediation, restorative practices, etc.];
- When the Respondent accepts responsibility for violating policy, and desires to accept a sanction and end the resolution process; or
- When the Title IX Coordinator can resolve the matter informally by providing supportive measures to remedy the situation.

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 the University.

The University 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.

Alternate Resolution

Alternate Resolution is an informal resolution proceeding, including mediation or restorative practices, by which a mutually agreed upon resolution of an allegation is reached. All parties must consent to the use of Alternate Resolution.

The Title IX Coordinator may look to the following factors to assess whether Alternate Resolution is appropriate, or which form of Alternate Resolution may be most successful for the parties:

- The parties' amenability to Alternate Resolution;
- Likelihood of potential resolution, taking into account any power dynamics between the parties;
- The parties' motivation to participate;
- Civility of the parties;
- Violence risk assessment/ongoing risk analysis;
- Disciplinary history;
- Whether an emergency removal is needed;
- Complaint complexity;
- Goals of the parties;
- Adequate resources to invest in Alternate Resolution (time, staff, etc.)

The determination of whether Alternate Resolution is available or successful is 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 through student conduct/human resources. Given that Informal and Alternate resolutions are voluntary, resolutions determined in this manner are not appealable.

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 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 according to the criteria above.

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

This result may not be appealed 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.

Negotiated Resolution

The Title IX Coordinator, with the consent of the parties, may negotiate and implement an agreement to resolve the allegations that satisfies all parties and the University. Negotiated Resolutions are not appealable.

For employees, negotiated resolutions will be facilitated in coordination with the Director of Human Resources in accordance with any applicable collective bargaining agreements.

Formal Complaint Grievance Process Pool

The Formal Complaint Grievance Process relies on a pool of administrators (“the Pool”) to carry out the process. Members of the Pool, and a description of their roles, are listed on the PSU Title IX, Harassment, Nondiscrimination web page.

Pool Member Roles

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

- To provide appropriate intake of and initial guidance pertaining to complaints
- To act as an Advisor to the parties
- To serve in a facilitation role in informal resolution or Alternate Resolution
- To perform or assist with initial assessment
- To investigate complaints
- To serve as a hearing facilitator
- To serve as a Decision-maker regarding the complaint
- To serve as an Appeal Decision-maker

Pool Member Appointment

The Title IX Coordinator selects and trains the Pool, which acts with independence and impartiality. While members of the Pool are trained in a variety of skills and can rotate among the different roles listed above in different cases, the Title IX Coordinator 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.

Advisor training is available for members of collective bargaining grievance committees.

Pool Member Training

The Pool members receive annual training based on their respective roles. This training includes, but is not limited to:

- The scope of PSU’s policies and procedures
- How to conduct investigations and hearing the protect the rights and safety of Complainants and Respondents, and promote accountability
- Reporting, confidentiality, and privacy requirements
- Applicable laws, regulations, and federal regulatory guidance
- How to apply definitions used by the University with respect to consent consistently, impartially, and in accordance with policy
- How to conduct an investigation and grievance process including hearings, appeals, and informal resolutions
- Issues of relevance to create an investigative report that fairly summarizes evidence
- How to determine appropriate sanctions in reference to all forms of harassment, discrimination,

and/or retaliation violations

Specific training is also provided for Appeal Decision-makers, intake personnel, Advisors (who are University employees), and Hearing Panel Chairs. All Pool members are required to attend these trainings annually. The materials used to train all members of the Pool are publicly posted on the PSU Title IX, Harassment, Nondiscrimination web page.

Pool Membership

The Pool includes:

- Title IX Coordinator
- Director of Human Resources
- Associate Director of Human Resources
- Dean of Students
- Associate Directors of Student Conduct
- Assistant Director of Athletics for Communication
- Head Athletic Trainer
- Director of Campus Accessibility Services
- Provost
- Associate Provost

Individuals who are interested in serving in the Pool are encouraged to contact the Title IX Coordinator.

Formal Grievance Process

Notice of Investigation and Allegations

The Title IX Coordinator will provide written notice of the investigation and allegations (NOIA) to the Respondent upon commencement of a Formal Grievance Process. This facilitates the Respondent's ability to prepare for a process overview meeting, an information gathering interview, and to identify and choose an Advisor to accompany them. A NOIA is also provided to the Complainant, who will be given advance notice of the timing of delivery of the NOIA to the Respondent.

The NOIA will include:

- A meaningful summary of the 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 University 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 evidence obtained during the review and comment period,
- A statement about the University's policy on retaliation,
- Information about the privacy of the process,

- Information on the need for each party to have an Advisor of their choosing and suggestions for ways to identify an Advisor,
- A statement informing the parties that the University's Policy prohibits knowingly making false statements, including knowingly submitting false information during the resolution process,
- Detail on how the party may request disability accommodations during the interview process,
- A link to the University's VAWA Brochure,
- The name(s) of the Investigator(s), along with a process to identify, in advance of the interview process, 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 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 Plymouth State University records, or emailed to the parties' PSU-issued email or designated accounts.

Resolution Timeline

Plymouth State University will make a good faith effort to complete the resolution process within a ninety (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.

Appointment of Investigators

Once the decision to commence a formal investigation is made, the Title IX Coordinator appoints a Pool member to conduct the investigation, usually within two (2) business days of determining that an investigation should proceed. In some cases, the Title IX Coordinator may appoint an external investigator.

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 select the Investigator(s) to ensure impartiality and that 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 Director of Human Resources or Provost.

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.

The University 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.

Delays in the Investigation Process; Interactions with Law Enforcement

The University 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 interpreter assistance, the absence of parties and/or witnesses, and/or accommodations for disabilities or health conditions.

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

Plymouth State 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.

Investigation

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 assigned Investigator typically takes the following steps:

- Identify all policies implicated by the alleged misconduct and inform the Complainant and Respondent of all of the specific policies implicated
- Identify issues and develop a strategic investigation plan, including a witness list, evidence list, intended investigation timeframe, and order of interviews for all witnesses and the parties
- Conduct information gathering interviews with Complainant and Respondent and their respective Advisor(s) as well as any identified witnesses
- Provide each interviewed party an opportunity to review and verify the Investigator's summary notes (or transcript) of the relevant evidence/statement 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, and location of the meeting, as well as the expected participants and purpose
- 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.
- Complete the investigation promptly and without unreasonable deviation from the intended timeline
- Provide regular status updates to the parties throughout the investigation. This is typically done via the Title IX Coordinator
- Prior to the conclusion of the investigation, provide the parties 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 (if so desired by the parties) 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 upon which the University does not intend to rely in reaching a determination, for a ten (10) business day review and comment period so that each party may meaningfully respond to the evidence.
- The Investigator 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 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 should document all rationale for any changes made after the review and comment period
- Investigator delivers the report to the Title IX Coordinator

Role and Participation of Witnesses in the Investigation

Witnesses (as distinguished from the parties) who are employees of Plymouth State University 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 disciplinary action.

Witnesses who are students are expected to provide complete and truthful information when participating in the University's investigation and resolution process and must not retaliate against others for participating in the process.

While in-person interviews for parties and all potential witnesses are ideal, circumstances (e.g., study abroad, break periods, campus closure/remote learning and working) may require individuals to be interviewed remotely. Videoconference technology may be used for interviews if the Investigator(s) determine that timeliness or efficiency dictate a need for remote interviewing. The University will take appropriate steps to reasonably ensure the security/privacy of remote interviews.

Witnesses may also provide written statements in lieu of interviews or choose to respond to written questions, if deemed appropriate by the Investigator. 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 or considered by decision-makers.

Recording of Interviews

No unauthorized audio or video recording of any kind is permitted during investigation meetings. If the Investigator elects to audio and/or video record interviews, all involved parties must be made aware of and consent to audio and/or video recording. Recordings made by Investigators will be made available for evidence review.

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) the character of the parties; or 3) questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

Hearing/Adjudication Preparations

Referral for Student Conduct Hearing / Employee Conduct Action

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 student conduct hearing ("hearing") or employee conduct action.

The final investigation report will be transmitted to the parties and the Decision-maker(s) at least ten (10) business days before the hearing. If all parties agree to an expedited timeline, a hearing may be scheduled in fewer than 10 business days.

The Title IX Coordinator will select the Student Conduct Hearing Decision-makers from the Pool when the Respondent is a student. Allegations involving student-employees will be directed to the appropriate Decision-maker depending on the context of the alleged misconduct.

When the Respondent is an employee, the Title IX Coordinator will refer the investigation report to the Director of Human Resources to determine the appropriate Decision-maker.

Decision-maker Composition

Plymouth State University will designate a single Decision-maker for matters where an employee is the Respondent. Where the Respondent is a student, the Title IX Coordinator will select a three-member panel from the Pool. With a panel, one of the three members will be appointed as Chair by the Title IX Coordinator.

The Decision-maker(s) will not have had any previous involvement with the investigation. The Title IX Coordinator may elect to have an alternate from the Pool sit in throughout the hearing process in the event that a substitute is needed for any reason.

The Investigator will be a witness at the hearing and therefore may not serve as a Decision-maker. Those who are serving as Advisors for any party may not serve as Decision-makers in that matter.

The Title IX Coordinator may not serve as a Decision-maker or Chair in the matter but may serve as an administrative facilitator of the hearing if their previous role(s) in the matter do not create a conflict of interest. Otherwise, a designee may fulfill this role. A student conduct hearing will convene at a time determined by the Title IX Coordinator.

Evidentiary Considerations During Adjudication

Any evidence that the Decision-maker(s) determine(s) 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) the character of the parties; or 3) questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

Previous disciplinary action of any kind involving the Respondent may be considered in determining an appropriate sanction or disciplinary action upon a determination of responsibility. This information is only considered at the sanction stage of the process.

The parties may each submit a written impact statement for the consideration of the Decision-maker(s) at the sanction stage of the process when a determination of responsibility is reached.

The Decision-maker(s) 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. The University bears the burden of proof.

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 Decision-maker(s) (For compelling reasons, the Title IX Coordinator may reschedule the hearing.).
- Notification that the parties may have the assistance of two Advisors of their choosing 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 the Title IX Coordinator will appoint one (Each party must have an Advisor present. There are no exceptions).
- Access to all the materials provided to the Decision-maker(s) about the matter, unless already provided.
- An invitation to each party to prepare an impact statement pre-hearing that the Decision-maker(s) 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.
- A copy of the Rules of Decorum to review along with Advisors.

Hearings for alleged 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 meet the resolution timeline followed by the University and remain within the ninety (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 appeal). A student facing charges under the Policy is not in good standing to graduate.

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.

Pre-Hearing Preparation

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

Any witness scheduled to participate in the hearing must have been first interviewed by the Investigator(s) or have provided 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 Decision-maker(s) in advance of the hearing. All objections to any Decision-maker based on bias or conflict of interest 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 two business days prior to the hearing. Decision-makers will only be removed if the Title IX Coordinator concludes that bias or conflict of interest precludes an impartial hearing of the allegation(s).

The Title IX Coordinator will give the Decision-maker(s) a list of the names of all parties, witnesses, and Advisors at least five (5) business days in advance of the hearing. Any Decision-maker 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 Decision-maker 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 Title IX Coordinator at the pre-hearing report review meeting. Any written response to the final investigation report must be submitted at least two days prior to the scheduled start of the hearing.

Pre-Hearing Report Review Meetings

The Title IX Coordinator will convene a pre-hearing Report Review Meeting(s) with the parties, their Advisors, and the Investigator to actively review the report and all evidence, asking questions and making comment so as to ensure parties are prepared in advance of a hearing. This advance review opportunity does not preclude the Advisors from asking questions at the hearing.

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

Hearing Procedures

At the hearing, the Decision-makers have 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, additional panelists, the Investigators who conducted the investigation, the parties, Advisors to the parties, any called witnesses, the Title IX Coordinator, and anyone providing authorized accommodations or assistive services.

The Title IX Coordinator 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 Decision-maker(s) and the parties and will then be excused.

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 Decision-maker(s) 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.

The Chair then conducts the hearing according to the hearing agenda. 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 the Title IX Coordinator or designee.

Investigator Presents Final Report

The Investigator 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 Decision-maker(s) and the parties (through their Advisors). The Investigator will be present during the entire hearing process, but not during deliberations.

Neither the parties nor the Decision-maker(s) should ask the Investigator their opinion on credibility, recommended findings, or determinations. The Investigator, 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.

Testimony and Questioning

Following the Investigator's presentation, 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 Decision-maker(s) and then by the parties through their Advisors ("cross-examination").

All questions are subject to a relevance determination by the Chair. The Advisor, who will remain seated during questioning, will pose the proposed question orally, electronically, or in writing. The proceeding will pause to allow the Chair to consider the question, 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 on the basis that they 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 ask advisors to frame why a question is or is not relevant from their perspective 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 Decision-maker at the hearing, the Chair may elect to address those issues, and/or refer them to the Title IX Coordinator, and/or preserve them for appeal. If bias is not at issue at the hearing, the Chair should not permit irrelevant questions that probe for bias.

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 Decision-makers 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 Decision-makers must disregard those statements. 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. Statements can be relied upon when questions are posed by the Decision-makers, as distinguished from questions posed by Advisors through cross-examination.

The Decision-makers 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 Decision-maker(s) 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 the University's established rules of decorum for the hearing, the University may require the party to use a different Advisor. If a University-provided Advisor refuses to comply with the rules of decorum, the University will provide that party with a different Advisor to conduct cross-examination.

Recording Hearings

Hearings, with the exception of deliberations, are recorded 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 Decision-makers, the parties, their Advisors, and appropriate administrators of the University 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.

Deliberation, Decision-making, and Standard of Proof

The Decision-makers will deliberate in closed session to determine whether the Respondent is responsible or not responsible for the policy violation(s) in question. If a panel is used, a simple majority vote is required to determine the finding. The preponderance of the evidence standard is used. The hearing facilitator may be invited to attend the deliberation by the Chair, but is there only to facilitate procedurally, not to address the substance of the allegations.

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

The Title IX Coordinator will ensure that each of the parties has an opportunity to review any impact statement submitted by the other party(ies). The Decision-maker(s) may – at their discretion – consider the statements, but they are not binding.

The Decision-maker(s) will review the statements and any pertinent student conduct history and will determine the appropriate sanction(s).

When possible, the panel will deliver findings to parties in person at the conclusion of the hearing. If extended time is required for deliberations, parties will be dismissed and the outcome will be delivered in writing.

Following a hearing, 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 or recommendations.

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.

Notice of Outcome

Using the deliberation statement, the Title IX Coordinator will work with the Chair to prepare a Notice of Outcome. 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 3 business days of receiving the Decision-makers' deliberation statement.

The Notice of Outcome will 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 Plymouth State University records, or emailed to the parties' PSU-issued email or otherwise approved account.

The Notice of Outcome will identify the specific policy(ies) reported to have been violated, including the relevant policy section, and will contain a description of the procedural steps taken by the University 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.

The Notice of Outcome will specify the finding on each alleged policy violation; the findings of fact that support the determination; conclusions regarding the application of the relevant policy to the facts at issue; a statement of, and rationale for, the result of each allegation to the extent the University is permitted to share such information under state or federal law; any sanctions issued which the University is permitted to share according to state or federal law; and any remedies provided to the Complainant designed to ensure access to the University's educational or employment program or activity, to the extent the University is permitted to share such information under state or federal law (this detail is not typically shared with the Respondent unless the remedy directly relates to the Respondent).

The Notice of Outcome will also include information on when the outcome is considered by the University to be final, any changes that occur prior to finalization, and the relevant procedures and basis for any available appeal options.

Sanctions

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

- The nature, severity of, and circumstances surrounding the violation(s)
- The Respondent's disciplinary history
- 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 Decision-makers

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.

Student Sanctions

The following sanctions may be imposed, singly or in combination, upon students or organizations found responsible for the violation of University policy:

- *Warning*: A formal statement that the conduct was a violation of University policy and a warning that further violations may result in more severe sanctions/responsive actions.
- *Loss of Privileges*: The University may deny specified privileges for a designated period of time.
- *Financial Charges*: A previously established and published charge may be imposed.
- *Restitution*: A requirement to compensate for loss or damage. This may take the form of appropriate service and/or monetary or material replacement.
- *Discretionary Sanctions*: The assignment of work, essay, service to the University, or other related discretionary requirement.
- *Alcohol and Other Drug Sanctions (AOD)*– An educational sanction related to alcohol and/or drug use. A fee will be billed to the student’s account for enrollment in AOD educational sanctions; the fee structure of which is listed in the Student Code of Conduct.
- *Counseling Referral*: A requirement to meet with and engage in either University-sponsored or external counseling to better comprehend the misconduct and its effects.
- *Probation*: A written reprimand for violation of institutional policy. Probation is for a designated period of time and includes the probability of more severe disciplinary sanctions if the student is found to violate policy during the probationary period.
- *Residence Hall Suspension*: The separation of the student from any or all residence facilities for a definite period of time, after which the student is eligible to return. Conditions for this sanction and readmission will be specified in the student’s outcome letter. Students who are suspended from residential life due to a conduct matter are not eligible for a housing or dining refund.
- *Residence Hall Expulsion*: A permanent separation of the student from the residence halls/facilities. Students who are expelled from residential life due to a conduct matter are not eligible for a housing or dining refund.
- *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 are suspended from the University due to conduct matters are not eligible for any refunds including but not limited to housing, tuition, dining and fees. Student who are suspended are not eligible to be on campus for any reason during the duration of the suspension. Students who return from suspension are automatically placed on probation through the remainder of their tenure as a student at Plymouth State University. This sanction will be noted as a Judicial Withdrawal on the student’s official transcript for the semester during which the suspension is sanctioned.
- *Expulsion*: Permanent termination of student status and revocation of rights to be on campus for any reason or to attend PSU-sponsored events. Students who are expelled from the University due to conduct matters are not eligible for any refunds including but not limited to housing, tuition, dining and fees. This sanction will be noted permanently as a Judicial Withdrawal on the student’s official transcript.
- *Withholding Degree*: The University may withhold awarding a degree otherwise earned and/or deny a student participation in commencement activities until the completion of the student conduct process including any sanction imposed, if any.
- *Revocation of Admission and/or Degree*: Admission to or a degree awarded from the University may be revoked for fraud, misrepresentation, or other violation of University standards required to obtain admission into or a degree from the University.

- *Other Actions:* In addition to or in place of the above sanctions, the University may assign any other sanctions as deemed appropriate.
- *Organizational Sanctions:* The University may deactivate, revoke recognition, revoke some or all privileges for a specified period of time, and/or apply any sanction listed above.

Employee Outcomes

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

- *Warning – Verbal or Written*
- *Performance Improvement/Management Process*
- *Counseling Referral*
- *Required Training or Education*
- *Probation*
- *Loss of Performance Pay Increase*
- *Loss of Oversight or Supervisory Responsibility*
- *Demotion*
- *Suspension with pay*
- *Suspension without pay*
- *Termination*
- *Other Actions:* In addition to the above sanctions, other sanctions may be assigned, as deemed appropriate.

Withdrawal or Resignation While Case Pending

Student Withdrawal

If a student has an allegation pending for violation of the Policy on Equal Opportunity, Harassment, and Nondiscrimination, and withdraws from Plymouth State University, the University will place a student conduct hold on the student's account until the matter is resolved.

Should a student Respondent decide to participate in the resolution process, the process will continue to a reasonable resolution. Should a student Respondent permanently withdraw from the University and not participate in the resolution process, the resolution process ends, as the University no longer has disciplinary jurisdiction over the withdrawn student. A student Respondent who withdraws or leaves while the process is pending may not return to the University. A hold will be placed on their ability to be readmitted. They may also be banned from University property and/or events.

The University 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.

If the student Respondent takes a leave of absence for a specified period of time (e.g., one semester or term), the resolution process may continue.

Employee Resignation

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

However, the University 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.

An employee who resigns with unresolved allegations pending is not eligible for rehire, and the records retained by Human Resources will reflect that status. All PSU responses to future inquiries regarding employment references for that individual will include the former employee is not eligible for rehire.

Appeals

A decision reached by the Student Conduct Board may be appealed by either the Responding Party or the Complainant within four (4) business days (by 4:30 pm) of the decision. Matters involving violations of the Student Code of Conduct will be directed to the Dean of Students or their designee. Matters involving student violations of the Equal Opportunity, Harassment and Nondiscrimination Policy will be directed to the Title IX Coordinator for referral to the appropriate appellate officer. Such appeals shall be in writing and submitted electronically via the [Appeal form](#). Upon submission, the form will be sent to the appropriate corresponding administrator.

Grounds for Appeal

Except as required to explain the basis of new information, an appeal shall be limited to a review of the information of the Student Conduct Board Hearing and supporting documents for one or more of the following purposes:

- Procedural irregularity that affected the outcome of the matter;
- New evidence that was not reasonably available at the time of determination that would affect the outcome of the matter;
- The sanction was not appropriate for the violation (may not be applicable for standard sanctions); or
- The investigator or hearing officer/decision-maker had a conflict of interest or bias for or against either party that affected the outcome of the matter.

Submitting a Petition for an Appeal does not guarantee that an appeal will be granted. The petition provides information to the administrator to determine whether or not there is a basis for an appeal. If an appeal is granted the decision and/or sanction(s) may be upheld, amended (increased or decreased), or overturned.

If any of the grounds in the Petition for Appeal do not meet the grounds in this Policy, the appeal will be denied by the Appeal officer and the parties will be notified in writing of the denial and the rationale.

If any of the grounds in the Petition for Appeal meet the grounds in this Policy, then the Appeal Chair will notify the parties, the Title IX Coordinator, and, when appropriate, the Investigators and original Decision-maker(s).

The Appeal Officer will collect any additional information needed and review all documentation regarding the approved grounds and the subsequent responses and will render a decision in no more than 5 business days, barring exigent circumstances.

If an appeal is granted, the decision and/or sanction(s) may be upheld, amended (increased or decreased), or overturned. The Appeal Officer may refer the matter to the original Decision-maker(s) for reconsideration based on the grounds for appeal that were granted.

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 which the University is permitted to share according to state or federal law, and the rationale supporting the essential findings to the extent the University is permitted to share under state or federal law.

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' PSU-issued email or otherwise approved account.

Sanctions Status During Appeal

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

If any of the sanctions are to be implemented immediately post-hearing, then emergency removal procedures (detailed above) will be followed.

Plymouth State University may still place a conduct hold on a student's accounts pending the outcome of an appeal when the original sanctions included separation.

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 the Appeal Officer to substitute their judgment for that of the original Decision-maker(s) merely because they disagree with the finding and/or sanction(s).
- The Appeal Officer may consult with the Title IX Coordinator on questions of procedure or rationale, for clarification, if needed. Documentation of all such consultation will be maintained.
- Appeals granted based on new evidence should normally 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 a new Decision-maker(s).
- The results of a remand to a Decision-maker(s) cannot be appealed. The results of a new hearing can be appealed, once, on any of the available appeal grounds.
- In cases in which the appeal results in reinstatement to the University 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.

Long-Term & Community-Based Remedies

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

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.

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

Failure to Comply with Sanctions, Remedies, 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) (including the Appeal Officer).

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 from the University and may be noted on a student's official transcript.

A hold on a student's account following suspension will only be lifted when compliance is achieved to the satisfaction of the Title IX Coordinator.

Record keeping

Plymouth State University will maintain for a period of at least seven years records of:

1. Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required under federal regulation;
2. Any disciplinary sanctions imposed on the Respondent;
3. Any remedies provided to the Complainant designed to restore or preserve equal access to the University's education program or activity;
4. Any appeal and the result;
5. Any Informal Resolution and the result;
6. All materials used to train Title IX Coordinators, Investigators, Decision-makers, and any person who facilitates an Informal Resolution process. PSU will make current training materials publicly available on its website; and
7. Any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment, including:
 - a. The basis for all conclusions that the response was not deliberately indifferent;
 - b. Any measures designed to restore or preserve equal access to the University's education program or activity; and
 - c. 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.

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

Disabilities Accommodations in the Resolution Process

Plymouth State University is committed to providing reasonable accommodations and support to qualified students, employees, or others with disabilities to ensure equal access to the University's resolution process.

Parties may access accommodations by either informing the Title IX Coordinator, who will consult the appropriate offices to make arrangements or by contacting the Director of Campus Accessibility Services or Director of Human Resources directly to request accommodations.

Revision of this Policy and Procedures

This Policy and related 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. The review and update process shall include consultation with appropriate campus, community, and state partners. The University 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.

This Policy and related procedures are effective August 14, 2020.

Policy Acknowledgment:

ADAPTED FROM ATIXA 2020 ONE POLICY, TWO PROCEDURES MODEL. USE AND ADAPTATION OF THIS MODEL WITH CITATION TO ATIXA IS PERMITTED THROUGH A LIMITED LICENSE TO PLYMOUTH STATE UNIVERSITY. ALL OTHER RIGHTS RESERVED.
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STATEMENT OF RIGHTS OF THE PARTIES

The right to an equitable investigation and resolution of all credible allegations of prohibited harassment or discrimination made in good faith to Plymouth State University officials with authority.

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 to be informed in advance of any public release of information regarding the allegation(s) or underlying incident(s), whenever possible.

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 Plymouth State University officials.

The right to have Plymouth State University 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 Plymouth State University officials from reporting sexual misconduct or discrimination to both on-campus and off-campus authorities.

The right to be informed by Plymouth State University officials of options to notify proper law enforcement authorities, including on-campus and local police, and the option(s) to be assisted in notifying such authorities, if the party so chooses. This also includes the right not to be pressured to report, as well.

The right to have allegations of violations of this Policy responded to promptly and with sensitivity by Plymouth State University law enforcement and/or other Plymouth State University officials.

The right to be informed of available supportive measures, such as counseling; confidential advocacy; health care; legal resources, student financial aid, visa, and immigration assistance; or other services, both on campus and in the community.

The right to a Plymouth State University-implemented Administrative 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.

The right to be informed of available assistance in changing academic, living, and/or working 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:

- Relocating an on-campus student's housing to a different on-campus location
- Changing an employee's work environment (e.g., reporting line, workspace relocation)
- Transportation accommodations
- Visa/immigration assistance
- Arranging to dissolve a housing contract and a pro-rated refund
- 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.

The right to have the University maintain supportive measures for as long as necessary and for such measures to remain private, provided privacy does not impair the ability to provide them.

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 not to have irrelevant prior sexual history or character admitted as evidence.

The right to know the relevant and directly related evidence obtained and to respond to that evidence.

The right to a fair opportunity to provide the Investigator(s) with a personal 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 at least eight hours of 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 Plymouth State University representative in the process be recused on the basis of disqualifying bias and/or conflict of interest.

The right to have up to two Advisors of their choice to accompany and assist the party in all meetings and/or interviews associated with the resolution process.

The right to have the University require the participation of faculty and staff witnesses.

The right to the use of the appropriate standard of evidence, preponderance of the evidence, 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.

The right to be informed in writing of when a decision by the Plymouth State University 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 the University.

The right to a fundamentally fair resolution as defined in these procedures.