



Policy Prohibiting Sexual Misconduct



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1.0 Statement Prohibiting Sexual Misconduct

Consistent with all applicable federal and state laws, rules, regulations, and ordinances, and in recognition of its responsibilities to its students, faculty, and staff, as well as the communities in which it operates, Plymouth State University prohibits sexual misconduct in any education program or activity. The University also prohibits retaliation against any person participating in any sexual misconduct complaint, investigation, or resolution process.

1.1 Title IX of the Education Amendments of 1972

As a recipient of federal financial assistance for educational activities, the University is required by Title IX of the Education Amendments of 1972 to ensure that all its education programs and activities do not discriminate on the basis of sex. Sexual harassment, sexual assault, dating and domestic violence, and stalking are forms of sex discrimination, which are prohibited under Title IX and under this policy.

1.2 Purpose

This policy identifies and defines Prohibited Conduct and the process the University uses to respond to allegations of Prohibited Conduct.

The University will respond to disclosures of sexual misconduct and retaliation to ensure individuals are informed of their rights and available supportive measures. The University will address formal complaints alleging sexual misconduct and/or retaliation. It will take necessary measures to end conduct that is in violation of this policy, prevent its recurrence, and remedy its effect on individuals and the community.

Situations involving conduct that may be in violation of other University student or employee policies may be reported to Student Conduct or Frost House for matters involving students, Human Resources or the Provost and Vice President for Academic Affairs for matters involving faculty, or Human Resources for matters involving staff.

1.3 Application

This policy applies to the entire University community, including, but not limited to, students, student organizations, faculty, administrators, staff, whether on or off campus. This policy also applies to third parties such as guests, visitors, volunteers, invitees, and alumni when they are on campus or participating in University-sponsored activities.

This policy may also pertain to instances in which the conduct occurred outside of the campus or University - sponsored activity if the University determines that the off-campus conduct affects a [substantial University interest](#), including access to an educational program or activity, safety and security, compliance with applicable law, and meeting its educational mission.

For any report of sexual misconduct that falls outside of the federally mandated definitions of sexual harassment under Title IX, the University reserves the right to consider the matter as another form of sexual misconduct or other misconduct subject to the Student Code of Conduct, personnel policies, or other applicable policies and procedures.

Members of the University community are expected to participate in any report, meeting, or proceeding under this policy.

Any [respondent](#) who is not a University student, faculty member, or staff member is generally considered a third party. The University's ability to take appropriate corrective action against a third party may be limited and will

depend on the nature of the third party's relationship, if any, with the University. When appropriate, the Title IX Coordinator will refer such allegations against third-party respondents to the appropriate office. The Title IX Coordinator reserves the right to report alleged violations to the institutions where the third-party is enrolled or employed.

The status of a [party](#) may also impact which resources, resolution options, and [remedies](#) are available to them from the University.

1.4 Prohibited Conduct

This section defines conduct that is strictly prohibited by Plymouth State University. These acts shall also be referred to as Prohibited Conduct under this policy.

- The term "sexual misconduct" is a broad term that includes sexual assault, sexual harassment, sexual exploitation, stalking, and relationship violence.
- "Relationship violence" is a term denoting domestic violence and dating violence.

1.4.1 Title IX Sexual Harassment

Prohibited Conduct under this policy constitutes 'Sexual Harassment' under Title IX when the sex-based conduct includes one or more of the following:

- An employee of the University conditions a provision of aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct. This is commonly referred to as quid pro quo harassment.
- Unwelcome conduct that is so severe and pervasive and objectively offensive that it effectively denies a person equal access to the University's education program or activity as determined by a reasonable person standard. This is commonly referred to as hostile environment harassment.
- Other "sexual offenses" defined in the following statutes and described in this Policy: "sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 1299(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30).

Determination of whether conduct constitutes sexual harassment requires consideration of all the circumstances, including the context in which the reported incident(s) occurred. Sexual harassment is often a pattern of behaviors. A single incident that creates a distractingly uncomfortable atmosphere on a given day may not constitute sexual harassment. However, even isolated or sporadic acts may constitute severe harassment based on factors such as the degree to which the conduct affected the educational experience, the individual's work or academic environment; the type of conduct; and the relationship between the parties. It is possible for a series of individual incidents, each minor, to have the cumulative effect of becoming pervasively harassing behavior.

Generally speaking, petty slights, minor annoyances, and isolated incidents (unless severe) of rude, uncivil, or non-collegial behavior will generally not rise to the level of a policy violation and should be addressed to a supervisor or administrator. Academic freedom provides significant space for individuals to express controversial views, teach controversial subjects, and engage in controversial research. As such, the offensiveness of a particular expression, course content, subject of academic inquiry, or research topic, as perceived by some, standing alone, is not sufficient to constitute a violation of this policy

1.4.2 Sexual Assault

Sexual assault: an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation. Specifically, this includes:

- a. Non-Consensual Sexual Penetration: 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 other party.
- b. Fondling: Touching the private body parts of another person for the purpose of sexual gratification, without the consent of the other party, including instances where the other party is incapable of giving consent because of their age or because of their temporary or permanent mental incapacity.
- c. Non-Consensual Sexual Contact: Intentionally touching the intimate body parts, such as breasts, buttocks, groin, genitals, or the clothing covering them, of another person, or forcing or coercing another person to touch your intimate body parts or themselves without consent.
- d. Incest: Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- e. Statutory Rape: Sexual intercourse with a person who is under the statutory age of consent. In New Hampshire the age of consent is sixteen (16).

1.4.3 Dating violence

[Violence](#) committed by a person:

- a. Who is or has been in a social relationship of a romantic or intimate nature with the other party; and
- b. Where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - The length of the relationship;
 - The type of relationship; and
 - The frequency of interaction between the persons involved in the relationship.

1.4.4 Domestic violence

Felony or misdemeanor crimes of violence committed by a person who:

- Is a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the jurisdiction of the University, or a person similarly situated to a spouse of the victim;
- Is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner;
- Shares a child in common with the victim; or
- Commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of the jurisdiction.

1.4.5 Stalking

Engaging in a [course of conduct](#) directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others; or suffer substantial emotional distress.

1.4.6 Sexual Exploitation

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. Examples of Sexual Exploitation include:

- a. Using any device for the purpose of observing, recording, or streaming of the intimate parts of a person or their sexual activity when there is a reasonable expectation of privacy without the other person's knowledge or consent.
- b. Making, sharing, posting, streaming, or otherwise distributing images, photographs, video or audio of another person's sexual activity or intimate parts, if the individual distributing the content knows or should have known that the person depicted in the images or audio did not consent to the disclosure.
- c. Observing, spying on or listening to a person(s) involved in sexual activity or in any state of undress, in a place where that other person would have a reasonable expectation of privacy, without that person's consent. Voyeurism also occurs when an individual allows others to observe this behavior without the consent of all parties involved.
- d. Knowingly transmitting a disease or infection to someone without their knowledge or consent by means of sexual contact.
- e. The prostituting of another person or the trafficking of another person, defined as the inducement of a person to perform a commercial sex act, or labor or services, through force, fraud, or coercion.
- f. Misappropriation of another person's identity on apps, websites, or other venues designed for dating or sexual connections.
- g. Contact between the intimate body parts of a person and the sexual organ of another due to the purposeful removal of any prophylactic barrier without consent (e.g., non-consensual dental dam or condom removal; 'stealth').

1.4.7 Retaliation

Retaliation is any materially adverse action taken against an individual because they were involved in the disclosure, reporting, investigation, or resolution of a report of Prohibited Conduct. Retaliation includes threats, intimidation, harassment, coercion, discrimination, violence, or any other conduct against a person by the University, a student, or an employee or other person authorized by the University to provide aid, benefit, or service under the University's education program or activity, for the purpose of interfering with any right or privilege secured by this policy or by law, including Title IX or its regulations. Adverse action does not include perceived or petty slights, or trivial annoyances.

The prohibition against retaliation applies to any individuals who participate (or any student who refuses to participate) in any manner in an investigation or hearing. Employees of the University may have other requirements to participate in an investigation or resolution process that do not otherwise violate applicable state or federal law.

Retaliation may occur even where there is a [finding](#) of "not responsible" under this policy. Good faith actions lawfully pursued in response to a report of Prohibited Conduct are not retaliation.

1.5 Title IX Coordinator

The University is committed to promoting a diverse, equitable, and inclusive working and learning environment free from discrimination. The Title IX Coordinator is charged with monitoring compliance with Title IX; providing education and training; and coordinating the University's investigation, response, and resolution of all reports of Prohibited Conduct under this policy. The Title IX Coordinator acts with independence and authority and

oversees all resolutions under this policy free from bias and conflicts of interest. The Title IX Coordinator is available to meet with any student, employee, or other individual to discuss this policy or the accompanying procedures and can be contacted at:

Janette Wiggett
Title IX Coordinator
Frost House 201
janette.wiggett@plymouth.edu
603-535-2172

1.6 Delegation of Duties

The Title IX Coordinator may designate other University employees or external professionals to fulfill any obligations in this policy. As used in this policy, the term Title IX Coordinator refers to the person occupying that role or their designee.

1.7 First Amendment and Academic Freedom

The University is dedicated to an uncompromising standard of academic excellence and an unwavering commitment to academic freedom, freedom of inquiry, and freedom of expression. This policy and procedures are not intended to inhibit or restrict free expression or exchange of ideas, abridge academic freedom, or prohibit educational content or discussions inside or outside of the classroom that include germane, but controversial or sensitive subject matters. Before proceeding with or continuing an investigation of any report of harassment or retaliation involving an individual's speech or other communication, the University will take care to distinguish between protected speech and hostile environment harassment. A person's subjective belief alone that behavior is offensive does not necessarily mean that the conduct rises to the level of a policy violation. The behavior must also be objectively offensive. However, speech or expressive conduct that constitutes sex-based harassment is neither legally protected expression nor the proper exercise of academic freedom.

2.0 Reporting Sexual Misconduct

2.1 How to Make a Report to the University

All reports of violations of prohibited conduct defined in this policy will be taken seriously and in good faith. The Title IX Coordinator will provide information and guidance regarding how to file a complaint with the University and/or local law enforcement, as well as information and options to address the complaint.

Employees, students, guests, or visitors who believe that this policy has been violated should promptly contact the Title IX Coordinator or another member of the Title IX Office as follows:

Janette Wiggett
Title IX Coordinator
Frost House 201
603-535-2172

Individuals may also fill out an online reporting form: <https://www.plymouth.edu/frost-house/title-ix/reporting-incident>.

There is no deadline for making a report of sexual misconduct, however, the University encourages prompt reporting as the ability to pursue the complaint to conclusion may be hindered by the passage of time. Timely

disclosure allows individuals to access supportive measures intended to restore and maintain access to the University's learning, living, and working environment.

Every reasonable effort will be made to maintain the privacy of those making a report to the extent possible. When responding to reports, the Title IX Coordinator will consider the wishes of those identified to be impacted by prohibited conduct. In certain circumstances, the Title IX Coordinator may initiate an investigation or take other responsive actions to a report, even when the person identifying a concern chooses not to participate in a resolution process and/or requests that the University not initiate an investigation.

2.2 Supportive Measures

Individuals who report allegations of Prohibited Conduct have the right to receive supportive measures regardless of whether they file a [formal complaint](#). Supportive measures are individualized measures offered as appropriate, as reasonably available, without unreasonably burdening a [complainant](#) or [respondent](#), not for punitive or disciplinary reasons, and without fee or charge to the parties to:

- Restore or preserve that party's access to the University's education program or activity, including measures that are designed to protect the safety of the parties or the University's educational environment; or
- Provide support during the University's resolution procedures or during an alternative resolution process.

Supportive measures may include but are not limited to: counseling; extensions of deadlines and other course-related adjustments; campus escort services; increased security and monitoring of certain areas of the campus; leaves of absence; changes in class, work, housing, or extracurricular or any other activity, regardless of whether there is or is not a comparable alternative; [no-contact directives](#) ; and training and education programs related to sexual harassment.

Supportive measures will also be offered to respondents when they are notified of allegations.

Any supportive measures put in place will be kept confidential, except when doing so impairs the ability of the University to provide the supportive measures.

The Title IX Coordinator will offer and coordinate supportive measures as appropriate for the parties as applicable to restore or preserve their access to the University's program or activity or provide support during the University's agreement-based resolution process or investigation and decision-making procedures. The Title IX Coordinator has the discretion to implement or modify supportive measures.

2.3 Amnesty

An individual who reports prohibited conduct under this policy shall not be subject to a disciplinary proceeding or sanction for a violation of Plymouth State University's student conduct policy related to the incident unless the institution determines that the report of prohibited conduct was not made in good faith or that the associated policy violation was egregious. An egregious violation shall include, but not be limited to, taking an action that places the health and safety of oneself or other persons at risk. Students should be aware that any such grant of amnesty from disciplinary action by the University has no effect on actions by law enforcement agencies.

2.4 Privacy and Confidentiality

The University values the privacy of its students, employees, and other community members. Individuals should be able to seek the assistance they need and access this policy without fear that the information they provide will be shared more broadly.

All activities under these procedures shall be conducted considering the privacy interests of those involved. While the University will take all reasonable steps to protect the privacy of individuals involved in a complaint, it may be necessary to disclose some information to individuals or offices on campus to address a complaint or provide for the physical safety of an individual or the campus. Thus, the University cannot, and does not, guarantee that all information related to complaints will be kept confidential.

Under USNH policy, the Title IX Coordinator or designee must provide the University President notice of any allegation of sexual misconduct involving an employee. See [BOT V \(c\)\(6\)\(1\)](#).

2.5 Confidential Resources

Individuals may choose to speak with a [Confidential Resource](#). These individuals (e.g., licensed mental health care providers, physicians) hold legal privilege under federal or state law and may not report to Title IX Coordinator any identifying information without the written consent of the individual who supplied the information, unless required by law. Such disclosures will not be reported to the Title IX Coordinator or initiate any process under this policy.

See the Resources section of this policy for additional information.

2.6 Medical Considerations

Individuals may wish to seek medical attention. Along with treatment of injuries, prompt medical examinations can test for pregnancy and STI's, and provide post-exposure treatment for HIV.

A forensic medical examination can also secure valuable evidence that could be used later if a person wishes to involve law enforcement. Physical evidence may exist up to five (5) days, or longer, after a sexual assault, though individuals are recommended to receive an examination as soon as possible. Local medical facilities can arrange to have a specially trained Sexual Assault Nurse Examiner (SANE) conduct a forensic examination, which collects evidence from a person's body, clothes, and other belongings. A confidential advocate can meet an individual at the hospital to provide support, which would be arranged by the hospital. The results of this examination can be provided to law enforcement anonymously. Transportation to and from Speare Memorial Hospital is available through the University Police Department or Campus Safety, if requested, by individuals who have experienced sexual or relationship violence.

When an individual seeks a forensic examination at the hospital, there is no charge. Medical, counseling, and other expenses related to the incident may also be provided at no cost to the individual through the [Victim's Compensation Program](#).

2.7 Employee Reporting Obligations

The University strives to be proactive in taking reasonable steps to identify and prevent incidents of sexual misconduct. All employees, with limited exceptions as identified by the University, are required to immediately provide to the Title IX Coordinator all complaints or disclosures of sexual misconduct reported to the employee and share all information made available to the employee.

When providing this information to the Title IX Coordinator, the employee must include their own name and contact information, and all known details about an incident, which may include, if known, the dates, times, locations, names of involved individuals and the nature of the incident as well as any details the employee may have personally observed.

These reporting requirements increase the likelihood that individuals will receive access to supportive measures, ensure that all University community members have equitable access to the resolution processes, and allow Plymouth State University to take appropriate action consistent with its Title IX and other federal and state obligations and educational mission while still respecting individual agency and autonomy.

Researchers conducting an IRB-approved human subjects research study designed to gather information about sexual misconduct need to apply for exemption to not report disclosures to the Title IX Coordinator. Please contact the Title IX Coordinator for additional information.

The University also encourages employees who themselves experience sexual misconduct to bring their concerns to the Title IX Coordinator, though they are not required to do so under these reporting obligations.

Aside from reporting to the Title IX Coordinator, employees will, to the fullest extent possible, maintain the privacy of an individual's information, consistent with the Family Educational Rights and Privacy Act of 1974 ([FERPA](#))

In addition, employees must report incidents of child abuse or sexual abuse of minors in the University's education program or activity to the University Police Department.

Some University employees are also required by law to be mandatory reporters of child abuse, elder abuse, or abuse of persons with disabilities to the Division for Children, Youth and Families (DCYF), pursuant to [RSA 169-C](#).

2.8 Reporting to Law Enforcement

Some Prohibited Conduct may constitute a violation of both the law and University policy. The University encourages individuals to report alleged crimes promptly to local law enforcement agencies. All impacted persons have the right to file a report with law enforcement, as well as the right to decline to file a report with law enforcement. The absence of a report to law enforcement alone shall not be considered as evidence that there is no violation of University policy.

The standards for finding a violation of criminal law are different from the standards for finding a violation of this policy. Conduct may constitute prohibited conduct under this policy even if law enforcement agencies lack sufficient evidence of a crime and decline to prosecute.

Proceedings under this policy may be carried out prior to, simultaneously with, or following civil or criminal proceedings off campus. When a complaint is made to the University as well as to law enforcement, the University may temporarily delay its investigation process if a law enforcement agency requests a delay for a reasonable amount of time to allow law enforcement to gather evidence of criminal misconduct. Criminal or legal proceedings are separate from the processes in this policy and do not determine whether this policy has been violated.

In the case of an emergency, where the physical safety of a member of the University community or the security of the University is threatened, any individual with such knowledge should promptly inform the University Police

Department/or Plymouth Police Department. The University may take any immediate steps as may be necessary and appropriate under the circumstances to ensure the safety of the University community.

3.0 Responding to a Report – Fundamental Requirements

The following process will be used following the receipt of a report of sexual misconduct.

3.1 Intake & Assessment

Following receipt of a report alleging a potential violation of this policy, the Title IX Coordinator will contact the complainant and request an opportunity to meet. The purpose of this meeting is to explain processes, offer resources, provide information about supportive and protective measures, discuss available resolution processes, and to explain the standards for establishing a policy violation. This information allows the complainant to make an informed decision whether to move forward with an investigation or pursue other means of addressing their concern.

The intake and assessment may gather limited information about the nature and circumstances of the report to determine whether this policy applies and, if so, which resolution process may be appropriate based on the conduct and the relationship of the parties to the University. The Title IX Coordinator may also determine that the provision of supportive measures only is the appropriate response under the policy. Intake and Assessment is not a [finding](#) of fact or responsibility nor does it obligate the complainant to a particular resolution pathway. If the individual bringing forward the report is not the actual complainant, the Title IX Coordinator will limit communication to general policy and procedure information.

If the information provided does not suggest a potential violation of this policy, the Title IX Coordinator will advise the complainant that the matter will be referred to address under a different policy, and/or to another appropriate office, or no further action will be taken. Such a decision will not preclude the complainant from accessing appropriate supportive measures.

3.2 Requests for No Further Action

When a complainant requests that the University not take any further action, the University will generally try to honor those requests. However, there are certain instances in which the University has a broader obligation to the community and may need to act against the wishes of the complainant. In such circumstances, the Title IX Coordinator will notify the complainant in writing of the need to take action. The Title IX Coordinator will consider the specific facts and circumstances when determining whether to act against the wishes of a complainant.

3.3 Formal Complaint

A formal complaint is required to initiate a resolution process. A formal complaint is a written document filed and signed by a complainant (or otherwise showing the complainant is the one filing the document), or signed by the Title IX Coordinator, which alleges that a respondent has engaged in Prohibited Conduct.

The formal complaint must contain sufficient information regarding the allegations being brought and to be able to adequately respond. At a minimum, the Formal Complaint must indicate: the name of the Respondent; the date or approximate date of the conduct; a description of the conduct; and the location of the conduct. Further, the formal complaint must indicate, to the best of the complainant's ability, the alleged form(s) of Prohibited Conduct that the complainant alleges the respondent committed. It is not required that the formal complaint reflect every detail related to the allegations in the complaint; additional information may be discovered during the investigation.

Following receipt of a formal complaint of prohibited conduct, the University is required to provide prompt written notice to the respondent(s).

If a complainant does not wish to file a formal complaint, the Title IX Coordinator may determine a formal complaint is necessary (see 3.2).

3.4 Dismissal of a Formal Complaint

Before dismissing a formal complaint, the University will make reasonable efforts to clarify the allegations with the complainant.

3.4.1 Title IX mandatory dismissal

The University must dismiss a formal complaint of Title IX Prohibited Conduct if:

1. The allegations in a formal complaint do not meet the definition of sexual harassment under Title IX; or
2. The alleged prohibited conduct did not occur in the school's education program or activity; or
3. The alleged prohibited conduct did not occur against a person in the United States.

When the University dismisses a formal complaint for the purposes of Title IX, it may still address the allegations as other Prohibited Conduct under this policy or refer for consideration and adjudication under another University policy or office.

3.4.2 Permissive dismissal

The University may dismiss a formal complaint of Title IX Prohibited Conduct if:

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 or employed by the recipient; or
3. Specific circumstances prevent the recipient 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 notify the complainant in writing of the basis for the dismissal. If the dismissal occurs after the respondent has been notified of the allegations, then the Title IX Coordinator will notify the parties simultaneously in writing. If a dismissal of one or more allegations changes the appropriate decision-making process under these procedures, the Title IX Coordinator will include that information in the notification. A complainant who decides to withdraw a complaint or any portion of it may later request to reinstate or refile it.

The University will notify the complainant that a dismissal may be appealed on the basis outlined in the [Appeals section](#). If a dismissal occurs after the respondent has been notified of the allegations, the University will notify the respondent that the dismissal may be appealed on the same basis. If a dismissal is appealed, the University will follow the procedures outlined in the Appeals section of these procedures.

When a complaint is dismissed, the Title IX Coordinator will, at a minimum:

- Offer supportive measures to the complainant as appropriate;
- If the respondent has been notified of the allegations, offer supportive measures to the respondent as appropriate; and,
- Take other prompt and effective steps, as appropriate, to prevent the alleged prohibited conduct from occurring within the University's education program or activity.

3.5 Referrals for Other Misconduct

The Title IX Coordinator has the discretion to refer complaints of misconduct not covered by Title IX for addressing under any other applicable University policy or code. As part of any such referral, the University may use evidence already gathered through any process covered by this policy.

Should there be a conflict between the provision of this policy and other University policies, procedures, rules, regulations, or terms or conditions of employment, the provisions of this policy will govern unless specifically stated otherwise.

This policy and these procedures are separate from the University's student disciplinary processes, by which the University may bring a discipline charge against a student for violating University policy according to the provisions found in the University's [Code of Conduct](#).

3.6 Emergency Removal

For matters alleging Title IX sexual harassment, the University retains the authority to remove a respondent from the University's program or activity on an emergency basis, where the University:

1. undertakes an individualized safety and risk analysis;
2. determines that an immediate threat to the physical health or safety of any student, employee, or other individual arising from the allegations of sexual harassment warrants removal; and
3. the University provides the respondent with [notice](#) of, and an opportunity to challenge, the decision immediately following the removal.

For other Prohibited Conduct, the University retains the authority to remove a respondent from the University's program or activity on an emergency basis in circumstances where a respondent's behavior significantly interferes with or poses a credible substantial threat to other individuals or the university community.

A respondent may challenge an emergency removal decision by notifying the Title IX Coordinator in writing. The University will designate an impartial individual, not otherwise involved in the matter, to consider the challenge of the removal and determine if the emergency removal was warranted.

3.7 Administrative Leave

The University retains the authority to place an employee respondent on administrative leave during a pending complaint process under this policy, with or without pay.

3.8 Student Withdrawal or Employee Resignation While Matters are Pending

If a student or employee respondent withdraws or resigns from the University after receiving notice of a complaint and with unresolved allegations, the Title IX Coordinator will consider whether and how to proceed with the resolution process. The University will continue to address and remedy any systemic issues or concerns that may have contributed to the alleged violation(s) and any ongoing effects of the alleged prohibited conduct.

A student respondent who withdraws with unresolved allegations may not return to the University without first resolving any pending matters. Admissions will be notified that the individual is not eligible for readmission. They may also be barred from University property or events. If a student respondent takes a leave of absence for a specified period (e.g., one semester or term), the resolution process may continue remotely.

An employee respondent who resigns with unresolved allegations is not eligible for rehire with the University and the records retained by the Title IX Coordinator will reflect that status. The Title IX Coordinator will notify the Director of Human Resources of the unresolved allegation(s).

4.0 Resolution Options

There are multiple ways to resolve a complaint or report of sexual misconduct. Whenever possible, the University will use the resolution method chosen by the complainant. During the resolution of a complaint, the Title IX Coordinator will determine whether to implement reasonable supportive measures designed to assist all parties and community members in maintaining access to and participation in University programs and activities.

4.1 Support-Based Resolution

A support-based resolution is an option for a complainant who has not filed a formal complaint and does not wish for the University to initiate an investigation or other resolution to address their concern, and the Title IX Coordinator determines that another form of resolution, or further action, is not required. Support that may be appropriate includes, but is not limited to:

- adjustments or changes to class schedules;
- moving from one residence hall room to another;
- adjusted deadlines for projects or assignments;
- adjustments to work schedule or arrangements;
- restrictions on contact applied to one or more parties;
- escorts to and around campus;
- counseling and support services referrals.

A support-based resolution does not preclude later use of another form of resolution. For example, if new information becomes available to the University and the Title IX Coordinator determines there is need for additional steps to be taken, or the complainant later decides to file a formal complaint to initiate an investigation and decision-making process or an agreement-based resolution, the complainant may seek another form of resolution.

4.2 Agreement-Based Resolution

An agreement-based resolution is a voluntary, structured arrangement between or among involved parties that integrates support and accountability. Agreement-based resolution is an alternative to the investigation and decision-making processes. A formal complaint must be filed prior to the initiation of an Agreement-Based Resolution. Agreement-based resolution is not available to resolve formal complaints where the respondent's primary role is employee and the complainant's primary role is student.

All parties must voluntarily consent to engage in the agreement-based resolution process and the Title IX Coordinator must approve of the use of this process and approve the final agreement between the parties. Plymouth State may never condition a party's enrollment, employment, or enjoyment of any other right or privilege upon participating in an agreement-based resolution. Agreement-based resolution may be initiated at any time after a formal complaint is filed and prior to the release of the final determination under other resolution pathways.

During an agreement-based resolution process, supportive measures will remain available to the parties. The Title IX Coordinator will also, to the extent necessary, take prompt and effective steps to prevent the alleged prohibited conduct from occurring within the University's education program or activity.

If an agreement cannot be reached, for any reason, the Title IX Coordinator may determine that the reported conduct will instead be addressed through the applicable investigation and decision-making process and will inform the parties.

4.2.1 Facilitating an Agreement-Based Resolution

If all parties are willing to explore agreement-based resolution, the Title IX Coordinator will discuss separately with each party the process and agreement provisions.

Any party may suggest provisions to the proposed agreement, and parties will be asked for their suggestions or ideas. Agreement provisions may include, but are not limited to:

- a change to a party's class schedule and/or housing assignment;
- an agreement that parties will not communicate or otherwise engage with one another;
- an agreement to engage in restorative practice or facilitated dialogue;
- completion of a training or educational project by the respondent;
- completion of community service by the respondent;
- acceptance or denial of responsibility by a party;
- community-based remedies;
- discipline agreed upon by all parties.

No evidence concerning the allegations obtained within the process may be disseminated to any person, provided that any party to the agreement-based resolution process may generally discuss matters as it relates to allegations of prohibited conduct with a parent, friend, advisor, or other source of emotional support, or with an advocacy organization.

If an agreement cannot be reached, information disclosed or obtained for purposes of the agreement-based resolution process may be incorporated into subsequent investigation and decision-making processes.

4.2.2 Agreement-Based Resolution Notice Requirements

Before the initiation of an agreement-based resolution or investigation and decision-making resolution, the Title IX Coordinator must provide the parties written [notice](#).

The Notice of Allegation(s) shall include:

1. Sufficient information available at the time to allow the parties to respond to the allegations, including the identities of the parties involved in the incident(s), a description of the facts alleged to constitute Prohibited Conduct, the type of Prohibited Conduct, and the date(s) and location(s) of the alleged incident(s);
2. A statement that retaliation is prohibited;
3. A statement that the respondent is presumed not responsible for Prohibited Conduct until a determination is made at the conclusion of the resolution process;
4. A statement that the parties may have an advisor of their choice who may be, but is not required to be, an attorney;
5. The parties are entitled to an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint, including the evidence upon which the institution does not intend to rely in reaching a determination regarding responsibility, and evidence that both tends to prove or disprove the allegations, whether obtained from a party or other source and is not otherwise impermissible, and an investigative report that accurately summarizes all relevant evidence;

6. A statement that false statements are expressly prohibited.

4.2.3 Finalizing the Resolution Agreement

Once the Title IX coordinator approves the agreed upon terms of the Resolution Agreement and all parties provide voluntary, written acknowledgement consenting to the resolution process and agree upon terms and conditions of the Resolution Agreement, the matter will be closed. No further actions will be taken beyond those established in the agreement. No appeal is permitted.

Records of an agreement-based resolution can be shared with other offices as appropriate.

Violations of Resolution Agreement terms may result in referral to the appropriate office for disciplinary action.

4.3 Investigation and Decision-Making Resolution

To initiate an investigation and decision-making resolution, a formal complaint must first be filed with the Title IX Coordinator.

4.3.1 General Information

4.3.1.1 Acceptance of Responsibility

If a respondent accepts responsibility for all or part of the Prohibited Conduct alleged, the designated sanctioning officer will issue an appropriate sanction or responsive action as to those violation(s).

4.3.1.2 Conflict of Interest or Bias

After a Notice of Allegations is issued to all parties, any party may object to the participation of the Title IX Coordinator or designated investigator on the grounds of a demonstrated bias or actual conflict of interest. All parties will have three (3) days from the date of the Notice of Allegations to object to the selection of the investigator or the Title IX Coordinator.

Objections to the Title IX Coordinator are to be made, in writing, to the President. Objections to the appointment of the investigator are to be made in writing, to the Title IX Coordinator. All objections will be considered, and changes made as appropriate. If the objection is substantiated as to either the Title IX Coordinator or the investigator, that individual shall be replaced. Any change will be communicated in writing.

4.3.1.3 Timeline

The University strives to complete the investigation within ninety (90) days from the date of the Notice of Allegations in matters that do not include a hearing. In matters that include a hearing, the University strives to complete the investigation process and hearing within 120 days of the Notice of Allegations.

The timeline for any part of the resolution process may be extended for good cause by the Title IX Coordinator. All parties shall be notified, in writing, of any extension to the timeline that is granted, the reason for the extension, and the newly anticipated date of conclusion of the investigation and/or hearing. Good cause reasons for extension may include ensuring availability of witnesses and other participants and ensuring participants have sufficient time to review materials.

The University may not unreasonably deny a student party's request for an extension of a complaint process deadline during exam periods.

The investigator and/or Title IX Coordinator may provide the parties with periodic status updates, in writing.

4.3.1.4 Standard of Review

The University has the duty of conducting an investigation that gathers sufficient evidence to determine whether Prohibited Conduct occurred. This duty does not rest with either party. The standard of proof used in the investigation and decision-making process is the preponderance of the evidence standard, which means more likely than not.

4.3.1.5 Advisor of Choice

Plymouth State will provide the parties with the same opportunities to be accompanied to any meeting or proceeding by the [advisor](#) of their choice, who may be, but is not required to be, an attorney, and will not limit the choice or presence of the advisor in any meeting or proceeding.

4.3.2 Notice of Allegations

Prior to the start of an investigation or resolution process, the parties will be provided a written Notice of Allegations. Should additional allegations be brought forward, a revised written Notice of Allegations shall be provided to all parties. Notice of Allegations will be provided as soon as practicable.

The Notice of Allegations shall include:

1. Sufficient information available at the time to allow the parties to respond to the allegations, including the identities of the parties involved in the incident(s), a description of the facts alleged to constitute Prohibited Conduct, the type of Prohibited Conduct, and the date(s) and location(s) of the alleged incident(s);
2. A statement that retaliation is prohibited;
3. A statement that the respondent is presumed not responsible for Prohibited Conduct until a determination is made at the conclusion of the resolution process;
4. A statement that the parties may have an advisor of their choice who may be, but is not required to be, an attorney;
5. The parties are entitled to an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint, including the evidence upon which the institution does not intend to rely in reaching a determination regarding responsibility, and evidence that both tends to prove or disprove the allegations, whether obtained from a party or other source and is not otherwise impermissible, and an investigative report that accurately summarizes all relevant evidence;
6. A statement that false statements are expressly prohibited.

4.3.3 Evidence Gathering

4.3.2.1 Interviews

The investigator will interview all parties and relevant witnesses and gather relevant documentary evidence provided by the parties and any identified witnesses. Interviews may be conducted in person or via video conference. Parties may identify fact witnesses and provide evidence that is relevant to the allegations and not otherwise impermissible.

The investigator will determine whether parties and witnesses are likely to provide relevant information about the allegations and has the discretion to determine which parties and witnesses to call to an interview. The investigator may conduct follow-up interviews as they deem appropriate.

All interviews shall be recorded to the extent feasible. Individuals present will be made aware of audio and/or video recording at the interview. Any interview recordings are the sole property of the University. Unauthorized audio or video recording of any proceedings under this policy is prohibited.

4.3.2.2 Relevant Evidence

Evidence is relevant when it is related to the allegations under investigation. Questions are relevant when they seek evidence that may aid in showing whether the allegation occurred. Evidence is relevant when it may aid a [decision maker](#) in determining whether the allegations occurred.

4.3.2.3 Impermissible Evidence

The following types of evidence are impermissible and will not be accessed or considered except by the University to determine whether one of the exceptions listed below applies. This information will not be disclosed or otherwise used, regardless of relevance:

1. Evidence that is protected under a privilege recognized by federal or state law, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality;
2. Evidence provided to an employee designated by the University as exempt from internal reporting under this policy, unless the person who made the disclosure or otherwise provided evidence to that employee has voluntarily consented to re-disclosure;
3. A party's or witness's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the party or witness, unless the University obtains that party's or witness's voluntary, written consent for use in its resolution procedures; and
4. Evidence that relates to the complainant's sexual interests or prior sexual conduct, unless evidence about the complainant's prior sexual conduct is offered to prove that someone other than the respondent committed the alleged conduct or is evidence about specific incidents of the complainant's prior sexual conduct with the respondent that is offered to prove consent to alleged sexual misconduct. The fact of prior consensual sexual conduct between the parties does not by itself demonstrate or imply the complainant's consent to other sexual activity or preclude a determination that prohibited conduct occurred.

4.3.4 Evidence and Report Review

The Title IX Coordinator will provide each party with a period of ten (10) days to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in the formal complaint, including the evidence upon which the institution does not intend to rely in reaching a determination regarding responsibility, and evidence that both tends to prove or disprove the allegations, whether obtained from a party or other source and is otherwise not impermissible and the [investigative report](#) that accurately summarizes all relevant evidence. The parties may provide written comments on the evidence and report draft at any time prior to the conclusion of the report review period.

The investigator will conduct any additional fact-finding as may be necessary. If previously unknown or unavailable, relevant evidence was submitted as part of evidence review or is gathered during this second fact-finding period, the new relevant evidence will be made available for review by the parties and their advisors. The parties shall have five (5) days to provide a response to the newly gathered evidence. No new evidence will

be accepted as part of any response, except that the investigator shall have the discretion to accept relevant evidence that was not previously available or known to exist, and that was not previously discoverable with the exercise of reasonable diligence.

The investigator will consider the parties' written responses before finalizing the investigation report.

Once the investigative report is final, the report shall be provided to each party and to their advisor in a secure manner.

4.3.5 Notice of Hearing

Following conclusion of the investigation, each party shall be provided with a Notice of Hearing, which shall include information regarding the date of the hearing, the identity of the Hearing Panel/decision maker, the process to be used at the hearing, and names of witnesses. The hearing shall be scheduled no earlier than ten (10) days from the date of the Notice of Hearing.

Within three (3) days of receipt of the Notice of Hearing, either party may object to a Hearing Panel/decision maker on the basis of a demonstrated bias or actual conflict of interest. Any objection is to be in writing and sent to the Title IX Coordinator. Should the Title IX Coordinator determine that there is an actual bias or conflict of interest, the Title IX Coordinator shall remove the decision maker and appoint another.

4.3.6 Hearing Procedures

The purpose of the hearing is for a [decision maker\(s\)](#) to determine whether the conduct occurred as alleged, and if so, whether that conduct violates this policy. The University expects that all individuals who participate in the hearing process do so truthfully and that all who have a responsibility for carrying out one or more aspects of the hearing process do so fairly and without prejudice or bias. Hearings may be conducted in person or via video conferencing. The Title IX Coordinator may determine that the hearing will continue in the absence of any party or any witness.

The decision maker(s) shall have the authority to determine the relevance of evidence submitted, and of questions asked, to limit the time allotted to any phase of the hearing, and/or to limit the time allotted to the full hearing. The decision maker(s) shall not draw an inference about the determination regarding responsibility based solely on a party's absence from the hearing or refusal to answer questions posed.

The hearing shall be audio recorded by the University, and this recording will be considered the only official recording of the hearing. The recording is the property of the University and is available by contacting the Title IX Coordinator. The recording shall be available to the complainant, respondent, their respective advisors (for the purpose of their advising role), and appellate officer until the conclusion of the appeals process. Any other recording of the hearing is strictly prohibited.

4.3.6.1 Prior to the Hearing

The parties and the decision maker(s) all have the right to call witnesses. Witnesses participating in the hearing must have information relevant to the allegations. Parties who wish to call witnesses must submit the name of the witness at the conclusion of the evidence inspection and report review period.

Only witnesses who participated in the investigation will be permitted to participate in the hearing. A list of witnesses invited to participate in the hearing will be provided in the hearing notice.

Parties are encouraged, but not required, to submit to the Title IX Office questions they would like asked during the hearing. If the decision maker determines that any questions submitted in advance of or asked during the hearing are not relevant or seek otherwise impermissible evidence, the decision maker shall exclude the question and explain the reason for the exclusion of the question at the hearing. The decision maker(s) must give a party an opportunity to clarify or revise any question that has been determined is unclear or harassing and, if the party sufficiently clarifies or revises a question, and the question is relevant, the question will be asked.

Parties may also submit introductory and closing statements before the hearing but are not required to do so.

4.3.6.2 Advisor's Role During the Hearing

Each party must be accompanied by an advisor at the hearing. The advisor's role is to help the party understand and navigate the proceedings. The advisor will directly, orally, and in real time ask the other party and any witnesses relevant questions and follow up questions. The advisor may not advocate for, respond for, or otherwise speak on behalf of a party during the hearing. If a party does not appear for the hearing, the advisor for that party may appear at the hearing and conduct cross-examination questions or submit questions to be asked on behalf of the party.

If a party does not have an advisor of choice, the University will appoint an advisor of the University's choice.

4.3.6.3 Support Persons

Parties may select a support person of their choice to accompany them to any meetings, interviews, or hearings. A support person may provide emotional support during meetings. A support person cannot speak on behalf or otherwise represent a party during meetings. A party may choose to change a support person at any time or choose to proceed without one. The support person will not be included in communications from the University or Title IX Office.

4.3.6.4 Hearing Participation Guidelines

The decision maker shall have the authority to maintain order and decorum at the hearing, including responding to disruptive or harassing conduct, and when necessary to adjourn the hearing or exclude the disruptive person. In the event the decision maker removes an advisor, the decision maker will have the discretion to appoint another advisor for the remainder of the hearing. The decision maker also has the authority to determine whether any questions are not relevant, abusive, intimidating, or disrespectful, and will not permit such questions. The decision maker cannot draw an inference about the determination regarding responsibility based solely on a party's absence from the live hearing.

4.3.6.5 Statements, Questioning and Presentation of Evidence

During the hearing, each party will be permitted to provide an introductory statement. Following introductory statements, the decision maker(s) will call parties and witnesses for questioning. The order of questioning shall be determined by the decision maker(s). The decision maker(s) will pose questions to the parties and witnesses including questions approved to be asked that were submitted by each party prior to the hearing. Each party will then be provided an opportunity to have their advisor pose questions to the other party or witnesses. Neither party may directly question the other party or witness.

If the decision maker determines that any questions are not relevant to the allegations, or seek otherwise impermissible evidence, the decision maker shall exclude the question and explain the reason for the exclusion of the question at the hearing and offer an opportunity to the party to reframe or resubmit the question.

Following the questioning of parties and witnesses, each party will be permitted to provide a closing statement.

Parties may also provide an impact statement to the decision maker(s), in writing or as an audio-video recording. The decision maker(s) will read and consider impact statements if there is a finding of responsibility, and sanctions are to be imposed.

4.3.7 Determination and Notice of Outcome

Following a hearing, the decision maker(s), having reviewed the investigative report, information shared during the hearing, and all relevant evidence, shall render a determination whether Prohibited Conduct occurred and determine what, if any, discipline is appropriate.

When a student is found responsible for sexual misconduct, the decision maker will determine the sanction and notify the Title IX Coordinator of the sanctioning determination.

When an employee is found responsible for sexual misconduct, the appropriate sanctioning officer will determine the sanction and notify the Title IX Coordinator of the sanctioning determination.

The Title IX Coordinator will provide each party, and their advisor should the party wish the advisor to receive it, a written Notice of Outcome within seven business days of the determination.

The Notice of Outcome will include:

1. A description of the sexual misconduct and other allegations, if applicable;
2. A reference to the policies and procedures used to evaluate the allegations;
3. Description of all procedural steps taken to date;
4. The decision maker's evaluation of the relevant and not otherwise impermissible evidence along with the finding of facts;
5. Determinations for each allegation, with the rationale;
6. Sanction determination, if applicable;
7. Whether remedies will be provided;
8. The procedures for an appeal.

The determination regarding responsibility becomes final either on the date that the University provides the parties with the written determination of the result of any appeal, or, if no party appeals, the date on which an appeal would no longer be considered timely.

Determinations may be appealed in writing by either party following the Appeal Procedure.

5.0 Appeal Procedure

A party may appeal the dismissal of a complaint, and/or the outcome of a hearing. Appeals must be filed in writing to the Title IX Coordinator within five (5) days following the issuance of the Notice of Outcome or dismissal. The Title IX Coordinator will send the appeal to the Appellate Officer assigned to conduct a written review of the appeal(s) and to make a final determination.

When an appeal is filed, the other party or parties shall be notified and provided with a copy of the filed appeal within two (2) days and have five (5) days to respond to the appeal in writing. A party's decision not to submit a reply to an appeal is not evidence that the non-appealing party agreed with the appeal.

Within three (3) days of an Appellate Officer being assigned, either party may provide written objection to the Appellate Officer on the basis of an actual bias or conflict of interest. Any objection is to be sent to the Title IX Coordinator. Should the Title IX Coordinator determine that there is an actual bias or conflict of interest, the Title IX Coordinator will appoint another Appellate Officer.

Appeals may be filed only on the following four grounds: procedural error, **disproportional sanction**, new evidence, actual conflict of interest or demonstrated bias.

The Appellate Officer will make a determination regarding the appeal and communicate that decision, along with a rationale for the decision, to the Title IX Coordinator who will communicate the Appellate Officer's decision to the parties. The decision of the Appellate Officer is final.

6.0 Additional Information

6.1 Failure to comply with Sanctions/Responsive Actions

All respondents are expected to comply with conduct [sanctions](#)/responsive actions/corrective actions within the timeframe specified by the University. Respondents needing an extension to comply with their sanctions must submit a written request to the Title IX Coordinator stating the reasons for needing additional time.

Failure to follow through on conduct sanctions/responsive actions/corrective actions by the date specified, whether by refusal, neglect or any other reason, may result in additional sanctions/responsive actions/corrective actions. Students who fail to comply will be referred to the Student Conduct Office.

6.2 Consolidation of Cases

The University may consolidate complaints under this policy as appropriate. For example, if there are multiple complaints where the allegations of Prohibited Conduct arise out of the same facts or circumstances, or there are multiple complaints with overlapping parties.

The University also reserves the right to use this policy to adjudicate other allegations and conduct charges as defined by policies outside of the scope of this policy in instances when the conduct is associated with an alleged issue of prohibited conduct under this policy. The Title IX Coordinator will address these consolidated complaints in collaboration and coordination with other appropriate offices, such as Student Conduct and Human Resources. Allegations of a violation of a separate policy are not required to be addressed using the procedural hearing requirements set forth in this policy.

6.3 Record Retention

Records of all reports and resolutions will be kept by the Title IX Coordinator in accordance with the applicable University records retention schedule and applicable Federal regulations. All records will be afforded the confidentiality protections required by law, including the Family Educational Rights and Privacy Act governing confidentiality of student information.

6.4 Application of Section 504/Americans with Disabilities Act to this Policy

The University is committed to providing individuals with disabilities equal access and opportunity and strives in its policies and practices to provide for the full participation of individuals with disabilities in all aspects of University life.

[Parties](#) may request reasonable accommodations for disclosed disabilities to the Title IX Coordinator at any time relating to the implementation of this policy, including making a [disclosure or report](#), initiating a resolution procedure, and participating in any grievance process. Accommodations will be granted if they are appropriate and do not fundamentally alter the process.

6.5 Crime and Incident Disclosure Obligations

The Clery Act is a federal crime and incident disclosure law. It requires, among other things, that the University report the number of incidents of certain crimes, including some of the Prohibited Conduct in this policy, that occur in particular campus-related locations. The Clery Act also requires the University to issue a warning to the community in certain circumstances.

In the statistical disclosures and warnings to the community, the University will ensure that a complainant's name and other identifying information are not disclosed. The Title IX Coordinator will refer information to the Clery Officer when appropriate for a determination about Clery-related actions, such as disclosing crime statistics or sending campus notifications.

6.6 Amorous Relationship Policy

The University System of New Hampshire (USNH) has an established Amorous Relationship Policy that addresses rules and expectations for employees, faculty, staff or other affiliations who are engaging in a consensual romantic, sexual, or dating relationship. [USY.V.D.3.6](#).

6.7 Policy Review and Revision

These policies and procedures will be reviewed by the Title IX Coordinator. This policy may be updated as changes in the law dictate. To the extent that the University is subject to rules, regulations, court decisions, guidance or other laws that are different than what is stated in this policy, those rules, regulations, court decisions, guidance, or laws will be followed. This document does not create legally enforceable protections beyond the protection of the background state and federal laws which frame such policies and codes.

Procedures in effect at the time of its implementation will apply. The policy definitions in effect at the time of the conduct will apply even if the policy is changed subsequently, unless the parties consent to be bound by the current policy or a different application is required by law.

This policy may be revised at any time without notice. All revisions supersede prior policy and are effective immediately upon posting to the University website.

7.0 Additional Reporting Information

The U.S. Department of Education, Office for Civil Rights (OCR) investigates complaints of unlawful discrimination and harassment of students and employees in education programs or activities.

U.S. Department of Education
Office for Civil Rights

Lyndon Baines Johnson Department of Education Building
400 Maryland Avenue, SW
Washington, DC 20202-1100

Telephone: 800-421-3481
FAX: 202-45-6012; TDD 800-877-8339

The U.S. Equal Employment Opportunity Commission (EEOC) investigates reports of unlawful harassment and discrimination, including sex-based harassment, in employment.

U.S. Equal Employment Opportunity Commission
15 New Sudbury Street, Room 475 Boston, MA 02203-0506
Telephone: 1-800-669-4000

New Hampshire Commission for Human Rights
2 Industrial Park Drive, Bldg. One Concord, NH 03301
Telephone: (603) 271-2767 Fax: (603) 271-6339
E-mail: humanrights@nh.gov

8.0 Definitions

Actual Conflict of Interest or Demonstrated Bias: The Title IX Coordinator, investigator, or others with a role in the process with an actual conflict of interest or demonstrated bias for or against complainants or respondents generally, or the individual complainant or respondent, that would change the outcome. Any evidence supporting the alleged conflict of interest or demonstrated bias must be included in the written challenge or appeal.

Administrative No Contact Order: An Administrative No Contact Order (ANCO), also referred to as a No Contact Directive, is a document issued by a University administrator that is designed to limit or prohibit contact or communications between parties. An Administrative No Contact Order issued as a sanction shall be unilateral, directing that the respondent not contact the complainant.

Advisor: Each party has the right to choose and consult with an advisor of their choice at their own expense. The advisor may be any person, including a friend, family member, union representative, or an attorney. The University will not limit their choice of advisor. Parties in this process may be accompanied by an advisor of choice to any meeting or proceeding to which they are required or are eligible to attend.

Except where explicitly stated by this policy, advisors shall not participate directly in the process. The University will provide the parties equal access to advisors; any restrictions on advisor participation will be applied equally.

The advisor may not represent, advocate, or speak on behalf of a complainant or respondent. An advisor may not disrupt or impede any resolution proceeding.

Complainant: Any individual who has reported being, or is alleged to be, impacted by Prohibited Conduct as defined by this policy, and who was participating, or attempting to participate, in a University program or activity at the time of the alleged misconduct.

Confidential Resources: any individual identified by the University who receives information about conduct prohibited under this policy in their confidential capacity and who are privileged under state law will not report prohibited conduct disclosed to them without written consent. Designation as a confidential resource under this policy only exempts such individuals from disclosure to the Title IX Coordinator. It does not affect other mandatory reporting obligations under state child abuse reporting laws, the Clery Act as a campus security authority, or other laws that require reporting to campus or local law enforcement.

Confidential Resource Advisor (CRA): As required by New Hampshire state law, the institution designates Confidential Resource Advisor(s), who shall not be required reporters, and who shall be permitted to assist students in a confidential manner and provide appropriate resources and information, and assist any student with the reporting process, if desired.

Course of Conduct: means two or more acts directed at a specific person or persons. In the context of stalking, this can include, but is 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.

Consent: an informed, voluntary, and mutual decision among all participants to engage in sexual activity, expressed in words or actions. 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 with that particular person or people.

Individuals may experience the same interaction in different ways. Each party is responsible for determining 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.

Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). Past consent does not imply future consent. A current or previous dating relationship is not sufficient to constitute consent. 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. Silence or the absence of resistance alone is not consent.

Consent can be withdrawn at any time during sexual activity through reasonable and clear communications through words or actions. When consent is withdrawn, sexual activity must stop. Consent cannot be given if a person is unable to understand the nature, fact, or extent of the activity or give knowing consent because:

- a person is incapacitated due to the consumption of alcohol or drugs;
- a person is asleep or unconscious;
- a person is under the legal age to provide consent (in New Hampshire, that age is 16 years old);
- a person has a disability that prevents such person from having the ability or capacity to give consent;
- the use of force, threat of force, or coercion (the use of pressure to compel another individual to initiate or continue sexual activity against an individual's will).

Days: any reference to days refers to business days when the University is in normal operation.

Decision maker: Trained professional designated by the University to decide responsibility, sanction, or appeals. A decision maker may be one person, or a panel of multiple people as determined by the University.

Disclosure or Report: A disclosure or report may be made by anyone, whether they learned about conduct potentially constituting sexual misconduct under this policy, or whether they personally experienced such conduct. A person making a disclosure or report may or may not be seeking to initiate an investigation.

Education Program or Activity: Locations, events, or circumstances over which the University exercises substantial control over both the respondent and the context in which the Prohibited Conduct occurs. All campus operations, including off-campus settings that are operated or overseen by the University, including, for example, field trips, online classes, and athletic programs; conduct subject to the University's disciplinary authority that occurs off-campus; conduct that takes place via the University-sponsored electronic devices, computer and internet networks and digital platforms operated by, or used in the operations of, the University. Conduct that occurs outside of the education program or activity may contribute to a hostile environment within the program or activity.

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

Formal Complaint: a written document signed by a complainant filed with the Title IX Coordinator (or signed by the Title IX Coordinator) alleging sexual misconduct against a respondent and requesting that the school initiate an investigation or resolution. A complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail (email), by using the contact information listed on the University website, or as described in this policy.

Incapacitation: occurs when someone cannot make rational, reasonable decisions because they lack the capacity to give knowing and informed consent (e.g., to understand the "who, what, when, where, why, and how" of their sexual interaction). Evidence of impairment or intoxication is insufficient alone to establish incapacitation. Incapacitation is determined through consideration of all relevant indicators of a person's state and is not synonymous with intoxication, impairment, or being under the influence of drugs or alcohol. This policy also covers a person whose incapacity results from temporary or permanent physical or mental health condition(s), involuntary physical restraint, and/or the consumption of incapacitating drugs, or who are sleeping.

Under this policy, the University will consider whether a respondent knew or should have known the complainant to be incapacitated, based on an objective, reasonable person standard that assumes the reasonable person is both sober and exercising sound judgment. The impairment or intoxication of a respondent is not a defense for misconduct and does not diminish one's responsibility to obtain consent.

Investigative report: a written report summarizing all relevant evidence gathered and all steps taken during the investigative process.

New Evidence: New evidence or information has arisen that was not available or known to the party during the investigation or hearing, that would change the outcome (Information that was known to the party during the resolution process but which they chose not to present is not considered new information. The new evidence, an explanation as to why the evidence was not previously available or known, and an explanation of its potential impact on the investigation findings must be included in the written appeal.

Notice: All notices under this policy are written and sent to the student or employee's assigned University email address or delivered via U.S. mail to the local or permanent address(es) of the parties as indicated in official University records or personally delivered to the intended recipient.

Party/parties: Referring to complainant(s), respondent(s), or both/all complainant(s) and respondent(s).

Procedural Error: A procedural error occurred and would change the outcome. A description of the error and its impact on the outcome of the case must be included in the written appeal

Remedies: measures provided, as appropriate, to a complainant or any other person the University identifies as having had their equal access to the University's education program or activity limited or denied by sexual misconduct or other prohibited conduct covered by this policy. These measures are provided to restore or preserve that person's access to the education program or activity after the University determines that sexual misconduct occurred. Only the complainant will be informed of any remedies pertaining to them. Some examples are academic support and/or opportunity to retake a class or resubmit work or time extensions on course or degree completion, or non-academic support such as counseling, or changes to work assignments or locations. The Title IX Coordinator is responsible for the implementation of remedies.

Respondent: an individual, or group of individuals such as a student organization, who has been reported to have been engaged in conduct that could constitute Prohibited Conduct under this policy; or retaliation for engaging in a protected activity.

Sanctions: One or more disciplinary steps listed imposed on a respondent who is found responsible for a violation of the University's policies. Sanctions or disciplinary steps not listed here may be imposed in consultation with the Title IX Coordinator.

The form of sanction or discipline used will depend on the nature of the offense, as well as any prior disciplinary history. Such discipline or sanction will be imposed pursuant to and in accordance with any and all applicable University rules, policies, and procedures. Factors considered when determining a sanction/responsive action may include:

- The nature, severity of, and circumstances surrounding the violation.
- An individual's disciplinary history.
- Previous resolutions or allegations involving similar conduct.
- The need for sanctions/responsive actions to bring an end to sexual misconduct or retaliation.
- The need for sanctions/responsive actions to prevent the future recurrence of sexual misconduct or retaliation.
- The need to remedy the effects of sexual misconduct or retaliation on the complainant and the campus community.

Student sanctions imposed are implemented when the decision is final (after an appeal, or, if there was no appeal, after the appeals period expires).

Employees found responsible for violating this policy may be referred to the appropriate academic official for any other applicable processes.

Possible sanctions and disciplinary steps for student respondents include, but are not limited to the following:

- Probation
- Suspension
- Dismissal
- Expulsion/removal

Possible sanctions and disciplinary steps for employee respondents include, but are not limited to:

- Oral or written warning
- Suspension
- Probationary period
- Termination

Substantial University Interest: includes:

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

Violence: an actual or an attempt to cause physical injury to another.

9.0 Resources

Privileged and Confidential Resources for Students

- [Voices Against Violence](#): 24-hour crisis line: 1-877-221-6176 or 603-536-5999 during business hours. VAV provides confidential crisis intervention services, including medical, legal and court advocacy, financial advocacy, crisis counseling, safety planning, and referrals to other resources. VAV provides secondary support for an individual's friends and family. Their advocates may also be able to help victim/survivors with unbundled or pro bono legal services, financial compensation, access to food, clothing, and transportation. VAV is oftentimes on campus facilitating prevention education and can meet students and employees on campus for support. VAV is the Confidential Resource Advisor (CRA) as outlined in New Hampshire RSA 188-H:7.
- The [University Counseling Center](#) provides counseling and consultation services to students, as well as consultation to faculty, administrators, and family members who are supporting students. To contact the Counseling Center by phone, dial: 603-535-2461 (weekday business hours). After-hours and weekends, individuals may contact: NH Rapid Response: 833-710-6477; Lakes Region Mental Health Center: 603-524-1100 (option 9).
- [Plymouth State University Health Services](#), located at 12 Merrill Street, is available to students and provides on-campus clinic services for a limited range of medical needs. [Speare Memorial Hospital](#) provides 24-hour emergency care through the Emergency Department.

- [New Hampshire Coalition Against Domestic & Sexual Violence](#): The Coalition works to create safe, just, and equitable communities through advocacy, education, and empowerment of anyone affected by domestic and sexual violence, stalking, child abuse, and human trafficking.
Phone: 24-hr helpline 1-866-644-3574
Location: Concord, New Hampshire

Confidential Resources for Employees

- [Spring Health](#): The University System of New Hampshire provides Spring Health as a confidential mental wellness benefit. Spring Health can be utilized to access therapy, in-app exercises, work-life resources, alcohol and substance use support, and more. To access Spring Health, visit: <https://benefits.springhealth.com/usnh/> or call 1-855-629-0554 (press 2 for 24/7 crisis support).
- [Voices Against Violence](#): 24-hour crisis line: 1-877-221-6176.
- [New Hampshire Coalition Against Domestic & Sexual Violence](#): 24-hr Helpline 1-866-644-3574

Additional National Resources

[RAINN \(The Rape, Abuse & Incest National Network\)](#): the nation's largest anti-sexual violence organization. RAINN created and operates the confidential 24/7 National Sexual Assault Hotline in partnership with more than 1,000 local sexual assault service providers across the country.

- [National Sexual Assault Hotline](#) 1-800-656-4673 (HOPE)

[National Domestic Violence Hotline](#) offers 24/7-hour support providing essential tools and support to help survivors of domestic violence so they can live their lives free of abuse. The Hotline provides trained advocates to offer free, confidential support, crisis intervention information, education, and referral services in over 200 languages.

- National Domestic Violence Hotline Phone: 1-800-799-7233 (SAFE)

[The Network La Red](#): The Network/La Red's 24-hour hotline provides confidential emotional support, information, referrals, safety planning, and crisis intervention for lesbian, gay, bisexual, queer and/or transgender (LGBTQ+) folks, as well as folks in kink and polyamorous communities who are being abused or have been abused by a partner. They offer information and support to friends, family, or co-workers on the issue of domestic violence in LGBTQ+ communities. All hotline staff are trained in domestic violence, peer counseling, crisis intervention, and safety planning.

The Network La Red Hotline: 1-800-832-1901