



GANNON UNIVERSITY
SEXUAL MISCONDUCT/TITLE
IX POLICY



August 14, 2020

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Policy Scope: Faculty, Staff, Students

Policy

Faithful to its mission as an educational community and Catholic Diocesan University, Gannon University (hereinafter referred to as “University”) affirms and promotes the fundamental dignity and respect accorded to all people by virtue of their common humanity. Both Scripture and Christian tradition affirm this, beginning with the book of Genesis: “In the divine image...male and female God created them” (Genesis 1:27). Sexual misconduct violates this basic right of each individual to be treated as a person worthy of respect and is in direct contradiction with the University’s Mission.

Gannon prohibits sexual misconduct, which includes sex and gender-based discrimination, sexual harassment, and violence, including acts of sexual assault, dating violence, domestic violence, and stalking, which may also constitute crimes. Gannon has a responsibility to address sexual misconduct in accordance with several federal laws including, but not limited to, Title IX of the Education Amendments of 1972, Title VII of the Civil Rights Act, the Violence Against Women Act, the Clery Act and the Campus Save Act as well as Pennsylvania state laws,

University programs and activities that receive federal funding must comply with all federal and state laws. No individual shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity operated by the University. These programs and activities may include, but are not limited to admissions, recruitment, financial aid, academic programs, student services, counseling and guidance, discipline, classroom assignment, grading, vocational education, recreation, physical education, athletics, housing and student employment.

The University is committed to maintaining a safe environment free from sexual misconduct/discrimination and, therefore, will not tolerate sexual misconduct of any kind. In an ongoing effort to prevent and address sexual misconduct, the University provides education and prevention programs, investigates complaints of sexual misconduct and dispenses corrective or disciplinary action where appropriate. The University will also provide remedies and information about resources, including how to obtain counseling and medical care and pursue criminal and University disciplinary actions. Remedies include interim measures, informal, or formal procedures as described below.

Behaviors that contribute to or constitute sexual misconduct have no place at Gannon University, where people are expected to learn and develop to their full potential. Through the sexual misconduct policy and procedures, the University seeks to provide an adequate, reliable and impartial response in a caring manner that when these behaviors occur within the University community. Support and information will be available to assist students in making decisions throughout the reporting and investigating process.

Gannon treats members of the community who are parties in a sexual misconduct complaint equitably and with dignity and respect throughout the University Process.

All students, faculty and staff, as well as members of the public participating in University activities, have the right to an environment free from sexual misconduct. Violence, abuse, intimidation and/or retaliation directed toward another person violate the University’s Code of Conduct and Pennsylvania State laws. Members of the University community are expected to comply with University policies and guidelines in addition to federal, state and local laws whether on or off campus.

Title IX: Discrimination on the Basis of Sex and Sexual Misconduct

In accordance with Title IX, the University establishes that sexual misconduct incidents are types of sex discrimination. Sex discrimination violates the basic right of each individual to be treated as a person worthy of respect and is in direct contradiction to the University's Mission.

Gannon University does not discriminate on the basis of race, color, creed, age, gender, sexual orientation, religion, national origin, veteran status, physical or mental disability, genetic information or any other basis of prohibited discrimination its programs and activities. This policy extends to employment with and admission to the University.

The Title IX Coordinator has the primary responsibility for coordinating Gannon's efforts related to the intake, investigation, resolution, and implementation of supportive measures to stop, remediate, and prevent discrimination, harassment, and retaliation prohibited under this policy.

Gannon's Title IX Coordinator is:

Susan Majocka, Director of Student Accountability and Prevention Education; Title IX Coordinator
Office Location: Student Development and Engagement, Beyer 306
814-871-7224
Kerner005@gannon.edu

Additionally, inquiries concerning Title IX and its implementing regulation can be made to:
Office for Civil Rights, **Philadelphia Office** U.S. Department of Education, The Wanamaker Building
100 Penn Square East, Suite 515 Philadelphia, PA 19107-3323; Telephone: (215) 656-8541
Email: OCR.Philadelphia@ed.gov

Religious Exemption

Title IX and its implementing regulation at 34 C.F.R. § 106.12 provides that Title IX does not apply to an educational institution controlled by a religious organization to the extent that application of Title IX would be inconsistent with the controlling organization's religious tenets. Gannon has identified specific provisions of the law that conflict with specific tenets of the Catholic Church. Title IX and its implementation at 34 C.F.R. § 106.45 (governing the grievance process for formal complaints of sexual harassment) requires advisors to conduct cross-examination of parties and witnesses during a live hearing. It also requires that if a party or witness does not submit to cross-examination, the decision-maker may not consider the information previously provided in reaching a determination regarding responsibility.

We believe that all human beings are inherently sacred and deserve dignity and respect and every community member is expected to be respectful in all interactions as part of the learning experience. Requiring Gannon to comply with 34 C.F.R. § 106.45 would be contrary to and inconsistent with the following tenants of our Catholic Social Teaching. The cornerstone of Catholic social teaching is the defense of human dignity. Every person has innate and infinite dignity imparted by God. All action in and by society may be judged as just or unjust, good or sinful, based on whether they uphold this fundamental dignity intrinsic to every human life. Sexual harassment is a violation of human dignity and having a victim share their story at a hearing cannot only retraumatize a victim but, it is also a violation of the human dignity of the person. The principle of subsidiarity; what individuals can accomplish by their own initiative and efforts should not be taken from them by a higher authority. Gannon has implemented policies and procedures that provide a fundamentally fair process for all parties involved. As a Catholic Diocesan University Gannon has incorporated specific procedures related to the grievance process to ensure the Title IX Sexual Misconduct Policy and Grievance Procedures are consistent with the religious tenants articulated above.

1. 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 cross-examination for the party at the hearing, if any.
- *Complainant* means an individual who is alleged to be the victim of conduct that could sexual harassment based on a protected class; or retaliation for engaging in a protected activity.
- *Complaint (formal)* means a document submitted or signed by a Complainant or signed by the Title IX Coordinator alleging sexual harassment 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 of notice of harassment and/or retaliation (irrespective of Clery Act Campus Security Authority status).
- *Day* means a business day when the Gannon is in normal operation.
- *Education program or activity* means locations, events, or circumstances where University exercises substantial control over both the Respondent and the context in which the sexual harassment occurs and also includes any building owned or controlled by a student organization that is officially recognized by the University.
- *Final Determination*: A conclusion by a preponderance of the Evidence that the alleged conduct did or did not violate policy.
- *Finding*: A conclusion by the preponderance of the Evidence that the conduct did or did not occur as alleged (as in a “finding of fact”).
- *Formal Grievance Process* is a method of formal resolution designated by GANNON to address conduct that falls within the policies included below, and which complies with the requirements of 34 CFR Part 106.45, and in accordance with 34 C.F.R. § 106.12.
- *Grievance Process Pool* includes any investigators, hearing officers, 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 Panel refers to those who have decision-making and sanctioning authority within the University’s Formal Grievance process.
- *Investigator* means the person or persons charged by Gannon with gathering facts about an alleged violation of this Policy, assessing relevance and credibility, synthesizing the evidence, and compiling this information into an investigation report and file of directly related evidence.

- *Mandated Reporter* means an employee of the University who is obligated by policy to share knowledge, notice, and/or reports of harassment and/or retaliation with the Title IX Coordinator.¹
- *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 the University explicitly vested with the responsibility to implement corrective measures for sexual harassment and/or retaliation on behalf of the University.
- *Parties* include the Complainant(s) and Respondent(s), collectively.
- *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 reported to be the perpetrator of conduct that could constitute sexual harassment or retaliation for engaging in a protected activity.
- *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 this policy.
- *Sexual Harassment* is the umbrella category including the offenses of sexual harassment, sexual assault, stalking, and dating violence and domestic violence.
- *Title IX Coordinator* is at least one official designated by the University to ensure compliance with Title IX and the University'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, deputy coordinator, and any member of the Grievance Process Pool.

Definitions: Sexual Harassment, Sexual Assault, Dating Violence, Stalking

OCR further defines Sexual Harassment as an umbrella category, and includes the offenses of sexual harassment, sexual assault, domestic violence, dating violence, and stalking. Allegations of such Sexual Harassment incidents will be addressed by the Title IX Office through the Title IX Sexual Misconduct Grievance Procedures.

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,

¹ Not to be confused with those mandated by state law to report child abuse, elder abuse, and/or abuse of individuals with disabilities to appropriate officials, though these responsibilities may overlap with those who have mandated reporting responsibility in this Policy.

includes the actual or attempted offenses of sexual harassment, sexual assault, domestic violence, dating violence, and stalking, and is defined as:

Sexual harassment – a form of sex discrimination. Unwelcome conduct on the basis of sex (of a sexual nature or otherwise): (1) by an employee of the member who conditions the provision of an aid, 'benefit, or service of the member on an individual's participation in that unwelcome sexual conduct² ; (2) determined by a reasonable person to be so severe³ and pervasive⁴ and objectively offensive⁵ that it effectively denies a person equal access to the member's education program or activity; or (3) sexual assault or dating violence, domestic violence, or stalking based on sex.

Sexual assault – an offense that meets the definition of rape, fondling, incest or statutory rape as used in the FBI's Uniform Crime Reporting system. A sex offense is any sexual act directed against another person, without the consent of the victim, including instances in which the victim is incapable of giving consent. These offenses are defined as:

Rape: the 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 victim.

Fondling: the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.

Incest: sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

Statutory Rape: sexual intercourse with a person who is under the statutory age of consent

Dating violence – violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim.

- (a) The existence of such a relationship will be determined based on the reporting party'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.
- (b) For the purposes of this definition:
 - (1) Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
 - (2) Dating violence does not include acts covered under the definition of domestic violence. [34 U.S.C. 12291(a)(10)]

² Quid pro quo sexual harassment means "this" for "that"; i.e., unwelcome sexual advances, requests for sexual favors or other verbal, nonverbal or physical conduct of a sexual nature, the submission to or rejection of which may result in an adverse educational or employment action

³ Severe: of sufficient seriousness to interfere with the rights, privileges, and legal activities of an individual, as well as actions that would be deemed by a reasonable person to be extreme or life threatening

⁴ Pervasive: conduct existing in or spreading over a large area of an activity or program over a period of time.

⁵ Objectively offensive: behavior determined by a reasonable person to be offensive. Offensive: action Stalking – engaging in a course of conduct directed at a specific person that would cause a reasonable person to that cause unreasonable harm or distress to another individual or group of people

Domestic Violence - knowingly, intentionally or recklessly causing bodily injury of any kind, causing fear of bodily injury of any kind, assault (sexual or not sexual), rape, sexually abusing minor children, or knowingly engaging in a repetitive conduct toward a certain person (i.e. stalking) that puts them in fear of bodily injury. These acts can take place between family or household members, sexual partners or those who share biological parenthood in order to qualify as domestic abuse.

Stalking – engaging in a course of conduct directed at a specific person that would cause a reasonable person to

(a) fear for the person's safety or the safety of others; or

(b) suffer substantial emotional distress. For the purposes of this definition:

(a) Course of conduct means two or more acts, including, but not limited to, acts in which the stalker 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.

(b) Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.

(c) Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling. [34 CFR 668.46(a)] **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 (e.g., "Have sex with me or I'll hit you," "Okay, don't hit me, I'll do what you want.").

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.

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 (e.g., "Have sex with me or I'll hit you," "Okay, don't hit me, I'll do what you want.").

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 is:

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

Individuals may experience the same interaction in different ways. Therefore, 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, previous patterns that may be evidenced.

Incapacitation- The inability, temporarily or permanently, to give consent, because someone is mentally and/or physically helpless, unconscious, or unaware due to drug or alcohol consumption (voluntarily or involuntarily), or for some other reason. Incapacitation means a person does not have the ability to knowingly give 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, or 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.

Additional Sexual Misconduct Definitions

- A. Sexual exploitation** is an act or acts committed through non-consensual abuse or exploitation of another person's sexuality for the purpose of sexual gratification, financial gain, personal benefit or advantage, or any other non-legitimate purpose.

The act or acts of sexual exploitation are prohibited even though the behavior does not constitute one of the other sexual misconduct offenses.

Examples of sexual exploitation include:

- Observing another individual's nudity or sexual activity or allowing another to observe consensual sexual activity without the knowledge and consent of all parties involved
 - Non-consensual streaming of images, photography, video, or audio recording of sexual activity or nudity, or distribution of such without the knowledge and consent of all parties involved
 - Exposing another's genitals in non-consensual circumstances
 - Knowingly exposing another individual to a sexually transmitted disease or virus without that individual's knowledge
 - Inducing incapacitation for the purpose of making another person vulnerable to non-consensual sexual activity.
- B.** Creation, possession, or dissemination of child pornography
- C.** 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 infection
- D.** 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
- E.** 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)

Online Harassment and Misconduct

The policies 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 use Gannon networks, technology, or equipment.

While the University may not control websites, social media, and other venues in 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 Gannon community.

Reporting Title IX Sexual Misconduct

Notice of alleged policy violations, or inquiries about or concerns regarding this policy may be made using any of the following options:

Reporting complaints of sexual harassment and/or retaliation may be made using any of the following options:

1) File a complaint with, or give verbal notice to, the Title IX Coordinator, Susan Majocka, 306 Beyer Hall Gannon University, Email titleix@gannon.edu or 814-871-7224. 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 reporting form posted at https://cm.maxient.com/reportingform.php?GannonUniv&layout_id=4. Anonymous reports are accepted but can give rise to a need to investigate. The University tries to provide supportive measures to all Complainants, which is impossible with an anonymous report. Because reporting carries no obligation to initiate a formal response, and as the University 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 privacy by making a report that allows the University to discuss and/or provide supportive measures.

3.) Reports can also be made via the LiveSafe app.

The Title IX Coordinator or Deputy Coordinator will explain their role in resolving the complaint and will provide a description of the degrees of privacy that can be provided by campus and non-campus resources.

Additionally, the Title IX Coordinator will explain the grievance process and the individual will be given the option of seeking an informal or formal resolution to the complaint. Gannon can, and will, take prompt steps to protect the complainant as necessary, including providing supportive measures before the final outcome of the investigation. Counseling is available upon request for any alleged victim or alleged perpetrator of an incident of sexual misconduct. Such counseling will be provided by a counselor who does not provide counseling to any other person involved in the incident.

Additionally, in the event that parties to an alleged incident of sexual misconduct are both enrolled in an academic course, such course may be dropped by either party without academic penalty as one of many available supportive measures described below. In the case of an allegation of sexual misconduct that is a violation of the Student Code of Conduct against a student enrolled at Gannon, Gannon will take reasonable steps to protect the student and the alleged victim from retaliation and harassment during the pendency provide the student and alleged victim the following:

1. A prompt and equitable opportunity to present witnesses and other evidence relevant to the alleged violation;
2. Reasonable and equitable access to all evidence relevant to the alleged violation in Gannon's possession, including:
 1. Any statements made by the alleged victim or by other persons;

2. Information stored electronically;
3. Written or electronic communications;
4. Social media posts;
5. Or physical evidence, redacted as necessary to comply with any applicable federal or state law regarding confidentiality

Title IX Coordinator

Gannon has designated a Title IX Coordinator to coordinate Gannon's efforts related to the intake, investigation, resolution, and implementation of supportive measures to stop, remediate, and prevent discrimination, harassment, and retaliation prohibited under this policy.

The Title IX Coordinator manages the Title IX Office 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. All persons of the Title IX Team are vetted and trained to ensure they are not biased for or against any party in a specific case, or for or against Complainants and/or Respondents, generally. To raise any concern involving bias or conflict of interest by the Title IX Coordinator, contact the Vice President of Student Development and Engagement. 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 Vice President of Student Development and Engagement. Reports of misconduct or discrimination committed by any other Title IX Team member should be reported to the Title IX Coordinator.

Gannon's Title IX Coordinator is:

Susan Majocka, Director of Student Accountability and Prevention Education; Title IX Coordinator
Office Location: Student Development and Engagement, Beyer 306
814-871-7224
Kerner005@gannon.edu

Mandated Reporters (*Gannon has a separate policy on mandate reporting of child abuse*)

Faculty, Staff, and administrators are expected to report actual or suspected sexual harassment/sexual misconduct to the University Title IX Coordinator. Gannon has created a culture of reporting in order to assist students or employee's who may need support or assistance.

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

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

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

Confidentiality

Complainants of sexual misconduct who are not ready to inform the University may contact the psychologists, counselors and nurses at Gannon University's Counseling and Health Services or priests in the office of Mission and Ministry and the resident campus ministers for confidential support. These campus professionals can legally maintain confidentiality, which means no disclosure unless there is an imminent risk to self or others.

Under a federal law known as the Clery Act, the University is required to maintain statistics of serious crimes reported on or near campus. Confidential resources that are University Employees will submit anonymous statistical information for Clery Act purposes.

Confidential Resources

- Counseling Services 814-871-7622
- Health Services: 814-871-7622
- Campus Ministry 814-871-7435

Procedures to Follow if a Crime of Sexual Assault, Domestic Violence, Dating Violence, or Stalking Has Occurred

An individual who believes that he or she is the Complainant of sexual misconduct or has witnessed an incident of sexual misconduct is encouraged to make a report. The University encourages all individuals to seek assistance from a medical provider and/or law enforcement immediately after an incident of sexual misconduct. An individual's physical well-being should be addressed as soon as possible, whether or not that individual wishes to make a report to the University or law enforcement. The University will help any individual to get to a safe place and will provide transportation to the hospital, coordination with law enforcement and information about on- and off-campus resources and options for resolution.

A medical provider can provide emergency and/or follow-up medical services, and meet two goals: first, to diagnose and treat the full extent of any injury or physical effect and second, to properly collect and preserve evidence. Following an incident of sexual assault, evidence is best preserved for proof of a criminal offense within 96 hours of the assault. In the event of a report immediately following an incident of sexual assault, a Complainant is encouraged to seek medical attention as soon as possible, and even before any shower, bathing, douching, brushing of teeth, drinking, or change of clothing. Similarly, any clothing, towels or bedding should remain untouched pending collection by law enforcement. Whether or not an individual has chosen how to proceed at the time of the medical examination, taking the step to gather evidence will preserve the full range of options to seek resolution through the University's complaint processes or through the pursuit of criminal investigation.

Please note that under Pennsylvania law, a medical provider may be required to notify law enforcement of a reported sexual assault under most circumstances. The University encourages the Complainant to report the incident to law enforcement. However, the Complainant may at any time, decline to speak with a law enforcement officer and decide on the extent of his or her participation in a criminal prosecution.

Complainant who does not want to proceed

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

The Title IX Coordinator has ultimate discretion over whether Gannon 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 upon completion of an appropriate violence risk assessment.

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

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

Note that Gannon's ability to remedy and respond to notice may be limited if the Complainant does not want Gannon 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 Gannon's obligation to protect its community.

In cases in which the Complainant requests confidentiality/no formal action and the circumstances allow Gannon to honor that request, Gannon will offer Informal Resolution options, 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 Gannon, and to have the incidents investigated and properly resolved.

Supportive Measures

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

Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the parties to restore or preserve access to the University's education program or activity, including measures designed to protect the safety of all parties or the University's educational environment, and/or deter 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 University will inform the Complainant, in writing, that they may file a formal complaint with the University either at that time or in the future, if they have not done so already. The Title IX Coordinator works with the Complainant to ensure that their wishes are taken into account with respect to the supportive measures that are planned and implemented.

The University will maintain the privacy of the supportive measures, provided that privacy does not impair the University's ability to provide the supportive measures. The University will act to ensure as minimal an academic impact on the parties as possible. The University will implement measures in a way that does not unreasonably burden the other party.

These actions may include, but are not limited to:

- Referral to counseling, medical, and/or other healthcare services
- Referral to Employee Assistance program
<https://my.gannon.edu/facultyandstaffresources/HR/Benefit%20Documents/Aetna%20Resources%20for%20Living.pdf>
- Referral to community-based service providers
- Visa and immigration assistance
- Student financial aid counseling
- Education to the community or community subgroup(s)
- Altering campus housing assignment(s)
- Altering work arrangements for employees or student-employees
- Safety planning
- Providing campus safety escorts
- Implementing contact limitations (no contact orders) between the parties
- Academic support, extensions of deadlines, or other course/program-related adjustments
- [Trespass, Persona Non Grata (PNG), or Be-On-the-Lookout (BOLO) orders]
- Timely Warnings
- Class schedule modifications, withdrawals, or leaves of absence
- Increased security and monitoring of certain areas of the campus
- Any other actions deemed appropriate by the Title IX Coordinator

Written Notice

Following a report of sexual harassment, sexual assault, dating violence, domestic violence, or stalking, whether the offense occurred on or off campus, Gannon will provide the student or employee a written explanation of the student's or employee's rights and options.

Gannon will provide written notification to students and employees about existing counseling, health, mental health, victim advocacy, legal assistance, visa and immigration assistance, student financial aid, and other services available to victims, both within the institution and in the community. Gannon will provide written notification to victims about available options and assistance in the following, including how to request these changes and who to contact at the institution: academic situations, living situations, transportation situations, working situations, and protective measures.

Promptness

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

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

Privacy

Every effort is made by the University to preserve the privacy of reports. The University will not share the identity of any individual who has made a report or complaint of sexual harassment 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 University officials have a legitimate educational interest in being informed about incidents that fall within this policy, pursuant to the Family Educational Rights and Privacy Act (FERPA).

Only a small group of officials who need to know will typically be told about the complaint. Information will be shared as necessary with Investigators, witnesses, and the parties. The circle of people with this knowledge will be kept as tight as possible to preserve the parties' rights and privacy.

Jurisdiction of the University

This policy applies to the education program and activities of the University to conduct that takes place on the campus or on property owned or controlled by the University, at University-sponsored events, or in buildings owned or controlled by University's recognized student organizations. The Respondent must be a member of University's community in order for its policies to apply.

This policy can also be applicable to the effects of off-campus misconduct that effectively deprive someone of access to University'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 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 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 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 is detrimental to the educational interests or mission of the University.

If the Respondent is unknown or is not a member of the University community, the Title IX Coordinator will assist the Complainant in identifying appropriate campus and local resources and support options and/or, when criminal conduct is alleged, in contacting local or campus law enforcement if the individual would like to file a police report.

Further, even when the Respondent is not a member of the University's community, supportive measures, remedies, and resources may be accessible 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 barring individuals from University property and/or events.

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

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

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

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 University'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.

- a. 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.

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 University Title IX Coordinator and will be promptly investigated. The University is prepared to take appropriate steps to protect individuals who fear that they may be subjected to retaliation.

It is prohibited for The University or any member of the University's 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.

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

False Allegations and Evidence

Deliberately false and/or malicious accusations under this policy are a serious offense and will be subject to appropriate disciplinary action. This does not include allegations that are made in good faith but are ultimately shown to be erroneous or do not result in a policy violation determination.

Additionally, witnesses and parties knowingly providing false evidence, tampering with or destroying evidence, or deliberately misleading an official conducting an investigation can be subject to discipline under University policy.

Amnesty for Complainants and Witnesses

The Gannon community encourages the reporting of misconduct and crimes by Complainants and witnesses. Sometimes, Complainants or witnesses are hesitant to report to University officials or participate in grievance processes because they fear that they themselves may be in violation of certain policies, such as 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 Gannon community that Complainants choose to report misconduct to University 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, Gannon 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 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 Respondent with respect to a Complainant.

Disabilities Accommodations in the Resolution Process

Gannon is committed to providing reasonable accommodations and support to qualified students, employees, or others with disabilities to ensure equal access to Gannon's resolution process. Anyone needing such accommodations or support should contact the Office for Disability Services for student requests, or Human Resources for employee requests. They will review the request and, in consultation with the person requesting the accommodation and the Title IX Coordinator, determine which accommodations are appropriate and necessary for full participation in the process.

Federal Timely Warning Obligations

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

The 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):

- b) All "primary crimes," which include homicide, sexual assault, robbery, aggravated assault, burglary, motor vehicle theft, and arson;
- c) 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;

- d) VAWA-based crimes,⁶ which include sexual assault, domestic violence, dating violence, and stalking; and
- e) 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 shared with [campus law enforcement] 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 Police and Safety, 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.

⁶ VAWA is the Violence Against Women Act, enacted in 1994 codified in part at 42 U.S.C. sections 13701 through 14040.

Title IX/SEXUAL MISCONDUCT GRIEVANCE PROCEDURES

Procedure

Title IX Sexual Misconduct Grievance Procedures (“the Procedures”) will include a prompt, fair, and impartial process from the initial investigation to the final result. In a complaint involving sexual misconduct, including sexual harassment, sexual assault, dating violence, domestic violence, or stalking, if the Complainant is uninterested in pursuing a formal complaint, or if Gannon does not have the authority over the alleged Respondent, the alleged victim may still be able to receive supportive measures to assist in alleviating the effects of the sexual misconduct. An alleged victim of sexual misconduct has the right to stop the grievance process at any time; however, if the Title IX Coordinator believes there is compelling evidence that an offense may have been committed and that the alleged offense poses a health and/or safety threat to the campus community, the Title IX Coordinator may move forward to investigate and address the matter and take appropriate action to ensure the safety of the campus community even if the complainant does not want the matter pursued.

Gannon will act on any notice of violation of the Title IX Sexual Misconduct Policy (“the Policy”) that is received by the Title IX Coordinator or any other Official with Authority by applying the Procedures. Anywhere the Procedures indicates “Title IX Coordinator,” Gannon may substitute a trained designee as appropriate.

The Procedures below apply only to qualifying Title IX allegations of sexual harassment, including sexual assault, dating violence, domestic violence, and stalking, as defined by the Policy, involving Gannon students, staff, or faculty members. Sexual harassment allegations that do not meet the Title IX definitions, as described by the Policy, will be referred to Student Accountability or Human Resources, and addressed through procedures elaborated in Gannon student and employee handbooks.

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). All other allegations of misconduct unrelated to incidents covered by the Policy will be addressed through procedures elaborated in the student, faculty, and employee handbooks.

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 Gannon 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. Gannon encourages parties to discuss this with their Advisors before doing so.

Notice of Complaint

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

Gannon 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 with the decision-makers.

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

Initial Assessment

- Following receipt of notice or a complaint of an alleged violation of the Policy, the Title IX Coordinator engages in an initial assessment, which is typically one to five (5) business days in duration. References to the Title IX Coordinator throughout the Procedures may also include a trained Title IX designee. The steps in an initial assessment include.
- If a formal complaint is received, the Title IX Coordinator assesses its sufficiency and works with the Complainant to make sure it is correctly completed.
- The Title IX Coordinator reaches out to the Complainant to offer supportive measures.
- The Title IX Coordinator works with the Complainant to ensure they are aware of the right to have an Advisor.
- The Title IX Coordinator works with the Complainant to determine whether the Complainant prefers a supportive and remedial response, an informal resolution option, or a formal investigation and grievance process.
 - If a supportive and remedial response is preferred, the Title IX Coordinator works with the Complainant to identify their wishes, assesses the request, and implements accordingly. No Formal Grievance Process is initiated, though the Complainant can elect to initiate one later, if desired.
 - If an informal resolution option is preferred, the Title IX Coordinator assesses whether the complaint is suitable for informal resolution, and may seek to determine if the Respondent is also willing to engage in informal resolution.
 - If a Formal Grievance Process is preferred, the Title IX Coordinator determines if the misconduct alleged falls within the scope of Title IX:
 - If it does, the Title IX Coordinator will initiate the formal investigation and grievance process, directing the investigation to address:
 - an incident, and/or
 - a pattern of alleged misconduct, and/or
 - a culture/climate concern, based on the nature of the complaint.
 - If it does not, the Title IX Coordinator determines that Title IX does not apply (and will “dismiss” that aspect of the complaint, if any), assesses which policies may apply. Please note that dismissing a complaint under Title IX is solely a procedural requirement under Title IX and does not limit the University’s authority to address a complaint with an appropriate process and remedies.

Violence Risk Assessment

In many cases, the Title IX Coordinator may determine that a Violence Risk Assessment (VRA) should be conducted by a sub set of the Behavior Intervention Team as part of the initial assessment. The VRA will determine if there is a need for a Emergency Removal and assess the need for a timely warning.

Dismiss a of a complaint (Mandatory and Discretionary)⁷

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

⁷ These dismissal requirements are mandated by the 2020 Title IX Regulations, 34 CFR §106.45.

- 1) The conduct alleged in the formal complaint would not constitute sexual harassment as defined above, even if proved; and/or
- 2) The conduct did not occur in an educational program or activity controlled by the University (including buildings or property controlled by recognized student organizations), and/or the University does not have control of the Respondent; and/or
- 3) The conduct did not occur 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.⁸

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

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

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

This dismissal decision is appealable by any party under the procedures for appeal below.

Counterclaims

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

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 student or other individual justifies removal. This risk analysis is performed by the Title IX Coordinator in conjunction with identified members of the Behavioral Intervention Team [also known BIT).

⁸ Such a Complainant is still entitled to supportive measures, but the formal grievance process is not applicable.

In all cases in which an emergency removal is imposed, the student or employee will be given notice of the action and the option to request 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 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 within 48 hours of notice of removal, objections to the emergency removal will be deemed waived. A Complainant and their Advisor may be permitted to participate in this meeting if the Title IX Coordinator determines it is equitable to do so. This section also applies to any restrictions that a coach or athletic administrator may place on a student-athlete arising from allegations related to Title IX. There is no appeal process for emergency removal decisions.

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

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

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

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

Independence and Conflict-of-Interest

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

To raise any concern involving bias or conflict of interest by the Title IX Coordinator, contact the Vice President of Student Development and Engagement, Brian Nichols at Nichols006@gannon.edu.

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 Vice President for Student Development and Engagement at Nichols006@gannon.edu. Reports of misconduct or discrimination committed by any other Title IX Team member should be reported to the Title IX Coordinator by emailing titleix@gannon.edu

Advisor

Right to an Advisor

The parties may each have an Advisor⁹ of their choice present with them for all meetings, interviews, and hearings within the resolution process, if they so choose. The parties may select whoever they wish to serve as their Advisor as long as the Advisor is eligible and available.¹⁰

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 Gannon community.

The Title IX Coordinator will also offer to assign a trained Advisor for any party if the party so chooses. If the parties choose an Advisor from Gannon, the Advisor will be trained by Gannon and be familiar with Gannon's resolution process. If the parties choose an Advisor from outside of those identified by Gannon, the Advisor may not have been trained by Gannon and may not be familiar with Gannon'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 hearing with the decision-makers.

Advisors in Hearings/Gannon-Appointed Advisor

A party may reject this appointment and choose their own Advisor, but they may not proceed without an Advisor. Gannon will appoint an Advisor, regardless of the participation or non-participation of the advised party in the hearing conducted by the decision-makers

Advisor's Role

The parties may be accompanied by their Advisor in all meetings and interviews at which the party is entitled to be present, including intake and interviews. Advisors should help the parties prepare for each meeting and are expected to advise ethically, with integrity, and in good faith. Gannon 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, Gannon is not obligated to provide an attorney.

Pre-Interview 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 OL's policies and procedures.

⁹ This could include an attorney, advocate, or support person. The law permits one Advisor for each party (witnesses are not entitled to Advisors within the process, though they can be advised externally).

¹⁰ "Available" means the party cannot insist on an Advisor who simply doesn't have inclination, time, or availability. Also, the Advisor cannot have institutionally conflicting roles, such as being a Title IX administrator who has an active role in the matter, or a supervisor who must monitor and implement sanctions.

Advisor Violations of Gannon Policy

Because this is an educational process, each party must always speak for themselves. All Advisors are subject to the same Gannon policies and procedures, whether they are attorneys or not. Advisors are expected to advise their advisees without disrupting proceedings. Advisors should not address Gannon 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.

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

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

Sharing Information with the Advisor

Gannon expects that the parties may wish to have Gannon share documentation and evidence related to the allegations with their Advisors. Parties may share this information directly with their Advisor. Doing so may help the parties participate more meaningfully in the resolution process.

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 Gannon University. Gannon 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 Gannon's privacy expectations.

Expectations of an Advisor

Gannon generally expects an Advisor to adjust their schedule to allow them to attend University meetings when planned. Gannon not required to reschedule a meeting if the Advisor cannot attend a meeting, but may change scheduled meetings to accommodate an Advisor's inability to attend, if doing so does not cause an unreasonable delay. Gannon may also make reasonable provisions to allow an Advisor who cannot attend in person to attend a meeting by telephone, video conferencing, or other similar technologies as may be convenient and available.

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.

Resolution

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 Gannon policy. Although 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 related to Informal Resolution, discussed below. Gannon encourages parties to discuss any sharing of information with their Advisors before doing so.

Informal Resolution

A complainant may elect to pursue an informal resolution for all allegations of sexual misconduct.

An informal resolution is designed to resolve complaints quickly, efficiently and to the mutual satisfaction of all parties involved. Informal resolutions include:

but are not limited to,

- Mediation of the complaint conducted by the Student Development staff in appropriate cases.
- Agreement in which one or more of the parties involved agrees to accept agreed upon corrective actions in the form of a warning, censure, probation, education, or counseling as may be warranted by the circumstances.
- Both the complainant and respondent must agree to engage in informal resolution. Either party can end the informal resolution process at any time, for any reason, and begin the process to pursue formal conduct proceedings. The Title IX Coordinator or their designee has the discretion to determine if it would be inappropriate to informally mediate any particular sexual misconduct complaint.

Formal Grievance Process:

Notice of Investigation and Allegations

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

The NOIA will include:

- A meaningful summary of all of allegations,
- The identity of the involved parties (if known),
- The precise misconduct being alleged,
- The date and location of the alleged incident(s) (if known),
- The specific policies implicated,
- A description of the applicable procedures,
- A statement of the potential sanctions/responsive actions that could result,
- A statement that the 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 and/or relevant 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,
- A statement informing the parties that the University 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,
- The name(s) of the Investigator(s), along with a process to identify, in advance of the interview process, to the Title IX Coordinator any conflict of interest that the Investigator(s) may have, and
- An instruction to preserve any evidence that is directly related to the allegations.

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

Notice will be made in writing and may be emailed or delivered in person, It will be emailed to the parties' University-issued email or designated accounts. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

Resolution Timeline

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

Appointment of Investigators

Once the decision to commence a formal investigation is made, the Title IX Coordinator appoints investigator(s) , typically a team of 2 investigators is used to investigate., usually within two (2) business days of determining that an investigation should proceed.

Ensuring Impartiality

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

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

Investigation Timeline Engagement

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

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

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

Delays in the Investigation Process and 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 language assistance, the absence of parties and/or witnesses, and/or accommodations for disabilities or health conditions.

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

University action(s) or processes 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.

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 University aims to complete the investigation within 30 days. At times the investigation may take longer. The University's investigative process is not a criminal investigation, and it does not take away the complainant's right to pursue a criminal investigation. The University process may be conducted separately or congruently with a criminal investigation.

It will be at the complainant's discretion to make a criminal report.

The University will investigate all complaints of sexual misconduct. The steps of the investigative phase are listed below. The investigative team will meet with the complainant and respondent separately to provide notification of the complaint and the procedures that will follow.

1. The respondent may elect to take responsibility for a violation at the onset of the investigation. The University will still follow the investigative procedures.
2. Respondents may choose not to participate in the investigation; however the investigation will proceed and the findings will be based on all available evidence. Adverse inferences will not be drawn from a respondent's decision not to participate in the investigation.
3. The Investigative Team will generally take the following steps:
 - a. The Investigative Team will meet separately with the complainant and the respondent to gather facts regarding the incident.
 - b. The Investigative Team will ask both the complainant and respondent to provide a list of witnesses and other relevant information.

- c. The Investigative Team may meet with other parties who have information regarding the incident as the Investigative Team so elects.
 - d. All available information to the complaint will be reviewed, including but not limited to emails, videos, text messages, social media, etc.
 - e. The Investigative Team may assist with supportive measures at the request of the Title IX Coordinator.
 - f. Identify all policies implicated by the alleged misconduct and notify the Complainant and Respondent of all of the specific policies implicated
 - g. Provide each interviewed party and witness an opportunity to review and verify the Investigator's summary notes (or transcript) of the relevant evidence/testimony from their respective interviews and meetings, allow five (5) business days for feedback or summary is deemed acceptable.
 - h. 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
 - i. Prior to the conclusion of the investigation, provide 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 parties may elect to waive the full ten days. Each copy of the materials shared will be watermarked on each page with the role of the person receiving it (e.g., Complainant, Respondent, Complainant's Advisor, Respondent's Advisor).
 - j. The Investigator(s) may elect to respond in writing in the investigation report to the parties' submitted responses and/or to share the responses between the parties for additional responses
 - k. The Investigator(s) will incorporate relevant elements of the parties' written responses into the final investigation report, include any additional relevant evidence, make any necessary revisions, and finalize the report. The Investigator(s) should document all rationales for any changes made after the review and comment period
 - l. [The Investigator(s) shares the report with the Title IX Coordinator and/or legal counsel for their review and feedback]
 - m. The Investigator will incorporate any relevant feedback, and the final report is then shared with all parties and their Advisors through secure electronic transmission or hard copy at least ten (10) business days prior to a hearing. The parties are also provided with a file of any directly related evidence that was not included in the report
4. If any changes are made to the report the complainant and respondent will again review the report. Once the report is reviewed by both parties and no additional changes need to be made as determined by the Investigative Team, the report will be presented the SMC hearing panel. The SMC hearing panel may:
- Accept the report.
 - Request clarification and ask questions.
 - Request that additional information be gathered.

5. If additional information is requested by the decision panel the Investigative Team will gather the information and repeat steps 4, 5, and 6.
6. Once the Investigative Report is accepted by the SMC Decision Making panel, a hearing will be scheduled.

Role and Participation of Witnesses in the Investigation

Witnesses (as distinguished from the parties) who are employees of Gannon are expected to cooperate with and participate in the Gannon's investigation and resolution process. Failure of such witnesses to cooperate with and/or participate in the investigation or resolution process constitutes a violation of policy and may warrant discipline. Student witnesses and witnesses from outside the Gannon community are encouraged to cooperate with Gannon investigations and to share what they know about a complaint.

Although in-person interviews for parties and all potential witnesses are ideal, circumstances (e.g., study abroad, summer break) may require individuals to be interviewed remotely. Skype, Zoom, FaceTime, WebEx, or similar technologies may be used for interviews if the Investigator(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(s), though not preferred.

Recording of Interviews

No unauthorized audio or video recording of any kind is permitted during investigation meetings. If Investigator(s) elect to audio and/or video record interviews, all involved parties must be made aware of [and consent to]¹¹ audio and/or video recording.

Evidentiary Considerations in the Investigation

The investigation does not consider: 1) incidents not directly related to the possible violation, unless they evidence a pattern; 2) questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

Referral for Decision Making Panel

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 to a decision hearing.

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

The Title IX Coordinator will select an appropriate panel of individuals from the pool of decision makers.

¹¹ Consent of the interviewer and interviewee is required in “dual-party recording” states.

Title IX/Sexual Misconduct Committee

The Sexual Misconduct Committee is the University body charged with resolving complaints of the Title IX/Sexual Misconduct Policy. The committee is composed of trained staff and administrators. Each sexual misconduct complaint is heard and adjudicated by a decision panel of three representatives drawn from the full membership of the SMC by the Title IX Coordinator. A chairperson of the hearing committee will be designated by the Title IX Coordinator.

Religious Exemption/Cross Examination

In line with the mission and religious tenets of Gannon the University will conduct a process that protects the dignity and respect of all parties and witnesses participating in the process.

After reviewing the Investigative Report Gannon will request parties identify any witnesses that they may have questions for at the hearing. With the agreement of the parties, it may be decided in advance of the hearing that certain witnesses do not need to be present if their testimony can be adequately summarized by the Investigator(s) in the investigation report or during the hearing.

If neither party has questions for a witness the witness will not be required to attend the hearing. The Title IX/Sexual Misconduct Committee will review the Investigative Report and will also be permitted to identify a witness they may need to attend the hearing.

Parties may submit a list of questions in advance of the hearing to the Title IX Coordinator. The Title IX Coordinator will forward the question on to the chair of the panel who will review for relevancy. Questions that arise on the day of the hearing will be permitted to be asked through the private chat function in zoom to the chair or through text message. The chair will then ask the question to the parties involved.

Evidentiary Considerations in the Hearing

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

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

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

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

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 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.
- A statement that if any party or witness does not appear at the scheduled hearing, the hearing may be held in their absence.
- Notification that the parties may have the assistance of an Advisor of their choosing at the hearing. The party must notify the Title IX Coordinator if they do not have an Advisor, and the University will appoint one.
- A copy of all the materials provided to the Decision-maker(s) about the matter, unless they have been provided already.¹²
- An invitation to each party to submit to the Chair an impact statement pre-hearing that the Decision-maker will review during any sanction determination.
- An invitation to contact the Title IX Coordinator to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing, at least seven (7) business days prior to the hearing.

Hearings for possible violations that occur near or after the end of an academic term (assuming the Respondent is still subject to this Policy) and are unable to be resolved prior to the end of term will typically be held immediately after the end of the term or during the summer, as needed, to meet the resolution timeline followed by the University and remain within the 60-90 business day goal for resolution.

Hearing Process

Hearings are conducted in private and are not open to members of the University community or the public.

The University recognizes that participation in a hearing may be difficult for those involved; the hearing can be set up such that the complainant and the respondent will have minimal interaction during the hearing or will not be in the hearing room at the same time.

The order of a hearing will be determined by the Chair of the hearing committee, but will generally follow this outline:

¹² The final investigation report may be shared using electronic means that preclude downloading, forwarding, or otherwise sharing.

- 1) The Chair will call the hearing to order and state the purpose of the hearing: to determine whether there has been a violation of the University's policy.
- 2) The complainant and respondent may have an advisor present during the hearings. The advisor may assist the party with formulating and submitting questions to the chair, the advisor may also provide support to the party, Advisors are required to follow the rules of the University.
- 3) Introductions—each person involved in the hearing will be introduced.
- 4) The hearing panel will ask the investigators any questions they have regarding the investigative Report.
- 5) The complainant and respondent will be invited to present a brief statement of the facts to the hearing panel, if they so choose. (impact statements are not permitted at this time)
- 6) Members of the hearing panel may ask questions of the complainant and respondent.
- 7) The complainant and respondent may ask questions of each other through the chair of the hearing committee. The chair will determine if a question is relevant and appropriate.
- 8) Witnesses will be called and the Panel, Complainant, and respondent will be able to ask any relevant questions through the chair.
- 9) The Chair will ask for the members of the hearing panel to determine whether any additional clarification or information is needed from the complainant, respondent, investigator or witnesses.
- 10) The hearing panel will go into closed session to determine whether a violation of policy was committed.
- 11) The decision of the hearing panel that a violation occurred or did not occur will be reached by a majority vote utilizing the preponderance of evidence standard ("more likely than not").
- 12) If the respondent is found to have violated the sexual misconduct policy the SMC will recommend a sanction. The sanction will be based on consideration of the specific facts of the case itself and relevant factors such as prior disciplinary history.

Deliberation, Decision-making, and Standard of Proof

The Decision-maker(s) 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 is the standard utilized. 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-maker(s) may then consider the previously submitted party impact statements in determining appropriate sanction(s).

The Decision-maker(s) will review the statements and any pertinent conduct history provided by the appropriate sanction(s) and in consultation with other appropriate administrators, including the Vice President of Student Affairs, Director of Human Resources, and the Vice President for Academic Affairs, or designee(s), as required.

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 not relied upon in its determination, credibility assessments, and any sanctions

This report is typically 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 5 business days of receiving the Decision-maker(s)' deliberation statement.

The Notice of Outcome will then be shared with the parties simultaneously. Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official Gannon records, or emailed to the parties' Gannon-issued email or otherwise approved account. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

The Notice of Outcome will articulate 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 results are considered by the University to be final, any changes that occur prior to finalization, and the relevant procedures and bases 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
- Previous allegations or allegations involving similar conduct
- The need for sanctions/responsive actions to bring an end to the sexual Harassment and/or retaliation
- The need for sanctions/responsive actions to prevent the future recurrence of sexual harassment and/or retaliation
- The need to remedy the effects of the sexual harassment and/or

- retaliation on the Complainant and the community
- The impact on the parties
- Any other information deemed relevant by the Decision-maker(s)

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

Possible sanctions are not limited to those listed below. Sanctions may be combined.

Change of Housing	Relocation to a new housing assignment.
Community Service	Assignment of a number of service hours to be completed within the campus community or the general community.
Counseling	Students may be required to attend counseling on or off campus. If mandated to attend counseling off campus the student will be responsible for any expenses or costs.
Probation	Students will be placed on probation for a specific period of time. During the time if there are additional violations they may be dismissed from the University
Formal Apology	A written statement in which the student reflects and apologizes for their behavior.
Education	Students may be required to participate in an educational program or experience.
No-Contact Order	A directive that mandates a student not to contact another student. A no-contact order includes contact, including in person, via e-mail, telephone, text messaging, Facebook or any other method of electronic or direct communication. The order also includes third parties acting on the person's behalf. It warns the student that any contact could be considered a violation of University policy
Restitution	Students may be required to pay for damages or other expenses.
Restricted Campus Access	Students may be restricted from entering buildings on campus, from registering for certain courses or from participation in activities.
Suspension	The student may be excluded from participation in any academic or other activities of the University for a specified period. Students who have been suspended from the University forfeit all University fees, are withdrawn from University courses contingent on the academic calendar (if after the withdrawal date, students receive F grades), and are not permitted on campus or at University-

sponsored events without the permission of the University Student Conduct Officer. Students who are suspended are permitted to reapply to the University as long as they fulfill all requirements of the suspension.

Expulsion

Expulsion is permanent exclusion of the University. Students who have been expelled forfeit all University fees, are withdrawn from University courses contingent on the academic calendar (if after the withdrawal date, students receive F grades), and are not permitted on campus without the permission of the University Student Conduct Officer. Students who are expelled are not permitted to reapply at the University.

Employee Sanctions/Responsive Actions

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

- *Warning – Verbal or Written*
- *Performance Improvement Plan/Management Process*
- *Enhanced supervision, observation, or review*
- *Required Counseling*
- *Required Training or Education*
- *Probation*
- *Denial of Pay Increase/Pay Grade*
- *Loss of Oversight or Supervisory Responsibility*
- *Demotion*
- *Transfer*
- *Reassignment*
- *Delay of tenure track progress*
- *Assignment to new supervisor*
- *Restriction of stipends, research, and/or professional development resources*
- *Suspension with pay*
- *Suspension without pay*
- *Termination*
- *Other Actions:* In addition to or in place of the above sanctions/responsive actions, the University may assign any other responsive actions as deemed appropriate.

Withdrawal or Resignation While Charges Pending

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

However, 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 sexual harassment and/or retaliation. The student who withdraws or leaves while the process is pending may not return to the University. Such exclusion applies to all campuses of University. A hold will be placed on their ability to be readmitted. They may also be barred from University property and/or events.

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

b. Employees: 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 retaliation.

The employee who resigns with unresolved allegations pending is not eligible for rehire with the University or any campus of the University, and the records retained by the Title IX Coordinator will reflect that status.

All University responses to future inquiries regarding employment references for that individual will include that the former employee resigned during a pending disciplinary matter.

Appeals

Any party may file a request for appeal ("Request for Appeal"), but it must be submitted in writing to the Title IX Coordinator within 7 days of the delivery of the Notice of Outcome. The Associate Vice President for Student Development and Engagement (AVPSDE) or his or her designee

The Request for Appeal will be forwarded to the AVPSDE for consideration to determine if the request meets the grounds for appeal (a Review for Standing).

This review is not a review of the merits of the appeal, but solely a determination as to whether the request meets the grounds and is timely filed.

a. Grounds for Appeal

Appeals are limited to the following grounds:

- (A) Procedural irregularity that affected the outcome of the matter;
- (B) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
- (C) The Title IX Coordinator, Investigator(s), or Decision-maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent that affected the outcome of the matter.

If any of the grounds in the Request for Appeal do not meet the grounds in this Policy, that request will be denied by the AVPSDE and the parties will be notified in writing of the denial and the rationale.

If any of the grounds in the Request for Appeal meet the grounds in this Policy, then the AVPSDE will notify the other party(ies) and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigators and/or the original Decision-maker(s).

The other party(ies) , the Title IX Coordinator, and, when appropriate, the Investigators and/or the original Decision-maker(s) will be mailed, emailed, and/or provided a hard copy of the request with the approved grounds and then be given 5 business days to submit a response to the portion of the appeal

that was approved and involves them. All responses will be forwarded by the Chair to all parties for review and comment.

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

Neither party may submit any new requests for appeal after this time period. The AVPSDE will collect any additional information needed and all documentation regarding the approved grounds. The AVPSDE will render a decision in no more than 5 business days, barring exigent circumstances. All decisions apply the Preponderance of the Evidence Standard.

A Notice of Appeal Outcome will be sent to all parties simultaneously including the decision on each approved ground and rationale for each decision. The Notice of Appeal Outcome will specify the finding on each ground for appeal, any specific instructions for remand or reconsideration, any sanctions that may result 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' University-issued email or otherwise approved account. Once mailed, emailed and/or received in-person, notice will be presumptively delivered.

b. Sanctions Status During the Appeal

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

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

If the original sanctions include separation in any form, the University may place a hold on official transcripts, diplomas, graduations, and course registration pending the outcome of an appeal. The Respondent may request a stay of these holds from the Title IX Coordinator within two (2) business days of the notice of the sanctions. The request will be evaluated by the Title IX Coordinator or designee, whose determination is final.

c. Appeal Considerations

- Decisions on appeal are to be deferential to the original decision, making changes to the finding only when there is clear error and to the sanction(s)/responsive action(s) only if there is a compelling justification to do so.
- Appeals are not intended to provide for a full re-hearing (de novo) of the allegation(s). In most cases, appeals are confined to a review of the written documentation or record of the original hearing and pertinent documentation regarding the specific grounds for appeal.
- An appeal is not an opportunity for Appeal Decision-makers to substitute their judgment for that of the original Decision-maker(s) merely because they disagree with the finding and/or sanction(s).
- The AVPSDE/Decision-maker(s) 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 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 three 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 Remedies/Other Actions

Following the conclusion of the resolution process, and in addition to any sanctions implemented, the Title IX Coordinator may implement additional long-term remedies or actions with respect to the parties and/or the campus community that are intended to stop the sexual harassment 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
- Implementation of long-term contact limitations between the parties
- Implementation of adjustments to academic deadlines, course schedules, etc.

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

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

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 and/or Interim and Long-term Remedies and/or Responsive Actions

All Respondents are expected to comply with the assigned sanctions, responsive actions, and/or corrective actions within the timeframe specified by the final Decision-maker(s) (including the AVPSD).

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.

A suspension will only be lifted when compliance is achieved to the satisfaction of the Title IX Coordinator.

Recordkeeping

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 therefrom;
5. Any Informal Resolution and the result therefrom;
6. All materials used to train Title IX Coordinators, Investigators, Decision-makers, and any person who facilitates an Informal Resolution process. University will make these training materials publicly available on University's website.
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.

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

Revision of this Policy and Procedures

Gannon reserves the right to make changes to this document as necessary, and once those changes are posted online, they are in effect. This policy supersedes any previous policy(ies) addressing harassment, sexual misconduct, and/or retaliation.

Gannon shall review this policy annually and with appropriate University approval, revise as necessary.

During the resolution process, the Title IX Coordinator may make minor modifications to related procedures that do not materially jeopardize the fairness owed to any party. 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 is effective August 14, 2020

INTERIM SEXUAL HARASSMENT POLICIES AND PROCEDURES
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Appendix A: Support and Resources:

There are several University offices available to assist members of the Gannon community who have experienced harm on or off campus including the Gannon Police and Safety, University Health and Counseling Services and the Division of Student Development and Engagement.

Erie Campus

Day-time Campus Resources (Mon. to Fri. 8 a.m. to 4 p.m.)

- University Police 814-871-7690 (24-Hours)
- Counseling Services 814-871-7622
- Health Services: 814-871-7622
- Campus Ministry 814-871-7435

24-Hour Resources outside of the University system:

- SafeNet 814-455-1774 (24-hr. Crisis Hotline: 814-454-8161)-Relationship Violence
- Erie Crime Victim Center 814-455-9414 (Crisis or Sexual Violence Advocate 1- 800-352-7273)
- Erie Police Department: 814-879-1125 or 911
- UPMC Hamot: 814-877-6000
- UPMC Crisis Network: 1-888-796-8226
- St. Vincent Hospital: 814-452-5000 (ask for Emergency Dept.)

Ruskin Campus

- Safe Harbor Behavioral Hotline & 1-877-550-4007 Warm line 8am-4pm weekdays
- Sexual Assault: Counseling, Advocacy, Support Services for Victims of Crime. (813) 964-1964 24 Hr
- Crisis Center of Tampa Bay Domestic Violence: Legal Advocacy, Counseling, Shelter and Other Assistance. (813) 645-7874 Office information (813) 641-7027 Shelter Information
- RAINN: Rape, Abuse and Incest National Network Sexual Assault Hotline • 800-656- HOPE (4673)

Appendix B: 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 Gannon officials.
- 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 treated with respect by Gannon officials.
- The right to have Gannon 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 Gannon officials from reporting sexual misconduct or discrimination to both on-campus and off-campus authorities.
- The right to be informed by Gannon officials of options to notify proper law enforcement authorities, including on-campus and local police, and the option(s) to be assisted by Gannon authorities 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 Gannon officials.
 - The right to be informed of available interim actions and supportive measures,
 - 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
- The right to have Gannon maintain such actions for as long as necessary and for supportive measures to remain private, provided privacy does not impair Gannon's ability to provide the supportive measures.
 - The right to receive sufficiently advanced, written notice of any meeting or interview involving the other party, when possible.
- The right to ask the Investigator(s) and to identify and question relevant witnesses, including expert witnesses.
 - The right to provide the Investigator(s)/Title IX Coordinator with a list of questions that, if deemed relevant by the Investigator(s)/Title IX Coordinator, 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 their account of the alleged misconduct and have that account be on the record.
- The right to receive a copy of the investigation report, including all factual, policy, and/or credibility analyses performed, and all relevant and directly related evidence available and used to produce the investigation report, subject to the privacy limitations imposed by state and federal law, prior to the hearing, and the right to have at least ten (10) business days to review the report prior to the hearing.
- The right to respond to the investigation report, including comments providing any additional relevant evidence after the opportunity to review the investigation report, and to have that response on the record.

- The right to be informed of the names of all witnesses whose information will be used to make a finding, in advance of that finding, when relevant.
 - The right to regular updates on the status of the investigation and/or resolution.
 - The right to have reports of alleged policy violations addressed by investigators, Title IX Coordinators, and decision-makers who have received relevant annual training.
 - The right to decision-makers that are free of bias and conflict-of-interest.
 - 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 Gannon representative in the process be recused on the basis of disqualifying bias and/or conflict of interest.
 - The right to have an Advisor of their choice to accompany and assist the party in all meetings and/or interviews associated with the resolution process.
 - The right to the use of the appropriate standard of evidence, preponderance of the evidence, to make a finding after an objective evaluation of all relevant evidence.
 - 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, delivered simultaneously (without undue delay) to the parties.
 - The right to be informed in writing of when a decision by Gannon is considered final.
 - 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 Gannon
- The right to a fundamentally fair resolution as defined in these procedures. Revision of this Policy and Related Procedures

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