



**CARSON-NEWMAN**  
A CHRISTIAN UNIVERSITY

**TITLE IX POLICY AND GRIEVANCE PROCEDURES:  
SEX-BASED HARASSMENT AND DISCRIMINATION**

**The University maintains the following policy on sex discrimination and sexual harassment in compliance with Title IX of the Education Amendments of 1972 and the Title IX regulations in 34 CFR Part 106. The University provides notice of this policy to applicants for admission and employment, students, and employees to the extent required by law.**

The University has at least one designated “Title IX Coordinator” at all times and publishes the Coordinator’s contact information on campus and on the University website. Emails sent to TitleIX@cn.edu will reach the Title IX Coordinator.

This policy and associated procedures are reviewed for revision each May and promptly upon the release of federal Title IX-specific regulations.

**DISCRIMINATION ON THE BASIS OF SEX**

The University does not unlawfully discriminate in its programs and activities on the basis of sex and complies with state and federal laws prohibiting sex discrimination. The requirement not to discriminate on the basis of sex applies to admissions, except undergraduate admissions as provided by Title IX.

As a non-profit Christian institute of higher learning, the University exercises its rights under state and federal law to use religion as a factor in making employment decisions. Some regulations issued under Title IX relating to discrimination on the basis of sex are not consistent with the University’s religious tenets and do not apply to the University (34 CFR § 106.12(a)).

Questions or inquiries about the application of Title IX to the University’s programs and activities may be addressed to the University’s Title IX Coordinator, to the Assistant Secretary of the Department of Education, or both.

**TITLE IX SEXUAL HARASSMENT PROHIBITED CONDUCT**

The University prohibits Sexual Harassment as defined by Title IX of the Education Amendments of 1972, and the Title IX regulations in 34 C.F.R. part 106.

Sexual Harassment is conduct on the basis of sex that satisfies one or more of the following:

- (1) A University employee conditioning the provision of a University aid, benefit, or service on an individual’s participation in unwelcome sexual conduct (*quid pro quo*);
- (2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive,

and objectively offensive that it effectively denies a person equal access to the University's education program or activity; or

- (3) Sexual Assault (as defined in 20 U.S.C. 1092(f)(6)(A)(v));
- Dating Violence (as defined in 34 U.S.C. 12291(a)(10));
- Domestic Violence (as defined in 34 U.S.C. 12291(a)(8));
- or Stalking (as defined in 34 U.S.C. 12291(a)(30)).

The University prohibits retaliation with regard to reports of violations of Title IX. Neither the University nor any other person may engage in retaliation against an individual because the individual has made a report or complaint or testified, assisted, participated, or refused to participate in any manner in an investigation, proceeding, or Hearing under the Title IX grievance procedure.

### **WHEN DOES TITLE IX APPLY?**

Title IX applies when a Complainant is participating or attempting to participate in an Education Program or Activity of the University. The alleged conduct must meet the definition of Sexual Harassment as defined in this policy. The alleged conduct must have occurred at a location, event, or circumstance over which the University exercises (or, during the relevant time, exercised) substantial control over both the Respondent and the context in which the Sexual Harassment occurred. The alleged conduct must occur against a person in the United States.

### **DEFINITIONS**

The following words in this policy, when capitalized, mean the following:

*Complainant:* an individual who is alleged to be the victim of conduct that could constitute Sexual Harassment.

*Consent:* Consent is informed, knowing and voluntary permission. Consent is active, not passive. Silence, in and of itself, cannot be interpreted as consent. Consent can be given by words or actions, as long as those words or actions create mutually understandable permission regarding the conditions of sexual activity. Consent to one form of sexual activity cannot imply consent to other forms of sexual activity. Previous relationships or consent cannot imply consent to future sexual acts. Consent cannot be procured by use of physical force, compelling threats, or intimidating behavior. In order to give effective consent, one must be of legal age and not otherwise legally incapacitated.

*Dating Violence:* violence committed by a person

- (1) who is or has been in a social relationship of a romantic or intimate nature with the victim; and
- (2) where the existence of such a relationship shall be determined based on a consideration

of the following factors:

- (a) The length of the relationship.
- (b) The type of relationship.
- (c) The frequency of interaction between the persons involved in the relationship.

*Decision-maker:* the person designated by the University to conduct the Hearing and make a determination on the allegations in a Formal Complaint. No Decision-maker will be a Title IX Coordinator or the Investigator.

*Document:* a document or electronic submission (such as by email) that contains the Complainant's physical or digital signature, or otherwise indicates that the Complainant is the person filing the Formal Complaint.

*Domestic Violence:* felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the State of Tennessee, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the State of Tennessee.

*Education Program or Activity:* a location, event, or circumstance over which the University exercises (or, during the relevant time, exercised) substantial control over both the Respondent and the context in which the Sexual Harassment occurs, including any building owned or controlled by a student organization that is officially recognized by the University.

*Facilitator:* A person who serves to facilitate an informal resolution of a Formal Complaint through mediation, arbitration, restorative justice, or a similar process.

*Formal Complaint:* a document which:

- (1) is filed by a Complainant or signed by the Title IX Coordinator; and
- (2) if filed by the Complainant, he or she is participating in or attempting to participate in the University's education program; and
- (3) alleges Sexual Harassment against a Respondent; and
- (4) Requests that the University investigate.

*Hearing:* The live hearing before a Decision-maker for the purpose of presenting evidence regarding the allegations in a Formal Complaint and allowing for questioning and cross-examination of Parties and witnesses by the Parties' advisors, all in order that the Decision-maker can determine if the Respondent is responsible for violating University policy.

*Investigative Report:* The written report created by the Investigator that fairly summarizes all relevant evidence obtained during the investigation of a Formal Complaint.

*Investigator:* The person designated by the University to investigate a Formal Complaint. If more than one person is designated, this term refers to all of the investigators.

*Party:* either the Complainant or the Respondent.

*Parties:* All Complainants and all Respondents with respect to a complaint of Sexual Harassment or with respect to multiple Formal Complaints which have been consolidated.

*Respondent:* An individual who has been reported to be the perpetrator of conduct that could constitute Sexual Harassment.

*Sexual Assault:* an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation, including: forcible or statutory rape, forcible sodomy, sexual assault with an object, forcible fondling, and incest.

*Sexual Harassment:* conduct on the basis of sex that satisfies one or more of the following:

- (1) A University employee conditioning the provision of a University aid, benefit, or service on an individual's participation in unwelcome sexual conduct;
- (2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's education program or activity; or
- (3) Sexual Assault, Dating Violence, Domestic Violence, or Stalking.

*Stalking:* engaging in a course of conduct directed at a specific person that would cause a reasonable person to (1) fear for his or her safety or the safety of others; or (2) suffer substantial emotional distress.

*Supportive Measures:* non-disciplinary, non-punitive individualized services offered to the Complainant or the Respondent (or one who may become a Respondent) before or after the filing of a Formal Complaint or where no Formal Complaint has been filed.

## **RESPONSE TO SEXUAL HARASSMENT (WITH OR WITHOUT A FORMAL COMPLAINT)**

If the University has actual knowledge of Sexual Harassment in an Education Program or Activity, the Title IX Coordinator is responsible for coordinating a University response that is prompt and reasonable in light of the known circumstances and includes at least the following:

- 1) Treating Complainants and Respondents equitably;
- 2) Promptly contacting the Complainant to discuss the availability of Supportive

- Measures;
- 3) Offering Supportive Measures to the Complainant whether or not the Complainant files a Formal Complaint;
  - 4) Considering the Complainant's wishes with respect to Supportive Measures;
  - 5) Explaining to the Complainant the process for filing a Formal Complaint; and
  - 6) Following the University's grievance procedure before the imposition of any disciplinary sanctions or other actions that are not Supportive Measures against a Respondent.

## **REPORTING SEXUAL HARASSMENT, SEXUAL ASSAULT OR OTHER SEX DISCRIMINATION**

Any person may report a grievance relating to sex discrimination, including Sexual Harassment, whether or not the person reporting is the person who may be the victim of conduct being reported. A report may be made:

- in person during normal business hours;
- at any time during or outside of normal business hours by mail, telephone, or email; or
- at any time using any other means that results in the Title IX Coordinator receiving the verbal or written report.

The University will provide students or employees who report being victims of Sexual Assault, Dating Violence, Domestic Violence, or Stalking with a written explanation of their rights and options, regardless of whether the offense occurred on campus. The explanation will include written notification of counseling, health, mental health, victim advocacy, student financial aid, and other services available for victims (within the University and in the community), and the availability of changes to academic, living, and working situations, or Supportive Measures regardless of whether the student or employee files a Formal Complaint or makes a report to law enforcement.

## **SUPPORTIVE MEASURES**

The University will offer Supportive Measures as appropriate, as reasonably available, and without fee or charge to the Complainant, the Respondent, or a person who may become a Respondent before or after the filing of a Formal Complaint, including where no Formal Complaint has been filed. Supportive Measures are designed to restore or preserve equal access to the University's education program or activity without unreasonably burdening the other Party, including measures designed to protect the safety of all Parties or the University's educational environment, or deter sexual harassment.

The following are examples of Supportive Measures the University may make available:

- Modifications of class schedules or other course-related adjustments
- Academic support services, such as free tutoring

- Adjustments to campus housing assignments
- Adjustments to campus work schedule or assignments
- Mutual no-contact orders (prohibiting contact with another Party in person or by phone, email, text message, social network, or other means, including a third person)
- Counseling Services
- Health Services
- Increased security and monitoring of certain areas of the campus

The Title IX Coordinator is responsible for coordinating the effective implementation of Supportive Measures.

#### Confidentiality of Supportive Measures

The University will maintain as confidential any Supportive Measures provided to the Complainant or Respondent to the extent that maintaining such confidentiality would not impair the University's ability to provide the Supportive Measures.

#### **EMERGENCY REMOVAL FROM THE UNIVERSITY**

The University may place a non-student employee Respondent on administrative leave during the pendency of the grievance procedure. The University may remove any Respondent from the University's Education Program or Activity on an emergency basis if:

- (1) The University conducts an individualized safety and risk analysis.
- (2) As a result of the analysis, the University determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of Sexual Harassment justifies removal of the Respondent.
- (3) The University provides the Respondent with notice and an opportunity to challenge the decision immediately following the removal.

This provision for administrative leave or emergency removal does not modify any of the Respondent's rights under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act.

#### **PROCESS FOR FORMAL COMPLAINTS OF SEXUAL HARASSMENT**

##### General Provisions

The University will:

- (1) Treat Complainants and Respondents equitably by providing remedies to a Complainant where a determination of responsibility for Sexual Harassment has been made against the Respondent.

- (2) Presume that the Respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance procedure.
- (3) Follow this grievance procedure before the imposition against the Respondent of any disciplinary sanctions that are not Supportive Measures with the exception of emergency removal or administrative leave as described in the Emergency Removal from the University section of this procedure.
- (4) Provide any Party whose participation is invited or expected written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the Party to prepare to participate.
- (5) Require all persons who serve as the Title IX Coordinator, Investigator, Decision-maker, Appeal Decision-maker, or Facilitator not to have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent.
- (6) Ensure that Title IX Coordinators, Investigators, Decision-makers, and Facilitators receive appropriate training.
- (7) Apply the preponderance of the evidence standard in making determinations with respect to all Formal Complaints, whether against students, faculty, or non-faculty employees.
- (9) Following a determination of responsibility for a violation of policy, the University will design remedies to restore or preserve equal access to the University's Education Program or Activity. Remedies may include the same individualized services described as Supportive Measures; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the Respondent.

### Notice of Allegations

Upon receiving a Formal Complaint, the University will provide all known parties written notice that includes at least the following:

- (1) The University's grievance procedure, including any informal resolution process.
- (2) All allegations which may constitute Sexual Harassment, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting Sexual Harassment, and the date and location of the alleged incident, if known.
- (3) A statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance procedure.
- (4) A statement that the Parties may have an advisor of their choice, who may be, but is not required to be, an attorney.
- (5) A statement that the Parties may inspect and review evidence.
- (6) A statement that the University's code of conduct prohibits knowingly making false statements or knowingly submitting false information during the grievance procedure

under the University's Abuse of Process Policy.

If, in the course of an investigation, the University decides to investigate allegations about the Complainant or Respondent that are not included in the initial notice, the University will provide notice of the additional allegations to Parties whose identities are known.

#### Dismissing a Formal Complaint

If the conduct alleged in the Formal Complaint 1) would not constitute Sexual Harassment even if proved, 2) did not occur in an Education Program or Activity, or 3) did not occur against a person in the United States, then the University must dismiss the Formal Complaint as a complaint of Sexual Harassment under Title IX or this grievance procedure. However, the University may separately pursue allegations of conduct which would violate other provisions of the University's code of conduct.

The University may dismiss all or part of a Formal Complaint 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 in it;
- (2) the Respondent is no longer enrolled 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 in it.

If all or part of a Formal Complaint is dismissed, the University must promptly and simultaneously send written notice of the dismissal and reason(s) for it to the Parties.

#### Consolidating Formal Complaints

The University may consolidate Formal Complaints:

- 1) as to allegations of Sexual Harassment against more than one Respondent; or
- 2) by more than one Complainant against one or more Respondents; or
- 3) by one Party against the other Party, where the allegations of Sexual Harassment arise out of the same facts or circumstances.

Where a grievance procedure involves more than one Complainant or more than one Respondent, singular references to "Party," "Complainant," or "Respondent" include the plural, as applicable.

### **ADVISORS**

#### Designated Advisors and University-Appointed Advisors

A Party may designate an advisor of his or her choice, and the advisor may be an attorney. The University will not limit the choice or presence of an advisor for either a Complainant or a



Respondent in any meeting or grievance proceeding.

The University will appoint an advisor for any Party who does not have one present in the Hearing. University-appointed advisors serve at no cost to a Party. However, advisors appointed by the University serve for the limited purpose of conducting cross-examination at the Hearing. University-appointed advisors are not required to be attorneys or have a level of competency comparable to that of another Party's designated advisor. An advisor is not required to perform any function beyond relaying a Party's desired questions to the other Party and witnesses.

A Party may find that having an advisor is helpful throughout the grievance procedure and not just at the Hearing. Both Parties are encouraged to designate an advisor.

Because the University is required to provide certain information to a Party's advisor, each Party must notify the Title IX Coordinator in writing if he or she has designated an advisor and the contact information for that advisor.

#### Rules for Advisors

Except during a Hearing, the role of the advisor is limited to providing support, guidance, or advice to the Complainant or Respondent throughout the grievance procedure. The following rules apply to all advisors, including advisors appointed by the University:

- (1) Advisors are not to answer questions posed directly to any Party or witness, nor otherwise interfere with questioning by the Investigator.
- (2) An advisor may request reasonable opportunities to confer with the Party being advised.
- (3) During meetings, a Party and the advisor may talk quietly with each other.
- (4) Advisors do not have the right to question witnesses except in a Hearing.
- (5) Advisors may not present opening statements, closing statements, or arguments.
- (6) Advisors must act in a respectful manner at all times; bullying, yelling, and abusive conduct are never permitted.
- (7) Parties and advisors must not disturb the Hearing or any other proceeding by loudly conferring with one another.
- (8) Advisors must comply with the decisions and directions of the Decision-maker.
- (9) Advisors cannot disclose to other persons any confidential student information which is disclosed to the advisor in the course of the grievance procedure.

If a Party's advisor (whether designated by the Party or appointed by the University) refuses to comply with these rules, including rules relating to decorum, the University may require the Party to designate a different advisor or, if no other advisor is designated, to accept an advisor appointed by the University to conduct cross-examination on behalf of the Party. The University may remove from any proceeding advisors who become disruptive or who do not abide by the restrictions on their participation.

## **INFORMAL RESOLUTION**

At any time after a Formal Complaint has been filed but before reaching a determination regarding responsibility, the University may facilitate an informal resolution process that does not involve a full investigation and adjudication. Before the University and the Parties can proceed with an informal resolution the University must notify the Parties in writing disclosing

- 1) the allegations;
- 2) the requirements of the informal resolution process, including the circumstances under which it precludes the parties from resuming a Formal Complaint arising from the same allegations;
- 3) that at any time prior to agreeing to a resolution, either Party has the right to withdraw from the informal resolution process and resume the grievance procedure with respect to the Formal Complaint; and
- 4) any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.

The University must obtain the Parties' voluntary, written consent to proceed with an informal resolution process. The formal procedures for resolving a Formal Complaint will normally be suspended during the informal resolution process. If the informal process produces a resolution that is agreed upon by the Parties in writing, the grievance procedure shall end, and no further investigation or Hearing shall occur.

The University:

- (1) may not require any person to waive the right to an investigation and adjudication of a Formal Complaint as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right;
- (2) may not require the Parties to participate in an informal resolution process;
- (3) may not offer an informal resolution process unless a Formal Complaint has been filed; and
- (4) may not offer or facilitate an informal resolution process to resolve allegations that an employee engaged in Sexual Harassment against a student.

## **INVESTIGATING FORMAL COMPLAINTS**

### The University's Responsibilities

The University will designate one or more investigators to investigate the allegations in the Formal Complaint. The burden of gathering evidence sufficient to reach a determination regarding responsibility rests on the University and not on the Parties. The University shall not

require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege unless the person holding such privilege has waived it. If the Investigator makes any determinations regarding credibility, those determinations may not be based on a person's status as a Complainant, Respondent, or witness.

The University may restrict who can be present during any meeting or proceeding related to the grievance procedure, including meetings or interviews conducted by the Investigator. However, both the Complainant and the Respondent will have the same opportunities to have others present during any grievance proceeding.

#### Equal Opportunity to Present and Review Evidence

In the course of the investigation, all Parties have an equal opportunity to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence. The University does not restrict the ability of either Party to discuss the allegations under investigation in order to gather and present relevant evidence. However, the ability to discuss the allegations freely does not give a Party permission to make false or harassing statements - on social media, for example - without consequences for violating the University's code of conduct.

Before completing the Investigative Report, the Investigator will send to each Party and the Party's advisor, if any, all of the evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint, including:

- 1) Evidence upon which the University does not intend to rely in reaching a determination regarding responsibility; and
- 2) inculpatory or exculpatory evidence, whether obtained from a Party or another source.

The evidence will be subject to inspection and review by both Parties and may be provided in an electronic format, a hard copy, or a mixture of both. Each Party will have at least 10 days to submit a written response to the evidence. This written response shall be the Party's final opportunity to identify and present witnesses and other inculpatory and exculpatory evidence.

If the Investigator finds that either Party has provided new evidence (including witnesses) directly related to the allegations, the Investigator will provide the new evidence to both Parties, and permit an additional 10 days for each Party to respond to the new evidence. The Investigator will consider the Parties' written responses to the evidence before completing the Investigative Report.

#### Medical and Treatment Records

In gathering evidence, except with the Party's voluntary, written consent the University cannot access, consider, disclose, or otherwise use a Party's records that are:

- 1) made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity; and
- 2) made and maintained in connection with the provision of treatment to the Party.

### The Investigation Report

After the time for a Party's written response to the evidence has expired, the Investigator will create an Investigative Report that fairly summarizes all of the relevant evidence gathered in the course of the investigation, including a description of the procedural steps taken from the receipt of the formal complaint through the investigation. This should include any notifications to the Parties, interviews with Parties and witnesses, site visits, and description of methods used to gather other evidence.

At least 10 days prior to the Hearing, the Investigator will send each Party and each Party's advisor a copy of the Investigative Report in an electronic format or a hard copy. A Party or a Party's advisor may make a written response to the Investigative Report by providing a copy of their response to the Investigator and the Title IX Coordinator no later than noon of the last business day before the day of the Hearing. The Title IX Coordinator will provide a Party's written response, if any, to the other Party. A copy of the Investigative Report and all written responses by the Parties will be provided to the Decision-maker prior to the Hearing.

## **PRE-HEARING PROCEDURES**

### When Hearings Are Required

A live hearing must be held with respect to a Formal Complaint unless:

- 1) the Formal Complaint has been dismissed;
- 2) the facts alleged in a Formal Complaint are not contested;
- 3) the Respondent has admitted, or wishes to admit responsibility; or
- 4) the Parties want to resolve the case through an informal resolution process without a completed investigation or adjudication.

The Parties cannot waive a Hearing except by agreement to use the University's informal resolution process.

### Preparing for the Hearing

At least five days before the Hearing, the University will notify each Party and advisor in writing of the date, time, location, and participants for the Hearing, including the name of each witness whom the University will request to appear at the Hearing (in person or virtually) for the purpose of providing evidence. The Hearing may be conducted with all participants physically present in the same location or, at the University's discretion, any or all Parties, witnesses, and other participants may appear virtually, with technology enabling participants simultaneously

to see and hear each other.

### Requesting Separate Rooms

At the request of either Party, the University will provide for the Hearing to occur with the Parties located in separate rooms using technology enabling the Decision-maker and Parties to simultaneously see and hear the Party or the witness answering questions. In order to have sufficient time to make the appropriate arrangements, a Party's request to be in a separate room must be made in writing to the Title IX Coordinator at least two (2) business days before the Hearing.

### Attendance by Advisors

If a Party does not have an advisor present at the Hearing, the University will provide the Party an advisor of the University's choice without fee or charge to that Party. Unless the University grants a delay for good cause shown, the University shall appoint an advisor for a Party whose designated advisor is absent from the Hearing. The advisor, who is not required to be an attorney, shall be responsible to conduct cross-examination on behalf of that Party.

### Attendance of Parties and Witnesses; Delay for Absent Witness

The University is prohibited by law from requiring any Party or witness to appear at the Hearing, or from engaging in any act that would intimidate, threaten, coerce, or discriminate against any individual because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, grievance proceeding, or Hearing.

For these reasons, the University is not responsible if a Party or witness fails to appear at the Hearing, and the Hearing may proceed in the absence of the Party or witness. The University may grant a Party's reasonable request to delay the Hearing if that Party or an important witness is unable to attend the Hearing. A request for a delay should be made *as soon as possible* in the manner described below in the section of this grievance procedure entitled Temporary Delays or Extensions.

## **HEARING**

### Convening the Hearing

The Decision-maker shall convene the Hearing at the appointed time. In order to maintain students' privacy as much as possible, witnesses will not be in the Hearing room or attending by technological means except when providing evidence or being cross-examined. Parties and witnesses will be reminded that providing false information in connection with the Hearing is a violation of the University's code of conduct for students or expectations for employees.

### Questioning Parties and Witnesses

Each Party's advisor will be given an opportunity to ask the other Party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Such cross-examination must be conducted directly, orally, and in real time by the Party's advisor, and never by a Party personally.

Before a Complainant, Respondent, or witness answers a cross-examination or other question, the Decision-maker must first determine whether the question is relevant and explain any decision to exclude a question as not relevant. The Decision-maker may ask both advisors to provide reasons why a question should or should not be considered relevant. The Decision-maker will instruct all Parties and witnesses not to answer any question until the Decision-maker has allowed the question.

Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless:

- (1) 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
- (2) the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

The Decision-maker shall not permit any questions, nor the introduction of any evidence, that would involve the disclosure of information protected under a legally-recognized privilege under state law unless the person holding the privilege has waived it.

Because the University's grievance procedure is not a civil proceeding or state action, there is no right against self-incrimination. However, the Decision-maker cannot draw an inference regarding responsibility based solely on a Party's or witness's absence from the Hearing or refusal to answer cross-examination or other questions.

### Availability of Evidence

The University will make all of the evidence that was subject to inspection and review by the Parties in connection with the preparation of the Investigative Report available at the Hearing to give each Party equal opportunity to refer to such evidence during the Hearing, including for purposes of cross-examination. Parties must notify the Title IX Coordinator at least 24 hours prior to the Hearing regarding any physical evidence, transcripts, recordings, or other items requested to be physically available at the Hearing.

### Conducting the Hearing

The Hearing will be conducted substantially as provided below. The Decision-maker may recess

the Hearing for appropriate and reasonable rest and meal breaks. Any Hearing participant may request a break.

1. A University representative will serve as the moderator for the Hearing. The function of the moderator is to move the proceeding forward in an unbiased manner and to give the Parties and witnesses an opportunity to have their evidence presented before the Decision-maker.
2. The moderator will read the allegations and all University policies that are alleged to have been violated.
3. The Investigator will be called forward to read the evidence and statements provided by the Complainant and summarized in the Investigative Report. The Complainant will be asked if they wish to affirm the allegations and evidence as reviewed, and whether they would like to make any additional statements.
4. The Respondent's advisor will be given an opportunity to question the Complainant.
5. The Investigator will be called forward to read the Respondent's response to the allegations and review the evidence provided by the Respondent and summarized in the Investigative Report. The Respondent will be asked if they wish to affirm their response and evidence as reviewed, and whether they would like to make any additional statements.
6. The Complainant's advisor will be given an opportunity to question the Respondent.
7. Each witness will be called before the Decision-maker, either in person or through appropriate technology. The Investigator will review any evidence provided by the witness and summarized in the Investigative Report. The witness will be asked if they wish to affirm the evidence as reviewed.
8. The Complainant's advisor will be given an opportunity to question the witness.
9. The Respondent's advisor will be given an opportunity to question the witness.
10. If the University has provided any additional relevant evidence summarized in the Investigative Report, an appropriate representative or representatives of the University will review such evidence before the Decision-maker.
11. The Complainant's advisor will be given an opportunity to question the University's representative(s).
12. The Respondent's advisor will be given an opportunity to question the University's representative(s).
13. The Decision-maker may ask questions of any Party, witness, or University representative

during the time that person is presenting evidence or being questioned.

14. Each Party, beginning with the Complainant, will have the opportunity to make a brief closing statement to the Decision-maker. Advisors or others may not make closing statements on behalf of the parties.

15. After confirming that there is no additional evidence or other matters to be addressed, the Decision-maker will adjourn the Hearing.

#### Record of the Hearing

The University will create an audio or audiovisual recording, or transcript, of the Hearing and make it available to the Parties and to the Decision-maker for inspection and review.

### **DETERMINATION OF THE ALLEGATIONS**

#### Preponderance of the Evidence Standard

In university disciplinary processes, the standard of proof that must be met for a Decision-maker to find a Respondent responsible for a violation of the code of conduct is the Preponderance of the Evidence standard. This means that the Decision-maker determines that it is *more likely than not* that the Respondent did violate the university rule or policy, based on the evidence provided.

#### Letter of Determination

The Decision-maker shall determine whether the Respondent is responsible for each of the allegations in the Formal Complaint that could constitute Sexual Harassment. The Decision-maker shall reach these decisions by applying the preponderance of the evidence standard. In making the determination, the Decision-maker:

- 1) must make an objective evaluation of all relevant evidence – including both inculpatory and exculpatory evidence;
- 2) must not make credibility determinations based on a person's status as a Complainant, Respondent, or witness;
- 3) cannot draw an inference about responsibility based solely on a Party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions; and
- 4) cannot rely upon evidence or information protected under a legally recognized privilege unless the person holding the privilege has waived it.

The Decision-maker shall issue a written determination regarding the Respondent's responsibility for the alleged misconduct. The written determination must include:



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

The Decision-maker shall exercise independent and unbiased judgment with respect to:

- 1) findings of fact which support the determination(s);
- 2) conclusions regarding the application of the University's code of conduct to the facts;
- 3) the determination regarding responsibility as to each allegation; and
- 4) the rationale for the Decision-maker's conclusions.

The Decision-maker may consult with University officials for information with respect to the procedural steps taken, the University's normal practices relating to appropriate sanctions, and the University's procedures and permissible bases for appeals.

#### Effective Date of Determination

The University will provide the written determination regarding responsibility to the Parties simultaneously. If neither Party appeals, the determination becomes final on the date on which an appeal would no longer be considered timely.

If a Party appeals the determination, the determination becomes effective on the date the University provides the Parties with the written determination of the result of the appeal, unless the appeal decision requires further proceedings.

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

## **SANCTIONS**

The University can impose a range of disciplinary sanctions and remedies with respect to any misconduct for which a Respondent has been determined to be responsible. Possible disciplinary sanctions and remedies include, but are not limited to:

- 1) Imposing, continuing, or modifying any Supportive Measures;
- 2) Warning: A verbal or written reminder to the Respondent about relevant university rules, regulations, or policies and the potential consequences for violating them;
- 3) No contact order: A directive to initiate no contact with the Complainant, including contact in person or by phone, email, text message, social media, or any other means, either directly or through a third party;
- 4) Reprimand: Written notice that university rules, regulations, or policies have been violated and that continuation or repetition of misconduct may result in a more severe sanction;
- 5) Fines: A monetary fine assessed for a disciplinary violation;
- 6) Disciplinary Probation: Official warning that a student has been found responsible for violating Carson-Newman University policy, and future violations may result in more severe sanctions (which may include suspension or expulsion). The student will not be in “good disciplinary standing” with the university for a designated period of time, and may face specific restrictions on his or her behavior and/or privileges;
- 7) Restitution: Requirement to reimburse or otherwise compensate another for damage or loss of property;
- 8) Residence Life Suspension: Notice that the student is not eligible to live in a residence hall for a designated period of time. The student will not receive a refund for room and board. A student placed on residence life suspension must vacate his or her residence hall room within the timeframe specified by the conduct officer and surrender his/her keys;
- 9) Online education;
- 10) Disciplinary Suspension- Termination of student status at the university for a specified period of time;
- 11) Paid or unpaid leave;
- 12) Loss of supervisory or oversight responsibilities;
- 13) Reduction in Pay;
- 14) Termination of employment;
- 15) Disciplinary Expulsion- Termination of student status at the university; and
- 16) Transcript notation- Disciplinary Suspension or Disciplinary Expulsion may be noted on a student transcript.

## **APPEALS**

### Right of Appeal

Either Party may request an appeal from a determination regarding responsibility, or from the University's dismissal of all or any part of a Formal Complaint. Appeals are not automatic and are not a "re-hearing" of a case. Rather, they are an opportunity to request a review of a case based on specified grounds for appeal. The appeal procedures shall apply equally to both Parties.

Any of the following is an appropriate basis for appeal:

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

#### Filing an Appeal

In order to appeal, a Party must file a written Notice of Appeal challenging the initial outcome that is received by the Title IX Coordinator within 10 days after the written Letter of Determination was issued. The Notice of Appeal must state, at a minimum:

- 1) every basis for the appeal;
- 2) a complete statement of the facts and evidence that support each basis for the appeal; and
- 3) the relief requested as a result of the appeal.

#### Consideration of an Appeal

The University will promptly notify both Parties in writing that an appeal has been filed and provide a copy of the Notice of Appeal to the other Party. The non-appealing Party shall have 10 days from the date of such notice to submit to the Title IX Coordinator a written statement in support of the initial outcome or in opposition to the appeal. A copy of any such written statement shall be provided to the appealing Party.

The appeal shall be considered and decided by an Appeal Decision-maker who is not the same person as the Investigator, the Title IX Coordinator, or the Decision-maker that reached the determination regarding responsibility or dismissal. The Appeal Decision-maker shall review the Notice of Appeal, the response of the non-appealing Party, and may review the record of the Hearing as necessary to reach a conclusion on the appeal.

#### Decision on Appeal

The Appeal Decision-maker shall issue a written decision describing the result of the appeal and

the rationale for the result. The written decision shall, insofar as applicable, provide the same type of information required to be included in the initial written determination issued in connection with the Hearing.

The decision on appeal shall be appropriate to the basis or bases for appeal, and may adopt one or more of the following holdings, regardless of which Party filed the appeal:

- 1) Affirm the initial written determination;
- 2) Change any part of the written determination, including a change to find responsibility or to find no responsibility;
- 3) Increase or decrease the sanctions;
- 4) Require additional investigation (particularly in the case of new evidence that is material, not merely cumulative, and if presented in the Hearing could reasonably have resulted in a different determination); or
- 5) Order a new Hearing

The written decision on the appeal shall be provided simultaneously to both Parties.

## **SCHEDULED TIME FRAMES FOR THE GRIEVANCE PROCEDURE**

### Normal Time Frames

The University will conclude this grievance procedure in a reasonably prompt manner and in accordance with the following time frames:

- 1) The University will generally issue the written Hearing determination within 120 days after the filing of the Formal Complaint.
- 2) The University will generally issue the written appeal determination within 20 days after the filing of the Notice of Appeal.
- 3) The University will generally conclude any informal resolution process within 30 days after the Parties agree to an informal resolution.

### Temporary Delays or Extensions

The University may direct a temporary delay in the grievance procedure or the limited extension of the normal time frames for good cause. The University will notify the Complainant and the Respondent in writing of any temporary delay or limited extension and the reasons for the action.

The Complainant or Respondent may request a temporary delay or limited extension in writing to the Title IX Coordinator. The written request must state the reason for the delay or extension and the length of the delay or extension being requested.

Some examples of situations which may constitute good cause for a delay or extension include:

the absence of a Party, a Party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.

The University will attempt to accommodate the schedules of Parties and witnesses throughout the grievance procedure in order to provide Parties with a meaningful opportunity to exercise their lawful rights. However, the University will not delay the grievance procedure indefinitely because a Party, witness, or advisor is refusing to cooperate. In order to resolve complaints within reasonable time frames, the grievance procedure can proceed to conclusion even in the absence of a Party or witness.

## **RETALIATION PROHIBITED**

### Retaliation Defined

Retaliation shall be defined as:

- 1) Conduct intended to intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX, 34 CFR Part 106, or this grievance procedure.
- 2) Bringing disciplinary charges against an individual for code of conduct violations that do not involve sex discrimination or Sexual Harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or Formal Complaint, for the purpose of interfering with any right or privilege secured by Title IX, 34 CFR Part 106, or this grievance procedure.

### No Retaliation

Neither the University nor any other person may engage in retaliation against an individual because the individual has made a report or complaint or testified, assisted, participated, or refused to participate in any manner in an investigation, proceeding, or Hearing under this grievance procedure.

Any person who believes that he or she has experienced retaliation which is prohibited by this grievance procedure may file a complaint or Formal Complaint with the Title IX Coordinator.

### Confidentiality

Except as may be permitted by law or as necessary to carry out this grievance procedure, the University must keep confidential the identity of:

- (1) any individual who has made a report or complaint of sex discrimination;
- (2) any individual who has made a report or filed a Formal Complaint of Sexual Harassment;
- (3) any Complainant;

- (4) any individual who has been reported to be the perpetrator of sex discrimination;
- (5) any Respondent; and
- (6) any witness.