Southern Virginia University
Title IX Sexual Misconduct Policy and Grievance Procedures

IMPORTANT INFORMATION FOR INDIVIDUALS WHO MAY BE VICTIMS OF SEXUAL ASSAULT:

If you or someone you know may have been a victim of Sexual Assault or any other type of Sexual Misconduct and/or discrimination based on sex prohibited under this Policy, you are strongly encouraged to seek immediate assistance from one or more of the supportive measures listed in Exhibit A, attached to the end of this policy; page 47.

ARTICLE I. INTRODUCTION

A. Notice of Nondiscrimination

As a recipient of federal funds, Southern Virginia University ("SVU") is required to comply with Title IX of the Higher Education Amendments of 1972, 20 U.S.C. § 1681 et seq. ("Title IX") and its implementing regulations (34 CFR Part 106), which prohibit discrimination on the basis of sex in educational programs or activities, admission, and employment (insofar as Title IX and its implementing regulations apply to SVU as a religiously aligned institution with the teachings and practices of the Church of Jesus Christ of Latter-day Saints). Under certain circumstances, Sexual Misconduct (as defined in Exhibit B) constitutes Sexual Harassment (defined below) which is a form of sex discrimination prohibited by Title IX. Inquiries concerning Title IX may be referred to SVU's Title IX Coordinator or to the U.S. Department of Education's Assistant Secretary in charge of the Office for Civil Rights, or both.

SVU's Title IX Coordinator is Nate Friesema, whose office is located at One University Hill Drive, Main Hall Office 240, Buena Vista, VA 24416. Mr. Friesema may be contacted by phone at (540) 572-7414 or by email at **TitleIX@svu.edu**.

SVU will make this Policy and information about recognizing and preventing Sexual Misconduct readily available to all applicants for admission and employment, students, faculty, employees, and other members of the SVU community.

B. Overview of This Policy

As an important aspect of fulfilling its mission, SVU is committed to maintaining and strengthening an environment founded on civility and respect. SVU is committed to providing an educational environment, programs, and activities, and to making decisions about admissions and

employment free from sex discrimination. SVU also is committed to fostering a community that promotes prompt reporting of all types of Sexual Misconduct, a timely response to such reports, and a prompt and equitable resolution of reports of Sexual Misconduct whether or not they result in a Complaint. In furtherance of this commitment, this Policy sets forth available resources and Supportive Measures (described in more detail in Exhibit A) which are available even if no Formal Complaint is filed; describes prohibited conduct (Article II); establishes procedures for the timely responding to reports of Sexual Misconduct and Complaints of Sexual Harassment (Articles III-VI), which are consistent with all applicable federal laws including Title IX regulations, 34 CFR Part 106 (effective August 14, 2020), and Virginia Law, Va. Code §§ 23.1-806 to 23.1-808.

Title IX requires SVU to respond when it has Actual Knowledge of an incident constituting Sexual Harassment that occurs against a person in the United States and that occurs in connection to an Education Program or Activity of SVU. Since the definition of Sexual Harassment is central to this Policy and the application of the Grievance Procedures set forth in Articles IV - VI below, please see the next section for a discussion of how this term is defined by Title IX and its implementing regulations.

As further discussed in the Definitions below, some Sexual Misconduct may not meet the Title IX definition of Sexual Harassment but will otherwise violate provisions of SVU's Code of Conduct or its policies and procedures. In those instances, when Title IX is found not to apply to alleged misconduct, SVU retains the right to address such misconduct through the other policies and procedures of SVU, whether the individual who is accused of this misconduct is a student, faculty, or staff member.

C. Definitions

Capitalized terms used in this Policy which are not listed below or defined within the Policy, shall have the meanings set forth in Exhibit B. For ease of reference a few key terms are defined here:

(i) **"Complainant"** means an individual who is alleged to be the victim of conduct that would constitute Sexual Misconduct, regardless of whether they are the person who reports the incident or files a Complaint.

(ii) **"Formal Complaint"** means a written document signed by the Complainant or the Title IX Coordinator alleging conduct that if proven would constitute Sexual Harassment and contains a request for SVU to investigate the allegation(s).

(iii) **"Respondent"** means an individual who has been reported to be the perpetrator of conduct that could constitute Sexual Harassment.

(iv) **"Responsible Employee"** means an employee of SVU who does not work in SVU's offices designated as "Strictly Confidential Resources."

(v) **"Sexual Harassment"** as defined by Title IX and its implementing regulations means alleged conduct on the basis of sex that satisfies one or more of the following:

(1) Unwelcomed conduct that constitutes "Sexual Assault," "Dating Violence," "Domestic Violence," or "Stalking" as those terms are defined by federal law and as set forth in Exhibit B.

(2) Unwelcomed conduct that conditions the providing of any assistance, benefit, or service of SVU on the other person's participation in unwelcomed sexual conduct (a quid pro quo arrangement between an employee and student).

(3) Unwelcomed conduct determined to be so severe, pervasive, and objectively offensive from the perspective of a reasonable person that it effectively denies a person equal access to an Education Program and/or Activity of SVU.

No evaluation of the severity, pervasiveness, and offensiveness of the unwelcomed conduct and no separate finding of a denial of equal access is required when SVU receives a report of alleged Sexual Misconduct that falls with points 1 or 2, as those elements are presumed from the nature of those allegations.

There are several limits to this Title IX definition. First, the alleged incident(s) of Sexual Harassment must have occurred in the United States. Second, the alleged incident(s) of Sexual Harassment must occur in connection with an Educational Program or Activity of SVU. SVU's obligation under Title IX to respond to reported incidents of alleged Sexual Harassment that occur off campus is limited and extends to the three (3) following situations:

(1) The incident occurs as part of SVU's operations;

(2) SVU exercises substantial control over the Respondent and the context where the Sexual Harassment is alleged to have occurred; or

(3) The incident of Sexual Harassment occurs in a building owned or controlled by a student organization officially recognized by SVU.

If the allegations made in the Complaint are not covered by the Title IX definition of Sexual Harassment, the Complaint or certain of its allegations may be dismissed (See Article IV(B)(i) below). In those circumstances where Title IX is determined not to apply, SVU may, to the extent feasible or practicable, continue to investigate such allegations and address misconduct found to exist through its Student Code of Conduct, Faculty Handbook, and/or Staff Handbook as may be applicable.

(vi) "Strictly Confidential Resources" are all SVU employees who work in or for the Student Wellness Center at SVU and any SVU employee when acting in his/her defined capacity as a leader of the Church of Jesus Christ of Latter-day Saints.

D. Applicability of This Policy

This Policy applies to all aspects of Title IX compliance at SVU and covers any allegations of Sexual Harassment made by or against a student, faculty member, or employee of SVU, or a third party. SVU's disciplinary authority, however, may not extend to third parties who are not students or employees of SVU.

The Policy and the Grievance Procedures set forth in Articles IV and VI below, by which a determination will be made regarding responsibility for allegations of Sexual Harassment in a Complaint, are the exclusive Policy and procedures to be used by SVU to respond to a Complaint of sex discrimination or harassment under Title IX regardless of the status of the Complainant or Respondent. As such, this Policy and its Grievance Process supersedes and replaces any and all policies or procedures that may exist in the Student Handbook, Faculty Handbook, or Staff Handbook if they may have otherwise related to Title IX.

SVU's obligations to comply with Title IX and this Policy is not obviated or alleviated by FERPA, 20 U.S.C. § 1232g or its implementing regulations, 34 CFR Part 99. Further, nothing in this Policy shall be construed as a derogation of any rights any individual may have under Title VII of the Civil Rights Act of 1964, as amended, or any of its implemented regulations.

E. Period of Limitations

All persons with knowledge of conduct or an incident that may constitute any form of Sexual Misconduct involving a member of the SVU community or occurring on SVU's campus are encouraged to report the Sexual Misconduct, regardless of the length of time between the alleged incident and the decision to report it. However, SVU strongly encourages individuals to report Sexual Misconduct and to file Complaints promptly in order to preserve evidence for a potential legal or disciplinary proceeding. A delay in filing a Complaint may compromise the subsequent

investigation and the ability to remedy otherwise actionable Sexual Harassment, particularly if neither the Complainant nor the Respondent is enrolled as a student or employed by SVU when the Complaint is filed or before a Determination of Responsibility is made.

ARTICLE II. STATEMENTS OF POLICY

A. Prohibition on Sexual Misconduct

This Policy is designed to protect the rights of all members of the SVU community and to promote and further a safe environment where SVU's Education Programs and/or Activities are provided free from sex discrimination. All members of the SVU community have a responsibility to support and assist SVU in fostering and maintaining this environment.

SVU strongly encourages prompt reporting of all types of Sexual Misconduct and is committed to making a timely response and a prompt and equitable resolution of reports of Sexual Misconduct. To that end, SVU has defined Sexual Misconduct broadly to include any unwelcome conduct of a sexual nature, and SVU will timely respond to all allegations of Sexual Misconduct, regardless of whether a Complaint is filed, or whether Title IX is found to apply. SVU will also provide, as may be appropriate, Supportive Measures to a Complainant even if a Complaint is not filed or the Sexual Misconduct does not constitute Sexual Harassment under Title IX. See Exhibit A.

In circumstances where the reported Sexual Misconduct does not constitute Sexual Harassment that can be addressed under Title IX but constitutes other forms of misconduct prohibited by other SVU policies and procedures, including the Code of Conduct for students, faculty and/or staff, SVU reserves the right to investigate and adjudicate those acts of misconduct under those other policies and procedures and to impose disciplinary action, if found appropriate.

B. Prohibition on Retaliation

Retaliation against any person for filing, supporting, or providing information in good faith in connection with either a report of Sexual Misconduct or a Formal Complaint, or for refusing to participate in an investigation or Hearing, is prohibited. For example, no disciplinary action under the Student Code of Conduct shall be taken or threatened in order to compel witnesses or others to participate in an investigation, or a Hearing conducted pursuant to this Policy. Complaints of Retaliation will be addressed through SVU's other disciplinary procedures, as deemed appropriate. Any person who has experienced acts or conduct that constitute Retaliation should make a prompt report to the Title IX Coordinator, or to the Director of Human Resources if the Complaint of Retaliation involves the Title IX Coordinator.

C. Prohibition on Providing False Information

Any individual who knowingly files a false report or Formal Complaint under this Policy or who knowingly makes a materially false statement in bad faith in the course of proceedings under this Policy has violated SVU's Code of Conduct commitment to "be honest," and may be subject to disciplinary action. However, a determination regarding responsibility alone is not sufficient to conclude that any person made a materially false statement in bad faith.

D. Equitable Treatment

Upon receipt of a report of Sexual Misconduct, SVU will treat the Complainant and Respondent(s) equitably by offering Supportive Measures and by following the Grievance Procedures (as outlined in Article IV - VI below) if a Formal Complaint is filed, before imposing disciplinary sanctions or taking other actions which do not constitute Supportive Measures toward the Respondent. Supportive Measures will be made available to a Complainant whether or not a Formal Complaint is filed.

E. Confidentiality

(i) **Standard of Confidentiality (Applicable to all reports)** SVU will respect and will make every feasible effort to preserve the confidentiality of the information shared by and the identities of the individual who made the report of Sexual Misconduct, any Complainant, any person reported to be a perpetrator of Sexual Misconduct, any Respondent, and any witness, except as may be permitted by FERPA. However, nothing shall prevent the Title IX Coordinator or other designee from disclosing or using the information as permitted by Title IX and its implementing regulations.

To protect confidentiality (and except as required as set forth below), information regarding alleged Sexual Misconduct will generally be disclosed by SVU personnel only as follows:

(1) SVU's Responsible Employees will (and are obligated to) report information regarding alleged Sexual Misconduct to the Title IX Coordinator.

(2) SVU personnel will (and are obligated to) handle information regarding alleged Sexual Misconduct in accordance with applicable local, state, and federal laws. For example, under conditions of potential imminent harm to the community, SVU may be required by federal law to inform the

community of the occurrence of the alleged incident(s) of Sexual Misconduct. Similarly, information regarding the alleged Sexual Misconduct may be used as an anonymous report for data collection purposes under the Clery Act.

(3) SVU personnel, as set forth in Article II(F), may be required by state law to report alleged Sexual Misconduct to local law enforcement if warranted by the nature of the allegations at issue.

(4) SVU personnel will share information regarding alleged Sexual Misconduct, as required by law or to comply with Title IX and its regulations, including the sharing of information required under this Policy, as well as to prevent the reoccurrence or to address Sexual Misconduct which is found to have occurred.

Please note that SVU cannot control disclosures by students, employees, or third parties.

(ii) Strict and Heightened Confidentiality

(1) **Strict Confidentiality.** Individuals may discuss alleged Sexual Misconduct in strict confidence with SVU employees who:

(a) Work in **Student Support Services** (236 Main Hall, One University Hill Drive; (540) 261-8470; fax 1-540-266-3898; counseling@svu.edu).

(b) Act as your pastoral counselor or ecclesiastical leader when they are acting in that capacity.

This means that Personally Identifiable Information shared with Strictly Confidential Resources is not part of students' or employees' SVU records and will not be reported to other SVU personnel, to the Respondent, or to others (unless the disclosing individual gives his or her consent to the disclosure or the law requires it (as may be the case with alleged Sexual Misconduct involving a minor or under conditions of imminent physical harm, for example)).

Strictly Confidential Resources are not Responsible Employees and therefore are not required to (and will not, absent direction from the

disclosing individual to do so) report incidents of alleged Sexual Misconduct to the Title IX Coordinator. For purposes of clarity, please understand that SVU employees who are not Strictly Confidential Resources are considered Responsible Employees. Communications made to Responsible Employees (and others) are not entitled to the same confidentiality protections as those made to Strictly Confidential Resources.

(2) **Heightened Confidentiality.** If information regarding alleged Sexual Misconduct is shared with a Responsible Employee, the Responsible Employee (except in limited circumstances) (See Article III(B)(iii)) is obligated to report that information to SVU's Title IX Coordinator or a Deputy Title IX Coordinator. If the Complainant to whom the reported information pertains desires that the Title IX Coordinator not share the information with the Respondent or with others, even as appropriate and necessary to address the allegations, such individual must expressly request that SVU apply heightened confidentiality to such information. This request must be made to the Title IX Coordinator and documented in writing.

SVU takes requests for heightened confidentiality seriously; however, such requests may limit SVU's ability to investigate and take reasonable action in response to a Formal Complaint. SVU must therefore evaluate heightened confidentiality requests in the context of SVU's commitment to provide a reasonably safe and non-discriminatory environment. To make such an evaluation, the Title IX Coordinator may conduct a preliminary investigation into the allegations and will weigh requests for heightened confidentiality against the following factors:

(a) The nature and seriousness of the alleged Sexual Misconduct, including whether the allegations include physical acts of violence;

(b) the Complainant's age;

(c) whether there have been other reports of Sexual Misconduct or Formal Complaints filed against the Respondent;

(d) the Respondent's right to receive information about the allegations if the information is maintained by SVU as an "education record" under FERPA; and

(e) the applicability of any laws mandating disclosure.

The Title IX Coordinator will inform the person requesting heightened confidentiality of SVU's limitations on maintaining heightened confidentiality and whether SVU must make a disclosure under Article II(F) below to the Review Team, and what other actions, if any, SVU intends to pursue regardless of the person's request.

Even when SVU determines to abide by a request for heightened confidentiality (and even if such request limits SVU's ability to take disciplinary action against the Respondent):

(a) To the extent practicable and appropriate, SVU will take prompt action to limit the effects of the alleged Sexual Misconduct and to prevent its recurrence. For instance, SVU may provide appropriate Supportive Measures to the Complainant, so long as they do not constitute unreasonable burden or constitute disciplinary or punitive measures toward the Respondent.

(b) Information regarding the alleged Sexual Misconduct may be included in SVU records, as necessary and appropriate.

(c) SVU personnel will (and are obligated to) handle information regarding alleged Sexual Misconduct in accordance with applicable local, state, and federal laws. For example, information regarding the alleged Sexual Misconduct may be used and reported anonymously for data collection purposes under the Clery Act.

Please note that SVU cannot control disclosures by students, employees, or third parties.

F. Review Committee Assessment

When the Title IX Coordinator or Deputy Title IX Coordinator receives a report of Sexual Misconduct that includes an alleged physical act of sexual violence against a student, then, to comply with state law, a meeting of SVU's Review Committee shall be convened within 72 hours to review and consider all available information. The Review Committee process is consistent with the SVU's faith-based and religious-based principles rooted in The Church of Jesus Christ of Latter-day Saints and its principles and values (See SVU Code of Conduct).

(i) The Review Committee generally consists of the Assigned Title IX Coordinator and a representative from multiple other departments, such as the Director of Campus Safety, the Dean of Students, Directors from Student Affairs, the Director of Human Resources, or their designees. The purpose of the meeting is for the Review Committee to determine whether a disclosure needs to be made to protect the health and safety of the student directly affected and others on campus.

(ii) If the allegations received would constitute a felony sexual assault under state law, the Campus Security representative shall notify the other members, and within 24 hours either Campus Security, or another member of the Review Committee, shall consult with the local Commonwealth Attorney with jurisdiction to prosecute the alleged acts of sexual violence, but shall do so without disclosing the student's personally identifying information, unless specifically requested by Complainant.

(iii) If the Review Committee determines from all available information that a disclosure is necessary to protect the health and safety of the student and others, then the Campus Security representative shall disclose all known information to the other members of Office of Campus Security, and as appropriate, to the local police department. This disclosure shall include the personally identifying information of those students known and/or reasonably believed to be involved. The Title IX Coordinator or designee shall promptly notify the student that this safety disclosure was made.

G. Requests Not to Investigate and Declining to File a Formal Complaint or Participate

In all circumstances, a Complainant has the right (i) to request that SVU not investigate the information or allegation(s) reported, (ii) to decline to file a Formal Complaint, and/or (iii) to decline to participate in the investigation and/or resolution of allegation(s). Regardless of an individual's requests or decisions, Title IX requires SVU to take reasonable action in response to the information known to it, which will involve offering Supportive Measures.

SVU will respect and take such requests and decisions seriously; however, such requests and decisions may limit SVU's ability to investigate and take reasonable action in the absence of or in response to a Formal Complaint. In such cases, SVU will evaluate such requests and decisions in the context of SVU's commitment to provide a reasonably safe and non-discriminatory environment.

To make such an evaluation, the Title IX Coordinator may conduct a preliminary investigation into the alleged Sexual Misconduct and will weigh such requests and decisions against the same

factors utilized when initially considering a request for Heightened Confidentiality (Article II(E)(ii)(2)):

The Title IX Coordinator will inform the Complainant in writing of SVU's response to such a request or decision. If the Title IX Coordinator intends to sign a Formal Complaint, pursue an investigation and/or resolution Hearing regardless of the Complainant's request or desires, the notice will include a short statement of the factors relied upon.

Even if SVU cannot take disciplinary action against the Respondent because of a Complainant's decision to decline to file a Formal Complaint or a decline to participate in the investigation and/or a Hearing held to resolve the allegations, SVU, to the extent practicable and appropriate, will provide Supportive Measures to the Complainant, take steps to limit the effects of the alleged Sexual Misconduct, and to prevent its recurrence. For instance, SVU may issue a "no-contact" order or take other appropriate measures to ensure the Complainant's safety, as long as such actions do not unfairly burden and are not punitive or disciplinary in nature toward the Respondent.

H. Amnesty

To foster timely and good faith reporting and to comply with state law, complainants will not be subject to disciplinary action under the code of conduct, so long as the reported violation of Title IX is made in good faith.

This amnesty shall apply to Complainants, witnesses, and others who are reporting incidents of Sexual Misconduct or assisting the Complainant. In limited circumstances, this amnesty may also be extended to a Respondent.

I. Individuals with Disabilities

SVU will make arrangements to ensure that individuals with disabilities are provided appropriate accommodations, to the extent necessary and available, to participate in the steps and procedures outlined in this Policy. Requests for accommodations must be made to SVU's Office of Accessibility Services at accessibility@svu.edu. Requests may also be directed to Jamie Chandler, Assistant Provost and Accommodations Director, located at Main Hall 217, available by email at jamie.chandler@svu.edu, and by phone at (540) 232-9712.

ARTICLE III

HOW AND WHERE TO REPORT ALLEGED SEXUAL MISCONDUCT

For information regarding seeking medical assistance and emotional support, as well as important contact information for local law enforcement agencies and hospitals, see Exhibit A attached to this Policy.

Because Sexual Misconduct may in some instances constitute both a violation of SVU policy and criminal activity, and because SVU's Grievance Process is not a substitute for instituting legal action, **SVU encourages individuals to report alleged Sexual Misconduct promptly to campus officials and to law enforcement authorities, where appropriate**.

Individuals may, however, choose not to report alleged Sexual Misconduct to campus officials and/or law enforcement authorities. SVU respects and supports the individual's decision with respect to reporting; nevertheless, as noted above, once SVU has Actual Knowledge of Sexual Misconduct, it may determine it is required to notify appropriate law enforcement authorities based on the nature of the allegations at issue.

A. Reporting to Local Law Enforcement:

Individuals may file a complaint directly with local law enforcement agencies (e.g., the Buena Vista Police Department) by dialing 911. Individuals may also contact any of the following SVU personnel for assistance in filing a complaint with local law enforcement:

(i) SVU's Office of Campus Security, 24 hours a day, seven (7) days a week (available by phone at (**540) 261-4911,** email at security@svu.edu, and located on the ground floor of Main Hall; B1),

(ii) SVU's Title IX Coordinator, Nate Friesema (available by phone at **(540) 572-7414,** by email at **TitleIX@svu.edu,** and located at One University Hill Drive, Main Hall Office 240, Buena Vista, VA 24416).

Individuals may inform law enforcement authorities about Sexual Misconduct and discuss the matter with a law enforcement officer without making a criminal complaint (or filing a Formal Complaint with SVU). Individuals who make a criminal complaint may also choose to file a Title IX Formal Complaint but are not required to do so.

If the individual reports to law enforcement with the involvement of Campus Security, Campus Security will be obligated to report that information to the Title IX Coordinator. A criminal

investigation into the matter does not exempt SVU from conducting its own investigation. However, SVU's investigation may be delayed temporarily while the criminal investigators are gathering evidence. In the event of such a delay, SVU may implement Supportive Measures, when necessary, to protect the Complainant and/or SVU community which do not adversely impact the Respondent.

Neither the results of a criminal investigation nor the decision of law enforcement to investigate or decline to investigate the matter is determinative of whether prohibited Sexual Harassment under Title IX has occurred, or whether other prohibited misconduct in violation of SVU's applicable Code of Conduct has occurred.

B. Reporting to SVU:

Any person, including visitors, may make a report of Sexual Misconduct; it need not be the Complainant. A report can be made by any means: in person, by phone, by mail or email, and even anonymously. SVU respects and supports a Complainant's decision with respect to reporting; however, once SVU obtains Actual Knowledge of a report of Sexual Misconduct it must and will respond in a timely manner.

(i) Anyone wishing to report an incident of Sexual Misconduct under this Policy should contact one of the following individuals or offices:

(1) **Title IX Coordinator.** SVU's Title IX Coordinator is Nate Friesema (available by phone at **(540) 572-7414,** by email at **TitleIX@svu.edu,** and located at One University Hill Drive, **Main Hall Office 240**, Buena Vista, VA 24416). In addition to overseeing the prompt, fair, and impartial investigation and resolution of all Formal Complaints filed with SVU, Mr. Friesema will be responsible for overseeing the implementation of Supportive Measures. See Exhibit A.

(2) **Southern Virginia University's Office of Campus Security.** SVU's Office of Campus Security is located on the ground floor of Main Hall; B1. The Office of Campus Security is also available by phone at (**540) 261-4911** or by email at **security@svu.edu.** The Office of Campus Security is available 24 hours a day, seven (7) days a week. If an employee of SVU's Office of Campus Security receives a report of alleged Sexual Misconduct, that employee must notify SVU's Title IX Coordinator or a Deputy Title IX Coordinator promptly.

If any of the parties designated above is the Respondent or is otherwise at issue in the alleged misconduct, or if an individual is otherwise uncomfortable reporting to or making a Complaint to one or more of the parties listed above, he or she may report the alleged Sexual Misconduct to any other party or office listed above.

(ii) **Anonymous Reports.** Anonymous reports of sexual misconduct can be submitted in writing to any of the Title IX Coordinators listed above or through the Report a Concern link. The level of detail or identifying information regarding the alleged misconduct will determine SVU's ability to respond to the report and thoroughly investigate the matter.

(iii) **Responsible Employees.** Except as noted below, any Responsible Employee who obtains information that either a student attending SVU, or another individual, while on Campus or in a Non-campus Building or Property, or while on Public Property, may have been the victim of a physical sexual act against that person's will or where that person was incapable of giving consent, shall report such information to the Title IX Coordinator, Deputy Title IX Coordinator, or Campus Security as soon as possible after addressing the immediate needs of the person assaulted.

A Responsible Employee is not required to make a report if (a) the information was obtained through a communication considered privileged under state or federal law, and/or (b) the information was obtained in the course of providing services as a licensed healthcare professional, an employee providing administrative support for healthcare professionals, or while serving as a campus victim support person, as an accredited rape crisis or domestic violence counselor, as a member of the clergy, as an ecclesiastical lay leader in the Church of Jesus Christ of Latter-day Saints, or as an attorney who is not an employee of Southern Virginia University. Likewise, there is no duty to make a report if the Responsible Employee has actual knowledge that the same matter has already been reported to the Title IX Coordinator, to law enforcement for investigation, or to the Commonwealth Attorney's office.

No employee is authorized to investigate or resolve Formal Complaints without the involvement of SVU's Title IX Coordinator or a Deputy Title IX Coordinator, or to engage in actions not authorized by this Policy.

C. Initial Meeting with Complainant after Report

As soon as is practicable after receipt of a report of Sexual Misconduct, an Assigned Title IX Coordinator (either the Title IX Coordinator, the Deputy Title IX Coordinator, or an assigned

designee) will contact the Complainant (if the person is identified) to schedule an initial meeting. If the Complainant is not the person who reported the alleged Sexual Misconduct, the Assigned Title IX Coordinator will attempt to meet as soon as possible with the person who made the report to gather information from that person. In arranging the initial meeting, the Complainant will be advised of the right to be accompanied by an Advisor, if desired.

(i) During this initial meeting with the Complainant, the Title IX Coordinator or Assigned Title IX Coordinator will, as applicable:

(1) Discuss the broad range of Supportive Measures available and that these services are available even if that individual decides not to file a Formal Complaint. Among the measures to be mentioned are possible mutual no contact restrictions, campus escort services, changes in work or housing locations, increased security or monitoring, counseling, academic extensions, or other assistance, etc. Considering the circumstances or Complainant's wishes, an immediate referral to Student Wellness, Student Support Services, or other resources may be appropriate;

(2) Discuss concerns for physical safety, if any, for Complainant and others;

(3) Discuss confidentiality standards and any concerns with the Complainant;

(4) Explain avenues for a resolution by filing a Formal Complaint, and the availability of the Student Grievance Procedure, and the Informal Resolution Process (mediation) instead of going to a Hearing;

(5) Explain the Title IX Grievance Procedures, the steps involved in an investigation, and the Title IX Grievance Process;

(6) Discuss Retaliation protection and reporting; and

(7) Provide a copy of the Policy and a separate copy of the Sexual Misconduct Formal Complaint Form. If appropriate under the circumstances, inquire if the Complainant has already decided to file a Formal Complaint, or if additional time is needed to consider whether to initiate this formal process.

(ii) Following this initial meeting, the Assigned Title IX Coordinator will, if applicable, promptly take steps needed to provide Supportive Measures requested, and shall follow-up as needed with the Complainant and engage in an interactive process over time to determine what additional Supportive Measures may be requested and

are appropriate. In discussing Supportive Measures, it is important to explain that these measures are non-disciplinary, non-punitive in nature and are designed to restore or preserve equal access to SVU's Education Programs and Activities without unreasonably burdening the Respondent but will also provide for the safety of the Complainant and others. Once a decision is made on which Supportive Measures will be provided to the Complainant, the determinations will be communicated promptly in writing to the Complainant.

(iii) If no Supportive Measures are requested by the Complainant or if certain actions requested are not provided, the Assigned Title IX Coordinator shall document why certain measures (if requested) were not provided, and document what measures were offered to the Complainant. If changes occur subsequently and additional measures are extended, the reasons including additional facts, if any, obtained should be documented.

(iv) The Assigned Title IX Coordinator may meet and/or communicate with the Complainant as often as may be needed to respond to questions and to ensure the Complainant understands the requirements and options available under this Policy and otherwise prior to the filing of a Formal Complaint.

D. Filing a Formal Complaint with SVU

There is no requirement for a Formal Complaint to be filed. However, the filing of a signed Formal Complaint is a requirement to initiate either the Grievance Procedures and Process (investigation and Hearing)
(Articles IV and V), or to gain access to SVU's Informal Resolution Process (Article VI). To file a Formal Complaint, the Complainant must be participating in, or attempting to participate in an Education Program or Activity of SVU, or be employed by, or attempting to secure employment with SVU.

(i) SVU has provided a sample Formal Complaint form for use. However, any document signed by a Complainant and filed with the Title IX Coordinator alleging Sexual Harassment that requests SVU investigate the allegations will suffice.

(ii) If the sample Form is not used, a document will be considered to be a Formal Complaint under this Policy only if it meets all the following required elements, but it does not need to be labeled as a "Formal Complaint:"

(1) The document must allege conduct that meets the definition of Sexual Harassment and, if known, the identity of the Respondent.

(2) The alleged conduct must have occurred on Campus, within an Education Program or Activity, or in a building owned or controlled by a student organization that is officially recognized by SVU.

(3) The conduct must have occurred within the United States.

(4) The Complainant must provide a physical or digital signature on the document indicating that the Complainant is filing a Formal Complaint, and requesting SVU to investigate.

(5) The identity of the Respondent is not a requirement for the filing of the Formal Complaint. Ultimately, if the Respondent cannot be identified through an investigation, the Formal Complaint may be dismissed.

(iii) The Title IX Coordinator may also elect to submit and sign a Formal Complaint, but only after considering the Complainant's wishes. In determining whether to exercise discretion to sign a Formal Complaint on the behalf of SVU, the Title IX Coordinator shall consider whether the alleged act(s) of Sexual Harassment involves a pattern of misconduct, violence, threats, the use of weapons, serial predation, or minors.

ARTICLE IV.

GRIEVANCE ROCEDURES APPLICABLE TO ALL COMPLAINTS

A. Overview

(i) **Oversight.** The Title IX Coordinator or Assigned Title IX Coordinator is responsible for overseeing the timely response to a report of Sexual Misconduct and the prompt, and equitable resolution of Complaints filed with SVU, including the Grievance Procedures and Process (Articles IV and V) and the Informal Resolution Process (Article VI). Upon filing a Formal Complaint, an Assigned Title IX Coordinator will become the point of contact and decisionmaker for all procedural questions.

(ii) **Impartiality and Training.** All individuals designated by SVU to serve as a Title IX Coordinator, Deputy or Assigned Title IX Coordinator, an investigator, a decision-maker, or a mediator shall not have a conflict of interest, or a bias for or against Complainants or Respondents generally, or for or against either the

individual Complainant or Respondent. All such participants in SVU's Title IX Policy and processes will receive training on various required Title IX topics, and training on the Policy, including without limitation how to serve impartially, avoiding prejudgment of the facts at issue, conflicts of interest, and bias.

(iii) **Conflicts.** If any administrator who would normally be designated to oversee the Grievance Procedures and Policies or Informal Resolution Process is the Respondent (including, but not limited to, the Title IX Coordinator), then the Director of Human Resources will appoint another SVU administrator to perform duties of this person under this Policy and the person appointed will not be someone who reports to the conflicted administrator.

(iv) **Advisors.** The Complainant and Respondent may each be accompanied by an Advisor of their choice during any meeting or interview or proceeding held pursuant to this Policy. The Advisor may be a friend, mentor, family member, attorney, or any other person selected by the individual to provide advice and support. SVU will not typically change scheduled meetings to accommodate an Advisor's inability to attend. Individuals may elect to change their Advisor during the investigative process and are not required to use the same Advisor throughout the process.

If a party intends to use an Advisor, that party must provide prompt advance notice to the Title IX Coordinator, Assigned Title IX Coordinator, investigator(s), Hearing Officer, and/or Mediator as appropriate and identify them. An Advisor may attend proceedings for purposes of observation but will not be permitted to represent a party, to respond to questions posed to the party they advise, or to otherwise participate in any meeting or proceeding that may take place under these procedures, except during Live Hearings as provided in these procedures.

The Advisor, if involved, will have the opportunity to inspect and review evidence related to the allegations and to submit written comments to the Investigators prior to the completion of the Investigative Report. Advisors are not permitted to contact directly or ask the other party questions other than as permitted during a Live Hearing. At a Live Hearing, if held, the Advisor shall be permitted to ask relevant questions and cross-examine the other party and all witnesses, including asking questions that may challenge credibility. All Advisors will be expected to maintain confidentiality regarding the matter as well as any and all communications received or exchanged pursuant to this Policy.

Although all parties have the same opportunity to have an Advisor present during any grievance proceeding, SVU cannot guarantee equal Advisory rights when it comes to Advisors (e.g., if one party selects an attorney as their Advisor, but the other party does not have or cannot afford an attorney, SVU is not obligated to provide one). However, if a party does not have an Advisor present at the live Hearing, SVU will provide, without fee or charge to that party, an Advisor of SVU's choice to conduct cross-examination of the other party and witnesses on behalf of that party. If the Advisor provided by SVU is an attorney, that attorney will not have an attorney-client relationship with the party, and their communications will not be subject to an attorney-client privilege. However, SVU will treat the communications as confidential.

(v) **Presumptions & Objective Assessment.** In connection with all allegations of Sexual Misconduct, SVU follows a presumption that the Respondent is not responsible for the alleged conduct until a Determination of Responsibility is made at the conclusion of the Grievance Process or a separate proceeding held for other misconduct not involving Sexual Harassment. Likewise, SVU requires all SVU representatives, Title IX Coordinator, Assigned Title IX Coordinator, investigators, Hearing Officer, Appellate Decisionmakers and Mediator to use an objective evaluation of all relevant evidence – inculpatory and exculpatory – and expects that credibility determinations will not be made solely based on a person's status as a Complainant, Respondent, witness, etc. No Grievance Administrator may participate in the Grievance Process if the Grievance Administrator has a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent.

(vi) **Emergency Removal & Interim Action.** SVU retains the right to remove a Respondent who is a student from participation in Education Programs and/or Activities on an emergency basis if after an individualized safety and risk analysis the Title IX Coordinator, in conjunction with Campus Security or their designee, determines that an immediate threat to the physical health or safety of any student or other person arising from the allegations justifies removal. Additionally, SVU retains the right to place a non-student employee who is a Respondent on administrative leave (paid or without pay) pending the resolution of the Grievance Process set forth in Article V or the Informal Resolution Process in Article VI, below. The decision to place a non-student employee who is a Respondent on administrative leave will also depend on an individualized safety and risk analysis conducted by the Title IX Coordinator, in conjunction with Campus Security or their designee. In either case, should SVU exercise this right, it will provide the Respondent with written notice of its decision and will provide the Respondent an

opportunity to challenge the decision immediately following the removal. To challenge an Emergency Interim Action, an Objection must be filed, and will be considered an Appeal which is subject to and must comply with Article V(L) below. Exercising this right to appeal does not allow for Respondent's continued physical presence on campus, unless or until the decision is overturned or modified.

(vii) Timing. SVU will make every reasonable effort to ensure that the investigation and resolution of a Formal Complaint (not including an appeal, if applicable) occurs in as timely and efficient a manner as possible.

Any party may request an extension of any deadline for Good Cause by submitting a written request for an extension to the Assigned Title IX Coordinator that includes reference to a specific duration of the proposed extension and the basis for the request. The Assigned Title IX Coordinator may modify any deadline contained in this Policy as necessary and for Good Cause shown.

B. Preliminary Investigation and Dismissal of Formal Complaint

SVU will investigate all Formal Complaints that it receives consistent with the provisions of Title IX. However, all Formal Complaints when filed will be reviewed by the Assigned Title IX Coordinator and a determination will be made whether the Formal Complaint is one that is subject to Title IX and the Grievance Process of this Policy, or is one that should be addressed otherwise, through Code of Conduct proceedings for misconduct or through other similar procedures that apply to faculty and staff. In certain circumstances, a Formal Complaint must be dismissed for lack of jurisdiction and in other situations dismissal is discretionary as described below.

(i) Mandatory Dismissal. Under Title IX regulations SVU is required to dismiss a Formal Complaint if any of the following circumstances exist:

(1) The alleged conduct, even if proven, would not constitute Sexual Harassment as defined.

(2) The alleged conduct did not occur in or in connection with a SVU's Education Program and/or Activity.

(3) The alleged conduct did not occur in the United States.

Dismissal for any of the foregoing reasons precludes any subsequent Formal Complaint alleging the same factual allegations. However, a Complainant may file

another Formal Complaint against the same Respondent based on new or additional factual allegations.

(ii) **Discretionary Dismissal.** The Title IX Coordinator may choose to dismiss a Formal Complaint or any allegations herein, or suspend an investigation if, at any time during the investigation or Hearing:

(1) The Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegation therein.

(2) The Respondent is no longer enrolled or employed by SVU.

(3) Specific circumstances prevent SVU from gathering evidence sufficient to reach a determination as to the Formal Complaint or the allegations therein.

Required or discretionary dismissal of a Formal Complaint does not preclude action against the Respondent under the Code of Conduct, Employment Contract, or other SVU policies applicable to the conduct.

(iii) **Discretionary Considerations.** In exercising discretion, the Title IX Coordinator may elect to continue with an investigation even if the Complainant submits a written notice of withdrawal in those situations where (a) the information already obtained or available supports a finding that the Respondent may pose an ongoing risk to the SVU community, (b) the gathered evidence separate and apart from the Complainant's statements are sufficient to reach a determination regarding the Respondent's responsibility, or (c) a determination regarding responsibility will or may provide a benefit to the Complainant even though SVU lacks control over the Respondent or would be unable to issue disciplinary sanctions for other reasons.

(iv) **Respondent Not Enrolled or Employee.** When a Respondent is no longer enrolled or employed, the Title IX Coordinator may choose to dismiss the Formal Complaint if SVU has no way to gather evidence sufficient to make a determination.[1]

If a Formal Complaint is dismissed or an investigation is suspended because the Respondent is not or is no longer enrolled or employed by SVU, SVU may reopen the investigation if the Respondent enrolls, re-enrolls, reapplies, or applies for work

[1] It should be noted that if a student who is a Respondent withdraws from SVU while under investigation for Sexual Misconduct, state law requires SVU to make a notation on the student's transcript that the student withdrew with allegations pending. (See Article V (N), below.)

at SVU. If a Formal Complaint is re-opened, the Title IX Coordinator will promptly notify the parties, and the parties will be entitled to the same rights and responsibilities as set out in these procedures.

(v) **Special Circumstances.** A discretionary dismissal is intended to apply to a narrow set of circumstances. The following circumstances may justify, but do not require, a discretionary decision to dismiss a Formal Complaint: (a) SVU is unable to discern the identity of the Complainant or Respondent; (b) SVU is unable to gather evidence necessary to establish the elements of conduct which meets the Sexual Harassment definition, including whether the conduct was unwelcome or occurred without consent; (c) the allegations in the Formal Complaint are precisely the same as allegations SVU has already investigated and adjudicated; (d) the length of time elapsed between an incident of alleged Sexual Harassment and the filing of the Formal Complaint prevents SVU from collecting enough evidence to reach a determination; or (e) when a Complainant stops participating in the investigation, but has not sent a formal withdrawal request and the only evidence to suggest wrongful conduct occurred are statements made by the Complainant.

(vi) **Notice of Dismissal.** If SVU dismisses a Formal Complaint, the Assigned Title IX Coordinator will promptly send written notice of dismissal to both parties with an explanation of its reasons. As previously noted, in certain circumstances, dismissed charges will be referred for processing under SVU's Code of Conduct, Employment Contract, or other SVU policies applicable to the conduct.

(vii) **Appeal.** Either party may appeal a dismissal decision. To file an Appeal the party must comply with the requirements set forth in section L below, which also sets forth the rights and procedures involved with the Appeal. The decision made on the Appeal will be the final decision on this issue by SVU.

C. The Appointment of the Investigator

Unless the entire Formal Complaint is initially dismissed under Article IV(B) above, the Assigned Title IX Coordinator will promptly appoint one or more persons to serve as Investigator, including themself. The Investigator(s) names and contact information will be included in the Notice of Allegations sent to the Complainant and the Respondent. All individuals appointed to serve as Investigators will have completed all training required by the Title IX regulations and may be a SVU employee or a third party engaged for this purpose.

Within three (3) days of the Notice of Allegations being sent, either the Complainant or the Respondent may file a written objection with the Assigned Title IX Coordinator for any real or

perceived conflicts of interest or bias posed by assigned Investigator(s). The Assigned Title IX Coordinator will carefully consider such statements and if it is objectively determined that a material conflict of interest exists, a different individual(s) will be assigned to conduct the investigation. If no objection is filed in a timely manner, the party shall have waived any claim or objection on the basis of bias, conflict, or lack of impartiality.

D. Notice of Allegations

Within three (3) days of receiving a filed Formal Complaint, the Assigned Title IX Coordinator shall promptly collect the information necessary to prepare a written Notice of Allegations ("Notice") and will provide the Notice to both parties (provided the identity of the Respondent is known). This Notice shall contain the following information:

(i) The allegations constituting each instance of Sexual Harassment, including:

(1) The identity of the Complainant and the Respondent (if known);

(2) The date and location of the alleged incident or conduct constituting Sexual Harassment (if known); and

(3) The details of the conduct constituting Sexual Harassment;

(ii) The statement that the Respondent is presumed not responsible for the alleged misconduct and that a Determination of Responsibility will be made at the conclusion of the Grievance Process;

(iii) A statement that SVU has adopted a Grievance Process and Procedures (investigation and Hearing) (Articles IV and V) and also offers an Informal Resolution Process (mediation) (Article VI) that is available if both parties agree. A copy of SVU's Sexual Misconduct Policy will be provided;

(iv) The name(s) and contact information of the Investigator(s) appointed to investigate this Formal Complaint, and the right to challenge for bias;

(v) The right of each party to have an Advisor of their choice, who may be, but is not required to be an attorney;

(vi) Assurance that the initial interview of each party will be scheduled by the Investigator(s) or designee so as to afford reasonable time to be prepared;

(vii) The timetable proposed for moving through the Grievance Process related to this Formal Complaint.

(viii) A statement that if the investigation reveals new allegations not covered in this Notice, the information will be provided by the Title IX Coordinator, and this Notice may be amended to add the additional allegations, and this may impact the timetable;

(ix) The right of each party to submit evidence to the Investigator(s), and, if applicable, a deadline for doing so;

(x) The right of each party and their Advisor, if any, to inspect and review all evidence related to allegation(s) collected by the Investigator(s) and to comment on the evidence before the Investigative Report is completed;

(xi) The right to receive a copy of the Investigative Report at least ten (10) days before the Live Hearing;

(xii) The right to challenge the impartiality or bias of the Hearing Officer;

(xiii) The right to have an Advisor assigned to assist either party and to ask relevant questions of all witnesses including the opposing party at the Live Hearing;

(xiv) Notice prohibiting any party from knowingly making false statements or knowingly submitting false information during a Grievance Process and informing the parties that those actions constitute a material violation of SVU's Code of Conduct commitment to "be honest." (See Article II(C), above); and

(xv) Notice prohibiting any party from engaging in retaliation. (See Article II(B), above).

A party who wishes to file a Formal Complaint of Sexual Harassment or other violation of the Sexual Harassment Policy against another party or individual based on allegations arising out of the same facts or circumstances identified in the Notice of Allegations may do so. Allegations in any Formal Complaint received under this paragraph may be consolidated or separated as provided in the Sexual Harassment Policy.

If, during an investigation, the Investigator decides to investigate Sexual Harassment allegations about the Complainant or Respondent that are not included in the Notice of Allegations, the

Investigator must provide all known parties with a supplemental Notice of Allegations as to the additional allegations.

E. Initial Meeting with Respondent

Once a Formal Complaint is filed and the Assigned Title IX Coordinator has completed the initial reviews and provided Notice to both parties, an initial meeting will be scheduled with the Respondent. In arranging this initial meeting, the Assigned Title IX Coordinator will advise the Respondent of the right to be accompanied by an Advisor if desired. During the initial meeting with the Respondent, the Assigned Title IX Coordinator will address the following as applicable:

(i) Provide a copy of this Policy, and explain SVU's Grievance Process for formal resolution and the availability of informal resolution (mediation) process, if both parties agree;

(ii) Discuss confidentiality standards and concerns with the Respondent;

(iii) Explain the Grievance Procedures, the steps involved in an investigation, and the Grievance Process;

(iv) Discuss the availability of the Informal Resolution Process that utilizes mediation, if both parties agree;

(v) Discuss Retaliation protections and reporting, and any concerns Respondent may have for Retaliation; and

(vi) Inform the Respondent of any Supportive Measures being provided to the Complainant that directly affect the Respondent (e.g., mutual no contact directive with other party).

F. Consolidation of Formal Complaints

SVU reserves the right to consolidate Formal Complaints where the Formal Complaints arise out of the same factual circumstances or where there is more than one Complainant or Respondent, or where a cross-complaint is filed by a Respondent against a Complainant. If Formal Complaints are consolidated, there will be a single investigation and Hearing process. All parties will receive the same Investigative Report and the same written determination regarding responsibility although the Determination of Responsibility may be different with respect to each allegation depending on the facts. The written Determination of Responsibility will be provided simultaneously to all parties and will not be redacted.

In a case involving a cross-complaint, each party is entitled to the rights attached to being a Complainant, including the Respondent's right to request Supportive Measures that otherwise would be reserved only for the Complainant. Further, the rape shield provisions, and other evidentiary exclusions will apply to the Respondent when the Respondent is a Complainant on the cross-complaint. Likewise, there shall be no presumption that the initial Formal Complaint takes priority over the cross-complaint.

G. The Investigation and Investigative Report

(i) **Duty to Investigate.** Upon receipt of the Formal Complaint and Notice, the Investigators will promptly begin a thorough search for relevant facts and evidence pertaining to the allegations in the Formal Complaint to reach a Determination of Responsibility. The Investigators will operate under various legal restraints, and, if possible, conclude the investigation with reasonable promptness without the power of subpoena. This may include taking the following steps:

(1) Conducting interviews with the Complainant, the Respondent, and third-party witnesses (including expert witnesses, where applicable) to obtain relevant evidence and summarizing such interviews in written form. However, the Investigator will not interview a party's ecclesiastical leader, physician, psychiatrist, psychologist, lawyer, or other professional or paraprofessional acting or assisting in that capacity; nor will the Investigator access, consider, disclose, or otherwise use records that are made or maintained in connection with the confidential communication with or treatment by any such person, unless the Investigator obtains that party's voluntary, written consent to do so for a Grievance Process under these procedures;

(2) Identifying and gathering relevant documents, including electronically stored information, if available;

(3) Visiting, inspecting, and taking photographs at relevant sites;

(4) Where applicable, collecting and preserving other relevant evidence (in cases of corresponding criminal complaints, this step may be coordinated with law enforcement agencies); and

(5) Where applicable and possible, the Investigators should obtain the written consent of any third-party witnesses to the disclosure of any Personally

Identifiable Information contained in the Formal Complaint, the Investigative Report, and/or any other documents the disclosure of which is contemplated by this Policy to further the resolution of the Formal Complaint.

(ii) **Equal Treatment.** The Investigator(s) shall ensure that both parties have the equal opportunity to present witnesses, including fact and expert witnesses, as well as other inculpatory and exculpatory evidence. The investigator may ask the parties to provide this information in a written statement and/or through live interview(s).

(iii) **Timetable for Submissions.** The investigators will set a specific time-period within which all parties are permitted to submit any evidence that the parties would like the Investigators to consider. The Investigators may at the outset notify the parties that they will have the opportunity to provide additional evidence in response to their inspection and review of the evidence and also an opportunity to respond to the other party's additional evidence. In the latter circumstances, if a party submits a written response, the Investigators shall provide a copy of any written response submitted to the opposing party to allow both sides the ability to adequately prepare for the Live Hearing.

(iv) **Reasonable Notice.** Each party who is invited to participate in a meeting with, or interview by an Investigator shall be given sufficient written notice of the date, time, location, participants, and purpose of the interview or other meeting such that the party shall have reasonable time to prepare to participate. The written notice shall also allow the opportunity for the party to be accompanied by an Advisor. In most cases, advance notice of at least two (2) days will be considered sufficient, subject to adjustment based on the circumstances.

(v) **Ability to Prepare.** Apart from any mutual no contact order that may limit communications or contact between the opposing parties, and the prohibition against Retaliation, neither party is restricted in their ability to discuss the allegations under investigation with others or to gather and present relevant evidence.

(vi) **Non-Disclosure Agreement.** To the extent permitted by law, SVU may require each party and their Advisors, if any, to execute a non-disclosure agreement that: (a) prohibits the dissemination of all evidence and any information made available for inspection and review under Article IV(G)(viii) below, (b) prohibits the use of such information for any purpose unrelated to the Grievance Process under this Policy unless such use is permitted by law, and (c) prohibits the taking of

photographs or otherwise copying evidence, including sensitive materials such as nude images.

(vii) **Redaction.** Before sharing documents, under Article IV(G)(viii), Investigators may redact information that is not directly related to the allegations, or that is otherwise barred from use,. Personal Identifying Information may be redacted from a student's records if the information is not directly related to the allegations in the Formal Complaint. Under Title IX regulations SVU is not required to redact student "education records" shared among the parties in the course of the investigation if they directly relate to the allegations raised in the Formal Complaint because the evidence directly relates to the allegation and as such constitutes an education record of both the Complainant and Respondent, if both the Complainant and Respondent are students. The Investigator will keep a clear record of what documents are withheld or redacted because they are determined not to relate to the allegations in the Formal Complaint.

(viii) **Inspection and Review.** At least ten (10) days prior to completing and submitting the Investigative Report, the Investigators shall provide both parties an equal opportunity to inspect and review all evidence obtained as part of the investigation (the "Investigative Record") that is directly related to the allegations raised in the Formal Complaint, including evidence which is not intended to be relied upon in reaching a determination regarding responsibility, as well as all inculpatory and exculpatory evidence whether obtained from a party or other source, so that each party may meaningfully respond to the evidence prior to the conclusion of the investigation. The Investigators shall not exclude evidence from the Investigative Record so long as the information, document, or material relates to the allegation under investigation. In this regard, while prior sexual behavior of Complainant is generally irrelevant, the investigators must nevertheless share prior history if such evidence is directly related to the allegations because it may be "offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant or to prove consent."

(ix) **Format for Disclosure and Final Written Response.** The Assigned Title IX Coordinator or the Investigators will send to each party and the party's Advisor, if any, the Investigative Record subject to inspection and review through a file-sharing platform that provides the parties with read-only access and maintains the confidentiality of the transmitted data. The parties will have the required ten (10) days to submit a written response. Any written response and any additional evidence provided in connection with a party's final written response will be added to the Investigative Report.

(x) **Investigative Report.** In completing the Investigative Report, the investigator(s) will consider any timely written response submitted by either party. Following the parties' review and input, the Investigator(s) shall create an Investigative Report that:

(1) Identifies the allegations potentially constituting Sexual Harassment and the Respondent's responses to each allegation;

(2) Describes the procedural steps taken from the receipt of the Formal Complaint through the conclusion of the investigation, including notifications to the parties, interviews with parties and witnesses, site visits, and methods used to gather evidence;

(3) Impartially summarizes the relevant evidence;

(4) Makes any recommendations the Investigator deems appropriate; and

(5) Provides the name and contact information for the Hearing Officer.

The Investigative Report will initially be submitted to the Assigned Title IX Coordinator for review. Thereafter, the Investigative Report shall be provided to both parties and their Advisors at least ten (10) days prior to the Live Hearing. The Investigative Report will be included as part of the Investigative Record. The Investigative Report shall only include relevant information, and the Investigators or the Assigned Title IX Coordinator are permitted to redact information that is not relevant. Any evidence of a Complainant's sexual predisposition is never relevant and should be redacted from the report, and prior sexual behavior of Complainant can only be included if it meets narrow exceptions.

The Investigator will, in good faith, attempt to conclude the investigation and issue an Investigative Report within a reasonable time of receiving the Formal Complaint of Sexual Harassment, if possible. If, as a result of the complexity of a case or other good cause—including but not limited to considerations such as the absence of a party, a party's Advisor, or a witness; ongoing law enforcement activity; or the need for language assistance or accommodations for disabilities—warrants it, the Investigator will provide the Complainant and the Respondent with written notice of an estimated time for the deliverance of the Investigative Report to the parties and the reason for the estimated time.

(xi) **Review of the Investigative Report.** The Assigned Title IX Coordinator shall review the Investigative Report before forwarding it to the parties to determine if the grounds clearly exist that require or permit the dismissal of the Formal Complaint or certain of the allegations prior to the Live Hearing in accordance with Article IV(B) above.

This review is not designed to make the Assigned Title IX Coordinator the decisionmaker, but to ensure only allegations of Sexual Harassment as defined by Title IX proceed to a Live Hearing under this Policy. The Assigned Title IX Coordinator shall direct that the case proceeds to a Live Hearing unless it is clear there is a proper ground for dismissal of all or certain of the allegations in the Formal Complaint. The Assigned Title IX Coordinator will specify which allegations and, if applicable, which other related alleged misconduct will go forward for resolution under this Policy.

Should the Assigned Title IX Coordinator dismiss all or part of the allegations in the Formal Complaint, the decision will be reduced to writing with an explanation and promptly sent to each of the parties and Advisors, if any.

Either the Complainant and/or the Respondent may appeal the Assigned Title IX Coordinator's dismissal decision as set forth in Article IV(B) above, and in accordance with the requirements and procedures for Appeal, as set forth in Article V(L), below.

(xii) **Formal Versus Informal Resolution.** At any time after a Formal Complaint is filed and before a Determination of Responsibility is made by the Hearing Officer, either party may request to have the allegations in the Formal Complaint resolved through the Informal Resolution Process set forth in Article VI. This request is subject to the voluntary written consent and agreement of both parties and the other terms of Article VI.

ARTICLE V. GRIEVANCE PROCESS

A. Hearing Timeline

After receiving the Investigative Report, the Title IX Coordinator will schedule a live Hearing ("Hearing") and will provide written notice of the time and place of the Hearing to each party and each party's Advisor, if any, within a reasonable time.

B. Respondent's Acknowledgement of Responsibility Prior to Live Hearing

At any time prior to the date of the commencement of the Live Hearing, a Respondent may elect to acknowledge his or her actions and take responsibility for the alleged Sexual Harassment. In such a situation, the Assigned Title IX Coordinator will determine whether Informal Resolution can be used to resolve the Formal Complaint, as described above. If the Complainant and the Respondent agree to engage in Informal Resolution and an agreed-upon outcome can be reached, then the Formal Complaint will be resolved without a Live Hearing, and without any further rights of appeal by any party. If either the Complainant or the Respondent objects to participating in Informal Resolution, then the Hearing Officer will convene a Hearing for the exclusive purpose of determining a sanction, which determination may be subject to appeal pursuant to Article V(K) of this Policy.

C. Appointment of Hearing Officer

If a Live Hearing is to be held, the Assigned Title IX Coordinator shall appoint a Hearing Officer to conduct a Live Hearing in which the Complainant, the Respondent, and any witnesses whose testimony the Hearing Officer deems relevant shall appear, provide testimony, be subject to questioning by the Hearing Officer as well as the other party's Advisor. The Hearing Officer will be the decisionmaker on questions of responsibility for the allegations in the Formal Complaint and will decide to issue sanctions, if appropriate.

All individuals appointed by SVU to serve as a Hearing Officer under this Policy will have received specific trainings (i) as required by Title IX regulations; (ii) on any technology to be used at a live Hearing; and (iii) on issues of relevance of questions and evidence—including when questions and evidence about a Complainant's sexual predisposition or prior sexual behavior are not relevant. Additionally, all individuals appointed to serve as a Hearing Officer under this Policy will be free of known conflicts of interest or improper bias. (See Article IV(A)(ii), above.)

The Assigned Title IX Coordinator will share the Formal Complaint, Notice, and the Investigative Report with the Hearing Officer and, if only a portion of the misconduct alleged in the Formal Complaint is found to justify the Live Hearing, the Assigned Title IX Coordinator will also specify which part(s) of the alleged misconduct will be the subject of the Live Hearing.

Neither the Title IX Coordinator nor the Investigator may serve as the Decision maker.

D. Notice of Live Hearing & Hearing Officer

The Assigned Title IX Coordinator will provide written notice simultaneously to the Complainant and to the Respondent of the date and time for the Live Hearing and of the name of the individual

appointed to serve as the Hearing Officer. If only a portion of the alleged misconduct will be addressed at the Live Hearing, the Notice will specify which part(s) of the Formal Complaint are subject of the Hearing.

E ARTICLE V. GRIEVANCE PROCESS

A. Hearing Timeline

After receiving the Investigative Report, the Title IX Coordinator will schedule a live Hearing ("Hearing") and will provide written notice of the time and place of the Hearing to each party and each party's Advisor, if any, within a reasonable time.

Likewise, either party may also submit a written objection to the date and time set for the Hearing setting forth reasons for the proposed change. The Assigned Title IX Coordinator, with input from the Hearing Officer and the other party, will decide whether Good Cause exists to warrant the change in the Hearing date.

F. Standard of Proof

The burden of proving that the Respondent is responsible for Sexual Harassment rests at all times on SVU and not the parties. The standard of evidence to be used in determining responsibility at the Hearing level and on an Appeal shall be the preponderance of the evidence. This standard does not require corroborating evidence as the testimony of one person may be sufficient.

G. Investigative Evidence at the Live Hearing

All evidence that was collected by the Investigators and made available for the party's inspection and review under Article IV(G)(viii), shall also be made available at any Live Hearing so that each party shall have equal opportunity to refer to or use such evidence during the Live Hearing. Physical or documentary information not included in the Investigative Record will not be admissible during the Hearing unless the Hearing Officer determines that the information was not reasonably available to the party seeking its admission during the investigation.

H. Relevance

Only relevant questions may be asked of a party or witness. Before a Complainant, Respondent, or witness answers a cross-examination or other question, the Hearing Officer must first determine whether the question is relevant and explain any decision to exclude a question as not relevant. Questions and evidence about Complainant's prior sexual behavior are only relevant under very narrow circumstances. See Article V(I)(xii), below.

I. Hearing Procedures

(i) **Submission of Written Materials by the Parties.** At least ten (10) business days prior to the start of the Hearing, the Complainant and the Respondent shall provide a written submission to the Hearing Officer that includes the following:

(1) The party's written statement of position regarding the allegations and the Investigative Report;

(2) The name and contact information of any witnesses the party intends to call at the Hearing, and a brief description of each proposed witness's connection to and/or knowledge of the issues in dispute; and

(3) The name and contact information of the party's Advisor for the Hearing.

The Hearing Officer will review the parties' written submissions and, at least five (5) business days prior to the Hearing, forward the written submissions to the other party.

(ii) **Appointment of Advisor.** If a party does not identify a chosen Advisor in the written submission, the Title IX Coordinator will, without fee or charge to the party, appoint an Advisor for that party and, at least five (5) business days prior to the Hearing, provide the Advisor's name and contact information to the parties. The SVU-provided Advisor need not be an attorney.

(iii) **Notice of the Hearing Witnesses.** Not less than three (3) business days prior to the start of the Hearing, the Hearing Officer or the Assigned Title IX Coordinator will send a separate notice to the Complainant, the Respondent, and to each witness(es) whose testimony the Hearing Officer deems relevant, requesting such individuals to appear at the Hearing. The notice shall set forth, as applicable, the date, time, and location of the Hearing. The notices to the Complainant, the Respondent, and the Hearing Officer will provide the names of all witnesses that are requested to attend.

(iv) **Confidentiality & Disclosure.** To comply with FERPA, Title IX, and other applicable laws, and to provide an orderly process for the presentation and consideration of relevant information without undue intimidation or pressure, the Hearing process is not open to the general public. Accordingly, documents prepared in anticipation of the Hearing (including the Formal Complaint, the Investigative Report, the notice of Hearing, and the prehearing submissions referenced above);

documents, testimony, or other information introduced at the Hearing; and the Determination Letter may not be disclosed, except as may be required or authorized by law.

If it is determined, however, that the Respondent committed Sexual Assault, SVU policy does not prohibit the further disclosure of the Determination by either the Complainant or the Respondent.

(v) **Opening and Closing Statements.** The Hearing Officer may ask the Complainant and the Respondent to make a brief statement at the opening and/or the closing of the Hearing. Such statements will be made by the parties, not by their Advisors. The Hearing Officer may limit the time for these statements but will give each party an equal opportunity to make any statements at the Hearing.

(vi) **Direct and Cross-Examination of Parties and Witnesses/Role of Advisor.** The Hearing Officer may ask any relevant questions of any party or witness at the Hearing, including the Investigator. The Hearing Officer will permit each party's Advisor to ask the parties and any witnesses all relevant questions and follow-up questions, including questions challenging credibility. Such questioning and cross-examination must be conducted directly, orally, and in real time by a party's Advisor and never by a party personally. Before a party or witness must answer a question posed by an Advisor, the Hearing Officer must first determine if the question is relevant, and if not, state the reason for the record.

(vii) **Failure to Appear or Participate.** SVU will make reasonable allowance for SVU students and employees who participate in a Hearing, if necessary, during regular school or work hours. However, no party or witness is compelled to participate in the Hearing.

If the Complainant, the Respondent, or a witness fails to appear before the Hearing Officer, and such party or witness was provided proper notice of the Hearing, then absent extenuating circumstances, the Hearing Officer will proceed to make a Determination of Responsibility for the allegations in the Formal Complaint. Should a party choose not to attend, the party's Advisor may still appear and conduct cross-examination.

The Hearing Officer may consider and rely upon statements made outside of the Hearing by a party or witness even if the party or witness is not present at a Hearing, or if present, refuses to answer relevant questions on cross-examination, provided the Hearing Officer finds that the earlier statement are reliable and trustworthy

under the totality of circumstances. In determining trustworthiness, the Hearing Officer may consider, among other factors:

(1) The personal knowledge of the subject matter of the person making the statement,

(2) The credibility of the person testifying about the statement (if any),

(3) Any apparent motive or bias the person may have to falsify or distort the subject matter of the statement,

(4) Questions raised regarding the reliability and accuracy of the statement based on credentials (or lack thereof) of the speaker making the statement,

(5) Questions raised regarding the reliability and accuracy of the statement based on integrity (or lack thereof) of the document containing the statement or the circumstances under which the earlier statement was provided, and

(6) Whether other evidence directly or indirectly supports the reliability of the statement.

The following documents often contain statements made outside of the Hearing and these statements will be examined for reliability and trustworthiness by the Hearing Officer before they are considered in determining responsibility for the charge: police reports or other official reports, medical records, court records and filings, investigation notes of interviews, emails, written statements, affidavits, text messages, social media postings, and the like.

However, the Hearing Officer may not draw an inference about responsibility based solely on (i) a statement made outside of a Hearing or (ii) the absence from the Hearing of a party or witness, or the refusal of a party or witness to answer cross-examination questions. This includes any inference that a Respondent's absence or refusal to answer questions implies their responsibility for the Sexual Harassment alleged or that a Complainant's absence or refusal to answer implies that the Respondent is not responsible for the Sexual Harassment alleged by the Complainant.

(viii) **Special Arrangements and/or Accommodations.** Hearings will typically be conducted with all parties participating virtually, via a live, video-conferencing software. However, in addition to disability-related accommodations, the parties

may request special arrangements and/or accommodations (for example, the ability to participate from a specific or private location) in connection with the Hearing. Such requests must be submitted in writing to the Assigned Title IX Coordinator no later than five (5) business days before the Hearing. Upon receipt of such a request, SVU will provide for the live Hearing to occur with the parties located in separate rooms with the use of technology. Where such technology is used to create a virtual live Hearing, SVU will ensure that all parties and the Hearing Officer can simultaneously see and hear the person testifying and answering the questions posed.

In the Hearing Officer's discretion, witnesses and other participants may also appear at the live Hearing virtually, with technology enabling participants to simultaneously see and hear each other. In these circumstances, the Hearing Officer may impose conditions on the person(s) appearing virtually to ensure the integrity of the process.

(ix) **No Contact Prior to the Hearing.** The Complainant and the Respondent are not to contact each other outside of the Hearing, even to discuss the Hearing. This prohibition does not apply to communications between Advisors of the parties.

(x) **Hearing Recording.** An audio or audiovisual recording or transcript of the Hearing shall be made by or under the direction of the Hearing Officer, and it shall be made available to the parties for inspection and review.

(xi) **Evidentiary Matters.** The Complainant and the Respondent will have an equal opportunity to present relevant evidence during the Hearing. Formal rules of evidence will not be observed during the Hearing.

(xii) **Prior Sexual Behavior.** Consistent with applicable rape shield laws, questions and evidence about the Complainant's sexual predisposition or past sexual behavior are not relevant and will not be permitted at the Hearing, unless the questions or evidence about the Complainant's prior sexual behavior are offered to prove one of the following:

(1) That someone other than the Respondent committed the alleged Sexual Harassment, or

(2) When the questions or evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent to the alleged Sexual Harassment.

(xiii) Role of the Hearing Officer. The Hearing Officer may question the Investigator(s), the parties, and any witnesses and will resolve any questions concerning procedure or the admission of evidence or testimony (including the relevancy of the evidence and testimony). Members of the SVU community are expected to provide truthful testimony.

J. Sanctions.

Sanctions to be imposed upon a finding of responsibility depend upon the nature and gravity of the misconduct, as well as the record of prior discipline for Sexual Misconduct.

(i) Potential Sanctions. Sanctions may include, without limitation, withholding a promotion or pay increase, reassigning employment, terminating employment, temporary suspension with or without pay, compensation adjustments, expulsion or suspension from SVU, disciplinary probation, mandatory housing changes or expulsion from campus housing, mandated counseling, Campus or location-specific bans, prohibition from participation in specific events, activities, or functions, permanent No-Contact Directives, Loss of Privileges, restitution, making permanent any supportive measure established, and/or educational sanctions deemed appropriate by the Hearing Officer.

(ii) The Hearing Officer will determine sanctions as part of the Hearing, giving consideration to whether a given sanction will (a) bring an end to the violation in question, (b) reasonably prevent a recurrence of a similar violation, and (c) remedy the effects of the violation.

K. Determination of Responsibility

(i) Process for Determination of Responsibility. The Hearing Officer will objectively evaluate all evidence relevant to the allegations in the Notice of Allegations—including both information tending to show the Respondent's responsibility for Sexual Harassment and information tending to show the Respondent is not responsible—and must determine, based on the preponderance of the evidence (i.e., whether it is more likely than not), whether the Respondent is responsible for Sexual Harassment. The Hearing Officer will not require, allow, rely on, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding the privilege has waived it. The Hearing Officer will presume that the Respondent is not responsible for the alleged conduct until a Determination of Responsibility is made at the conclusion of the Grievance Process and will not base

any credibility determinations on a person's status as a Complainant, Respondent, or witness. It is the decisionmakers' responsibility to ensure that the burden of proof is met for any Determination of Responsibility for a Respondent.

(ii) **Timing and Content of Hearing Officer's Determination.** Within thirty (30) calendar days following the conclusion of the Hearing, absent extenuating circumstances, the Hearing Officer will deliver to the Assigned Title IX Coordinator the written Determination of Responsibility on each of the allegations, applying the required Standard of Proof. This Determination of Responsibility shall include the following:

(1) Identification of each of the allegations potentially constituting Sexual Harassment and the Respondent's responses to each allegation;

(2) Description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including notifications to the parties, interviews with the parties and witnesses, site visits, methods used to gather evidence, and Hearings held;

(3) Findings of fact supporting determination;

(4) Conclusions regarding application of Sexual Harassment Policy to the facts,

(5) A statement of and the rationale for, and the result as to each allegation, including a Determination of Responsibility;

(6) A statement regarding any disciplinary sanctions to be imposed on the Respondent; and

(7) Whether there are other remedies designed to restore equal access to SVU's Education Programs or Activities that should be provided to the Complainant

(iii) **Notice of Determination.** The Assigned Title IX Coordinator must promptly and simultaneously provide to the parties a copy of the Hearing Officer's Determination of Responsibility, a statement explaining the procedures and permissible basis for appeal, and the date the Determination of Responsibility becomes final. The Determination of Responsibility is final either (i) eleven (11) business days after it

is delivered to the parties, or (ii) if an appeal is filed, then on the date the Final Determination of the result of the Appeal is sent to the parties.

The parties' access to the Investigative Record will terminate as soon as the Determination of Responsibility becomes final, and any further access will only be as permitted or as required by law.

(iv) Implementation of Sanctions. Sanctions imposed are not effective until the determination is final. However, SVU retains the right to take Emergency Interim Action if the facts warrant such action under Article IV(A)(vi) above, or to take steps to prevent or remedy acts of Retaliation.

(v) Final Accommodations and Corrective Action. In addition to any sanctions imposed on the Respondent, promptly, upon the Determination of Responsibility becoming final, the Assigned Title IX Coordinator will determine if additional Supportive Measures should be provided to the Complainant. The Assigned Title IX Coordinator will communicate the impact of such a decision to the Complainant.

The Assigned Title IX Coordinator will also take steps, where necessary, to prevent further harassment of or Retaliation against the Complainant, the Respondent, or other third parties, such as informing them about how to report subsequent problems, following up with them to ensure that there are no subsequent problems, providing training for the community, and/or providing counseling for the Complainant and Respondent.

L. Appeals.

Either party may appeal the determination of the Hearing Officer as to responsibility and/or the sanction imposed on the Respondent. The Determination of Responsibility and sanction may, if desired, be appealed simultaneously. This appeal process also applies to the decision by the Title IX Coordinator to impose an Emergency Removal of a student under Article IV(A)(vi) or if the Title IX Coordinator or the Assigned Title IX Coordinator decides to dismiss all or some portion of the Formal Complaint as permitted under Article IV(B), above.

(i) Grounds for Appeal.

(1) Emergency Removal Decision. The only permissible grounds for appeal from an Emergency Removal decision are (a) that the available facts do not reasonably support the finding that the Respondent poses an immediate risk to the physical safety and health of the Complainant or others, or (b) there

are measures short of removal from campus that will address any concerns without unreasonably burdening the Respondent and denying the Respondent the opportunity to participate in SVU's Education Programs and Activities.

(2) **Dismissal Decision and Responsibility Determination.** The only permissible grounds for an appeal from a Dismissal Decision made under Article IV(B) or from the Determination of Responsibility by the Hearing Officer are:

(a) A procedural irregularity that impacted the outcome of the matter.

(b) New evidence that was not reasonably available at the time the dismissal or Determination of Responsibility was made, that could impact the outcome of the matter.

(c) The Title IX Coordinator or Deputy Title IX Coordinator, Investigator, or Title IX Hearing Officer had a conflict of interest, a bias for or against Complainants or Respondents generally, or a preexisting bias against the individual Complainant or Respondent that impacted the outcome of the matter.

(ii) **Time of Filing.** Unless a different date is set for Good Cause, any appeal must be filed with the Title IX Coordinator within ten (10) calendar days of the issuance of the Decision that is being challenged. The appeal must be in writing and must identify at least one of the specific grounds for appeal. See Article V(L)(i), above. The written appeal is limited to five (5) pages, exclusive of exhibits.

Any Appeal that does not state and articulate one or more permissible grounds for an Appeal shall be dismissed by the Title IX Coordinator, or designee, and written notice of the dismissal of the appeal shall be sent to both parties.

(iii) **Appeal Notice.** Within five (5) calendar days of receiving a timely and proper Appeal, the Title IX Coordinator shall provide written notice to the opposing party and provide a copy of the appeal with an explanation of the opposing party's right to submit a response.

(iv) **Equal Opportunity.** The opposing party to an appeal will be given a reasonable time-period to file a written response to the appeal and in support of the decision at issue. Absent Good Cause, the opposing party's response to the appeal shall be

submitted in writing within ten (10) calendar days of receiving the Appeal Notice. The opposition to appeal is limited to five (5) pages, exclusive of exhibits. The Title IX Coordinator will send a copy of the opposition to the appealing party for reference, as no further opposition or statements will be accepted.

(v) **Appellate Decisionmaker.** The decisionmaker for an appeal is called a Reviewer. Neither the Title IX Coordinator nor any person designated as an Investigator or Hearing Officer in a matter may be designated as a Reviewer of the same matter. The Reviewer shall be an Administrator at SVU, contacted by the Title IX Coordinator, who agrees to the appointment, and who is trained concerning Title IX and according to all current Title IX rules and regulations. If no SVU Administrator can be identified, then the Reviewer shall be a third party specifically engaged for this purpose.

(vi) **Appellate Record.** A copy of the appeal and the opposing party's response, if any, along with the Investigative Record, Hearing Record (if applicable), and Determination of Responsibility ("Appellate Record") will be promptly delivered to the Reviewer by the Title IX Coordinator. The Reviewer will consider the full Appellate Record in reaching a determination on the appeal.

(vii) **Standard for Decision.** On all issues to be decided, the decisionmaker on appeal shall apply the preponderance of the evidence standard and utilize an objective evaluation of the relevant evidence.

(viii) **Appellate Decision.** The decisionmaker will simultaneously provide the parties and the Title IX Coordinator with a written decision upholding, remanding for new sanctioning, reversing, or amending all or part of the original Determination of Responsibility and providing the decisionmaker's rationale for the result. Absent extenuating circumstances or other Good Cause, a decision on the appeal shall be issued within thirty (30) calendar days upon the delivery of the Appellate Record. If the decision on the appeal is to be delayed, the decisionmaker will notify both parties as to when the appeal decision will be provided. The decision on the appeal is the final decision for SVU, and no further review will be allowed.

M. Documentation and Record Keeping

SVU will retain the following documentation for a period of seven (7) years:

(i) The written Formal Complaint.

(ii) Records of any actions, including any Supportive Measures, taken in response to a report or Complaint of Sexual Harassment. In each instance, SVU must document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to SVU's Education Program or Activity. If SVU does not provide a Complainant with Supportive Measures, then SVU must document the reasons why the response was not clearly unreasonable considering the known circumstances. The documentation of certain bases or measures does not limit SVU in the future from providing additional explanations or detailing additional measures taken.

(iii) Records of any informal resolution, including any documentation of mediation and written agreement of informal resolution.

(iv) Records of each Sexual Harassment investigation, including any written communication to the parties, Notices, Dismissal Decisions, Investigative Record, Determination of Responsibility and any audio or audiovisual recording or transcript created during the Hearing, any disciplinary sanctions imposed on the Respondent, and any remedies provided to the Complainant designed to restore or preserve equal access to SVU's Education Program or Activity.

(v) Records of any appeal and the result therefrom.

(vi) All materials used to train any person participating in the Title IX process at SVU (which SVU will also make publicly available on its Title IX website).

(vii) Documentation pertaining to terminations, expulsions, or educational sanctions may be retained indefinitely.

N. Transcript Notation and Removal

Pursuant to Va. Code § 23.1-900, the Registrar of SVU will include a prominent notation on the academic transcript of each student who has been suspended for, has been permanently dismissed for, or withdraws from SVU while under investigation for an offense involving Sexual Violence under SVU's Code of Conduct, rules, or set standards governing student conduct. The notation will state that the student was suspended for, was permanently dismissed for, or withdrew from SVU while under investigation for an offense involving sexual violence.

SVU will: (a) notify the student that any suspension, permanent dismissal, or withdrawal will be documented on the student's academic transcript; and (b) remove the notation from the student's

academic transcript who is subsequently found not to have committed an offense involving sexual violence.

SVU will remove from the student's academic transcript any notation due to the student's suspension if the student: (i) completed the term and any conditions of the suspension; and (ii) has been determined by SVU to be in good standing according to SVU's Code of Conduct, rules, or set of standards.

ARTICLE VI. INFORMAL RESOLUTION

A. Overview

SVU also makes available an Informal Resolution Process that utilizes mediation as a means for the parties to resolve allegations of Sexual Misconduct. If both parties agree to Informal Resolution, the Grievance Procedures will be put on hold until it can be determined whether an informal resolution can be reached by the parties. The Informal Resolution process offered by SVU is provided without charge to the parties.

There is no requirement for either party, Complainant or Respondent, to agree or participate in this Informal Resolution (IR) process. The IR process offered by SVU must be voluntarily agreed to by both parties, and any resolution reached through IR must also be voluntarily agreed to by both parties to become binding. No adverse action will be taken against any party who declines to agree to a request for IR, or who elects to withdraw from the IR process before a comprehensive agreement that resolves all allegations is reached.

B. Prerequisites for Informal Resolution

A request for Informal Resolution (IR) can only be made after a Formal Complaint has been filed and the Notice of Allegations has been provided (See Article IV(D)). Thereafter, either party may request the use of IR at any time before a determination is made as to the responsibility for the allegations in the Formal Complaint. Additionally, IR may only be used when it addresses all the allegations in the Formal Complaint (for example, parties may not choose to resolve a claim of Sexual Assault according to the Grievance Process, but then mediate all other claims). As noted, there is no requirement for any party to agree to use the mediator or to seek an informal resolution. Complaints involving an employee and a student as the complainant and respondent are not permitted to use IR to resolve their Formal Complaint.

C. Nature of Agreement to participate in Informal Resolution

One benefit of the Informal Resolution process is that the parties can fashion whatever resolution the parties can agree upon provided it does not violate applicable law or SVU's policies. In this

regard, through the Informal Resolution process, the parties may agree to a resolution of the allegations in the Formal Complaint that involves a range of responses and remedies. Any agreement reached by the parties shall be subject to SVU's review to ensure compliance with governing law and SVU policy, and proposed resolutions may be vetoed by the Assigned Title IX Coordinator.

D. Written Consent

Assuming the above prerequisites are met, SVU will initiate the Informal Resolution Process only upon receipt of the signed written consent of both parties, which must indicate that they have read and understood all the terms of the Informal Resolution Process as set forth in this Article VI.

E. Trained and Impartial Mediator

Neither the Title IX Coordinator nor any facilitator will be an advocate for either the Complainant or the Respondent in the Informal Resolution process, but rather will aid in the resolution of formal complaints in a non-adversarial manner. Upon receiving a signed consent to mediate, the Title IX Coordinator will appoint an individual to serve as facilitator under this Informal Resolution Process who has received specific training as required by Title IX regulations and is free of known conflicts of interest or improper bias. The person appointed to serve as a mediator may be an employee of SVU, including the Title IX Coordinator, or a third party specifically engaged for this purpose.

F. Activation of the Informal Resolution Process

Within five (5) calendar days of receiving the signed written agreement to participate in IR, the Title IX Coordinator will send notice to the Complainant and Respondent setting forth: (i) the method of IR being utilized; and (ii) the name of the individual selected to serve as the facilitator. Either party may challenge the selection of the mediator by submitting a written objection with specific reasons to the Assigned Title IX Coordinator within three (3) calendar days of receiving the notice. Failure to submit a timely and proper objection with specifics will constitute a waiver of the right to object to the assigned facilitator. The Assigned Title IX Coordinator will make a determination based on an assessment of objective information available whether the facilitator should be replaced for bias or lack of impartiality. Any decision to substitute the facilitator will be provided in writing to both parties..

H. Interaction of the Parties

The Complainant and Respondent, and their advisors, will not interact with one another during the Informal Resolution process, unless in-person mediation has been selected and agreed-upon as the

method of IR utilized to resolve the Formal Complaint. Communication about the IR process and discussion between parties, other than during in-person mediation, will happen through the IR Facilitator.

I. Advisor

Both Complainant and Respondent have the right to be accompanied by an Advisor to any meeting with the Facilitator or any IR session of their choice. The role of an Advisor in IR is merely to consult with and privately advise their participant. The IR Advisor shall not be permitted to question or cross-examine the other party, or to speak directly to the other party. The IR Advisor may speak with the Facilitator in private, outside of the presence of the parties.

J. Impact of Agreement on Grievance

If a mutual agreement is reached to submit the allegations of the Formal Complaint to IR, the Grievance Procedures shall be put on hold for a reasonable period of time to see if the Facilitator is able to reach an agreed upon resolution that is acceptable to both parties. As a result, the use of the Informal Resolution Process will cause an extension of the timetable that normally applies for the Grievance Process.

K. Privacy and Disclosure

To comply with FERPA and Title IX and to provide an orderly process for the presentation and consideration of relevant information without undue intimidation or pressure, the informal resolution process is not open to the general public. Accordingly, documents prepared in anticipation of the mediation and other information introduced at the mediation may not be disclosed outside of the mediation, except as may be required or authorized by law.

L. Withdrawal Right

Either party has the right to withdraw from the Informal Resolution Process and terminate the mediation at any time and for any reason. The decision to withdraw from the Informal Resolution Process will not result in any adverse action taken against the withdrawing party.

M. Failure to Agree/Impasse

In the absence of extenuating services, or other Good Cause, if either party fails to appear for the scheduled mediation after being provided proper notice, the mediator may declare the mediation to be at an impasse.

N. Withdrawal/Failure of Agreement

In the event a party withdraws from the IR process, or the IR process has been unable to reach an agreed upon resolution within ten (10) business days from the initial meeting with the facilitator, the mediation will be declared to be at an impasse, unless both parties agree in writing to extend the time period in an effort to complete negotiations of an agreement. Upon a party's withdrawal or the mediation being declared at an impasse, the Grievance Process will resume from the point at which it was stopped and proceed through the Hearing.

O. Implementation

Any agreement reached by the party in IR shall be submitted to the Title IX Coordinator for review and approval based on Title IX and other applicable SVU policies. If the agreement is not approved for any reason, the parties will be notified. If deemed appropriate, another meeting of the parties, their Advisors, the facilitator, and Title IX Coordinator will be held as soon as reasonably practicable to explain the legal difficulty and to see if those difficulties may be resolved with the parties' voluntary consent. Absent a new agreement being reached, the process will be declared at an impasse and the Grievance Process shall resume.

EXHIBIT A: CONTACT INFORMATION & RESOURCES
to
SEXUAL MISCONDUCT POLICY AND PROCEDURES

UNIVERSITY RESOURCES

SVU's **Title IX Coordinator** is Nathan Friesema, whose office is located at Main Hall 240. He may be contacted by phone at (540) 572-7414 or by email at TitleIX@svu.edu.

The Office of Campus Security is located on the ground floor of Main Hall; B1, and is available by phone at 540-261-4911 and by email at security@svu.edu. Campus Safety Officers are available 24/7.

Student Support Services/Student Wellness is located at 236 Main Hall, One University Hill Drive and is available by phone at 540-261-8470 and by email at counseling@svu.edu. The office is staffed from 8:30 a.m. until 4:30 p.m. Monday through Friday during the academic year.

LOCAL RESOURCES

Local Law Enforcement Agencies can all be reached by calling 911.

Buena Vista Police Department (BVPD) is located across the street from campus at 306 Park Ave A, Buena Vista, VA 24416, and can be reached at (540) 261-6174 for non-emergencies.

Carilion Rockbridge Community Hospital is located at 1 Health Circle Lexington, VA 24450 and can be reached at 540-458-3300.

SARA, Inc. (Sexual Assault Response and Awareness) is a sexual assault crisis center and provides free confidential counseling services to survivors of sexual assault and abuse. Office: 540-344-7273. 24-Hour Hotline 540-981-9352.

STATE AND NATIONAL RESOURCES

Project Horizon is a 24-hour Hotline which helps victims of sexual assault and has a regional location in nearby Lexington, VA. Phone number: 540-463-2594. Toll Free: 866-463-2594.

Virginia State Domestic & Sexual Violence Hotline (VSDS) is a 24-hour Hotline which helps victims of sexual assault and domestic violence. Phone number: 800-838-8238. Web address for more information: www.dss.virginia.gov/community/dv/.

National Domestic Violence Hotline (NDV) is a hotline available to victims of sexual assault and domestic violence. Phone number: 800-799-7233 (SAFE). Web address for more information: www.thehotline.org.

Rape, Abuse and Incest National Network (RAINN) is a hotline available to victims of sexual assault. Phone number: 800-656-4673. Web address for more information: www.rainn.org.

Suggested Actions for Survivors of Sexual Assault

While all types of Sexual Misconduct are inappropriate and taken seriously by SVU, actions involving Sexual Assault (as defined in Exhibit B) are particularly concerning. Thus, if you are the survivor of a Sexual Assault, SVU's first priority is to help you take steps to address your safety, medical needs, and emotional well-being. You are encouraged to take the following actions, as applicable, regardless of whether you have decided about whether to pursue criminal charges or file a Formal Complaint with SVU.

1. Ensure Your Physical Safety

Help is available from local law enforcement agencies by calling 911 or by contacting SVU's Office of Campus Security. The Office of Campus Security can assist you with contacting local law enforcement and can help you obtain transportation to the local law enforcement office. Campus Security personnel are on duty at the Office of Campus Security 24 hours a day, seven days a week.

2. Seek Medical Assistance and Treatment

The steps you take immediately following an assault are very important. These steps will help to protect your health and the options available to you later.

i. Preserve evidence. Do not bathe, douche, change clothes, brush your teeth, clean up, eat, or drink. If you choose to have an evidence collection kit ("PERK" "SANE" or "rape kit") completed, it is important to do so within 72 hours. This kit can still be completed even if you have showered or bathed. Even if you have not decided to file charges, it is advisable to have evidence collected so that you can preserve the option of pursuing charges within the criminal justice system at a later date. The local Emergency Department that provides such exams is **Carilion Rockbridge Community Hospital** located at 1 Health Circle Lexington, VA 24450 and can be reached at 540-458-3300.

ii. Get medical attention as soon as possible. Your health and safety should come first. This does not obligate you to press charges. Medical evaluation and care may address potential injuries, screen for the presence of sedative drugs such as Rohypnol or GHB (date-rape-drugs) or the possible exposure to sexually transmitted infections or unwanted pregnancy.

3. Emotional Support

The Student Wellness Center will provide therapy and help you contact a support person, such as a friend, family member, roommate, or SARA advocate for support. Licensed counselors are also available to provide crisis intervention and ongoing treatment. Counseling is free of charge to all students. Assault is a traumatic experience, and you may have feelings of anger, fear, guilt, and confusion, among others. These feelings are normal. Understanding and knowledgeable sources of support will promote recovery.

4. Obtain Information / Report Misconduct

You are encouraged to report incidents of Sexual Assault to SVU's Title IX Coordinator or other designated SVU employees or offices as outlined in the Sexual Misconduct Policy (even if you have filed a report directly with law enforcement). Further information about how to report Sexual Assault is provided in the body of the SVU Sexual Misconduct Policy. SVU employees can help you access resources and can provide you with support and information, including information on SVU's procedures for investigating and addressing instances of Sexual Assault.

Supportive Measures

Once the Title IX Coordinator is made aware of a report of Sexual Misconduct, the Title IX Coordinator will make contact with the Complainant in a reasonably prompt manner to offer supportive services, and to engage in an interactive process to discern what measures may be appropriate and available.

"Supportive Measure" means non-disciplinary, nonpunitive individualized services offered as appropriate and as reasonably available, without fee or charge, to the Complainant or Respondent before or after the filing of a Formal Complaint and even if no Formal Complaint is filed with SVU. These measures are meant to restore or preserve equal access to the Education Program and Activities of SVU without unreasonably burdening the other party, but also being designed to protect the safety of all parties and SVU's educational environment, and to deter further sexual discrimination. In making the decision of what measures should be provided, the wishes of the party will be considered as well as the specific facts and circumstances, taking into account the nature of the educational programs, activities, opportunities, and benefits in which both parties are participating.

Supportive Measures may include any or all of the following:

(i) Counseling;

(ii) Extensions of deadlines or other course related adjustments;

(iii) Modification of work or class schedules;

(iv) Campus escort services;

(v) Mutual restrictions on contact between the parties;

(vi) Changes in work or housing locations;

(vii) Leaves of absence;

(viii) Other similar measures.

The Title IX Coordinator is responsible for coordinating an effective implementation of the Supportive Measures. When Supportive Measures are provided, SVU will keep the delivery of such measures confidential to the extent that maintaining such confidentiality will not impair the ability of SVU to provide them.

In those circumstances where a determination is made that the Respondent poses an immediate threat to the physical health or safety of the Complainant or others, there are separate steps that may be taken to remove the student or employee from the campus, but those are not Supportive Measures. See Emergency Removal provision (Article IV(A)(vi) of the Policy) which addressees the removal of a student and the ability to place an employee on administrative leave.

EXHIBIT B: DEFINITIONS
to
SEXUAL MISCONDUCT POLICY AND PROCEDURES

(i) **Actual Knowledge.** "Actual Knowledge" means notice of Sexual Harassment or allegations of Sexual Harassment by report to the Title IX Coordinator or any official of SVU who has authority to institute corrective measures on behalf of SVU. Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute Actual Knowledge under this Policy.

(ii) **Advisor.** The "Advisor" is an individual who represents a Complainant or a Respondent in a Title IX proceeding. See Article IV(A)(iv).

(iii) **Assigned Title IX Coordinator.** The "Assigned Title IX Coordinator" means either the Title IX Coordinator or the Deputy Title IX Coordinator assigned by the Title IX Coordinator, Director of Human Resources, or President to handle a given Formal Complaint.

(iv) **Clery Act.** The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (the "Clery Act") is a federal statute codified at 20 U.S.C. § 1092(f), with implementing regulations in the U.S. Code of Federal Regulations at 34 C.F.R. 668.46. The Clery Act requires all colleges and universities that participate in federal financial aid programs to keep and disclose information about crime on and near their respective campuses.

(v) **Complainant.** A "Complainant" means an individual who is alleged to be the victim of conduct that would constitute Sexual Misconduct, whether they are the person who reports the incident or files a Formal Complaint.

(vi) **Formal Complaint.** A "Formal Complaint" means a written document signed by the Complainant or the Title IX Coordinator alleging conduct that if proven would constitute Sexual Misconduct and contains a request for SVU to investigate the allegation(s).

(vii) **Consent.** "Consent" is informed, freely and actively given and mutually understandable words or actions that indicate a willingness to participate in mutually agreed-upon sexual activity. Consent is mutually understandable when a reasonable person would consider the words or actions of the parties to have manifested a mutually understandable agreement between them to engage in certain

conduct with each other. Consent cannot be gained by ignoring or acting regardless of the objections of another.

Consent cannot be inferred from:

1) Silence, passivity, or lack of resistance alone;
2) A current or previous dating or sexual relationship alone (or the existence of such a relationship with anyone else);
3) Attire;
4) The buying of dinner or the spending of money on a date; or
5) Consent previously given (i.e., consenting to one sexual act does not imply consent to another sexual act).

Consent is not effective if it is obtained through the use of physical force, violence, duress, intimidation, coercion, or the threat, expressed or implied, of bodily injury. Whether a party used intimidation or coercion to obtain consent will be determined by reference to the perception of a reasonable person found in the same or similar circumstances.

Consent may never be given by:

1) Minors, even if the other participant did not know the minor's age;
2) Mentally disabled persons, if their disability was reasonable knowable to a sexual partner who is not mentally disabled; or
3) Persons who are incapacitated (whether as a result of drugs, alcohol, or otherwise), unconscious, asleep or otherwise physically helpless or mentally or physically unable to make informed, rational judgments. The use of alcohol or drugs does not diminish one's responsibility to obtain Consent and does not excuse conduct that constitutes Sexual Misconduct under this Policy.

If at any time during a sexual act any confusion or ambiguity is or should reasonably be apparent on the issue of consent, it is incumbent upon each individual involved in the activity to stop and clarify the other's willingness to continue and capacity to consent. Neither party should make assumptions about the other's willingness to continue.

(viii) Dating Violence. "Dating Violence" means 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, and
    c) the frequency of interaction between the persons involved in the relationship.

(ix) Day. A "day" is a business day, unless otherwise specified.

(x) Deputy Title IX Coordinator. SVU's Deputy Title IX Coordinator(s) work under the oversight of the Title IX Coordinator to assist with the handling of Title IX-related Complaints. The Title IX Coordinator may, at his or her discretion, assign a Deputy Title IX Coordinator as the Assigned Title IX Coordinator in connection with a given Formal Complaint.

(xi) Determination of Responsibility. The Hearing Officer's final determination of whether a Respondent's conduct, due to the preponderance of the evidence, qualifies as a violation(s) of Title IX and, if so, the appropriate sanctions which should be imposed on the Respondent as a result.

(xii) Domestic Violence. "Domestic Violence" includes 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 cohabiting with or has cohabited 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 Commonwealth of Virginia, 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 Commonwealth of Virginia.

(xiii) Education Program or Activity. "Education Program or Activity" includes locations, events, or circumstances over which SVU 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 SVU. Education Programs or Activities occurring off-campus are limited to the three following situations:

1) The off-campus incident occurs as part of SVU's operations;
2) SVU exercised substantial control over the Respondent and the context where the Sexual Harassment is alleged to have occurred; or
3) The incident of Sexual Harassment occurs in a building owned or controlled by a student organization officially recognized by SVU.

Examples of off-campus Education Programs and Activities include, but are not limited to, SVU-affiliated sporting events, and events that occur off-campus that are sponsored by SVU.

(xiv) **FERPA.** The Family Educational Rights and Privacy Act ("FERPA") is a federal statute codified at 20 U.S.C. § 1232g, with implementing regulations at 34 CFR Part 99. FERPA protects the privacy of student education records. FERPA grants to parents (of minor students) or eligible students the right to access, inspect, and review education records, the right to challenge the content of education records, and the right to consent to the disclosure of education records.

(xv) **Criminal Sexual Contact:** (Formerly called: Fondling*). The intentional touching of the clothed or unclothed body parts without consent of the victim for the purpose of sexual degradation, sexual gratification, or sexual humiliation. The forced touching by the victim of the actor's clothed or unclothed body parts, without consent of the victim for the purpose of sexual degradation, sexual gratification, or sexual humiliation. This offense includes instances where the victim is incapable of giving consent because of age or incapacity due to temporary or permanent mental or physical impairment or intoxication for the purpose of sexual degradation, sexual gratification, or sexual humiliation.

* "Fondling" was previously defined as the touching of the private body parts of another person for the purpose of sexual gratification, without the Consent of the other person, including instances where the other person is incapable of giving Consent because of their age or because of their temporary or permanent mental or physical incapacity.

(xvi) **Good Cause.** "Good Cause" means factors deemed appropriate to justify a change in date or delay in the timetables established for responding to a Complaint, including the absence of a party, the party's Advisor, or a witness; concurrent law enforcement activity; the need for language assistance or accommodation of disabilities; disruption and unavailability of technology resources that were planned to be used; or the closure or suspension of a substantial portion of SVU's operations due to a federal, state or local order, the declaration of a state emergency, or similar action by a government agency.

(xvii) Live Hearing. The forum in which the Complainant, the Respondent, and their respective Advisors, if applicable, adjudicate allegation(s) under Title IX before a Hearing Officer.

(xviii) Hearing Officer. The "Hearing Officer" is a neutral decision-maker who is appointed by the Assigned Title IX Coordinator to decide responsibility at a Hearing (see Article V(C)). The Hearing Officer will receive specific training as required by Title IX regulations and will be free of known conflicts of interest or improper bias.

(xix) Incest. "Incest" is non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

(xx) Investigative Record. "Investigative Record" is defined in Article IV(G)(viii) as all evidence obtained as part of the investigation that is directly related to the allegations raised in the Complaint and also includes the Investigative Report.

(xxi) Investigative Report. "Investigative Report" is defined in Article IV(H)(xii).

(xxii) Investigator. The "Investigator" is a neutral factfinder who is designated by the Assigned Title IX Coordinator to investigate a Formal Complaint. All individuals appointed to serve as Investigators will have completed all training required by the Title IX regulations, will be free of known conflicts of interest or improper bias, and may be an SVU employee or a third party engaged for this purpose.

(xxiii) Non-campus Building or Property. "Non-campus Building or Property" means (i) any building or property owned or controlled by a student organization officially recognized by SVU, or (ii) any building or property owned or controlled by SVU that is used in direct support of or in relation to SVU's Educational Programs or Activities and which is frequently used by students but is not within the same contiguous geographic area of the Campus.

(xxiv) Personally Identifiable Information. Personally Identifiable Information (as that term is defined by FERPA) includes, but is not limited to:

1) a student's name;
2) the name of a student's parent(s) or other family members;
3) the address of a student or a student's family;
4) a personal identifier, such as a student's social security number, student number, or biometric record;

5) other indirect identifiers, such as a student's date of birth, place of birth, or mother's maiden name;
6) other information that, alone or in combination, is linked or linkable to a specific student and that would allow a reasonable person in the SVU community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or
7) Information requested by a person whom SVU reasonably believes knows the identity of the student to whom the education record relates.

(xxv) Public Property. "Public Property" means all public property including streets, sidewalks, parking facilities, and other thoroughfares that are within the Campus or immediately adjacent to and accessible from the Campus.

(xxvi) Rape. "Rape" is the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration of a sexual organ of another person without consent of the victim; and,

Statutory Rape. Sexual intercourse with a person who is under the statutory age of consent.

(xxvii) Respondent. A "Respondent" means an individual who has been reported to be the perpetrator of conduct that could constitute Sexual Harassment.

(xxviii) Responsible Employee. A "Responsible Employee" means an employee of SVU who is not designated by their relationship to a student or other member of the SVU community as "Strictly Confidential Resources."

(xxix) Retaliation. "Retaliation" means any act by a person that intimidates, threatens, coerces, or otherwise discriminates against any individual for the purpose of interfering with any right or privilege secured by Title IX, or because an individual has made a report, filed a Complaint, testified, assisted, participated, or refused to participate in any manner in an investigation, proceeding, or Hearing under this Policy. The filing of a misconduct charge against an individual for a Code of Conduct violation that does not involve sexual discrimination or sexual harassment but arose out of the same facts or circumstances as a report or complaint of sexual discrimination or sexual harassment, for the purpose of interfering with any right or privilege under Title IX, constitutes Retaliation. However, charging an individual with a Code of Conduct violation for making materially false statements, in bad faith in the course of a grievance proceeding under this Policy does not

constitute Retaliation provided, however, that the determination regarding responsibility alone is not sufficient to conclude any individual has made a materially false statement in bad faith.

(xxx) Reviewer. The "Reviewer" is an SVU administrator or contracted 3rd-party the Policy designates to handle a particular appeal or other issue.

(xxxi) Sexual Assault. "Sexual Assault" means any actual, attempted, or threatened sexual act with another person without that person's Consent, including instances where the person is incapable of giving Consent. Sexual Assault includes but is not limited to:

1) Rape;
2) Fondling / Criminal Sexual Contact;
3) Statutory Rape; or
5) Incest.

(xxxii) Sexual Assault with an Object. "Sexual Assault with an Object" means to use an object or instrument (anything other than the offender's genitalia) to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the Consent of the person, including instances where the person is incapable of giving Consent because of their age or because of their temporary or permanent incapacity.

(xxxiii) Sexual Harassment. "Sexual Harassment" as defined by Title IX and its implementing regulations means alleged conduct on the basis of sex that satisfies one or more of the following:

1) Unwelcomed conduct that constitutes "Sexual Assault," "Dating Violence," "Domestic Violence," or "Stalking" as those terms are defined by federal law and as set forth in this Exhibit B.
2) Unwelcomed conduct that conditions the providing of any assistance, benefit, or service of SVU on the other person's participation in unwelcomed sexual conduct (a quid pro quo arrangement).
3) Unwelcomed conduct determined to be so severe, pervasive, and objectively offensive from the perspective of a reasonable person that it effectively denies a person equal access to an Education Program and/or Activity of SVU.

No evaluation of the severity, pervasiveness, and offensiveness of the unwelcomed conduct and no separate finding of a denial of equal access is required when SVU receives a report of alleged Sexual Misconduct that falls with points 1 or 2, as those elements are presumed from the nature of those allegations.

There are several limits to this Title IX definition. First, the alleged incident(s) of alleged Sexual Harassment must have occurred in the United States. Second, the incident(s) of alleged Sexual Harassment must occur in connection with an Educational Program or Activity of SVU. SVU's obligation under Title IX to respond to reported incidents of alleged Sexual Harassment that occur off campus is limited and extends to the three (3) following situations:

1) The incident occurs as part of SVU's operations;
2) SVU exercises substantial control over the Respondent and the context where the Sexual Harassment is alleged to have occurred; or
3) The incident of Sexual Harassment occurs in a building owned or controlled by a student organization officially recognized by SVU.

If the allegations made in the Complaint are not covered by the Title IX definition of Sexual Harassment, the Complaint or certain of its allegations may be dismissed (See Article IV(B)(i)). In those circumstances where Title IX is determined not to apply, SVU may, to the extent feasible or practicable, continue to investigate such allegations and address misconduct found to exist through its Student Code of Conduct, Faculty Handbook, and/or Staff Handbook as may be applicable.

(xxxiv) Sexual Misconduct. "Sexual Misconduct" means any unwelcome conduct of a sexual nature, including any conduct or act of a sexual nature perpetrated against an individual without Consent. Sexual Misconduct can occur between strangers or acquaintances, including people involved in an intimate or sexual relationship. Sexual Misconduct can be committed by men or by women, and it can occur between people of the same or different sex. Sexual Misconduct also includes complicity in Sexual Misconduct. SVU encourages reporting of all Sexual Misconduct, even if such conduct does not constitute Sexual Harassment under Title IX. Complaints of Sexual Misconduct that are not covered by Title IX will be addressed in accordance with other SVU policies and procedures, such as a Code of Conduct for students, faculty and/or staff.

(xxxv) Sodomy. "Sodomy" is oral or anal sexual intercourse with another person, without the Consent of the other person, including instances where the person is incapable

of giving Consent because of their age or because of their temporary or permanent mental or physical incapacity.

(xxxvi) Stalking. "Stalking" means 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.

For purposes of this policy a "course of conduct" means two or more acts, including, but not limited to, acts 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. A "Reasonable Person" means a reasonable person under similar circumstances and with similar identities to the victim, and "Substantial Emotional Distress" means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

(xxxvii) Strictly Confidential Resources. "Strictly Confidential Resources" are all SVU employees who work in or for either the Student Wellness Center, as a Counselor or mental health professional at SVU, or who serve as an individual's pastoral counselor or ecclesiastical leader, who also may work for SVU, but who acquire knowledge of the alleged Sexual Misconduct while serving in their capacity as an ecclesiastical leader.

(xxxviii) Supportive Measures. "Supportive Measures" means non-disciplinary, non-punitive individual services offered to the Complainant or Respondent as appropriate, as reasonably available, and without fee or charge. Supportive Measures provided to a Complainant or Respondent will be kept confidential unless disclosure is necessary to provide the service. Supportive Measures include but are not limited to counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of SVU campus, and other similar measures.

(xxxix) Title IX Coordinator. SVU's "Title IX Coordinator" has ultimate oversight and responsibility for handling Title IX–related Complaints and for identifying and addressing any patterns or systemic problems involving Sexual Misconduct. The Title IX Coordinator is available to meet with individuals who are involved with or

concerned about issues or SVU processes, incidents, patterns, or problems related to Sexual Misconduct on campus or in SVU programs. All allegations involving Sexual Misconduct should be directed to the Title IX Coordinator or other designated SVU individuals or offices as outlined in the Policy.