

**Student Conduct**

**&**

**TITLE IX HEARING**

**Panel Training**

# PURPOSE:

- Conduct Hearing Process Overview
- Best Practices Tips
- Title IX Hearing Requirements
- Content Knowledge
- Resources

# Conduct Process

## Purpose

The basic purpose of a conduct system is to protect an **environment for learning** and to protect the health & safety of the individual and/or the community

Not a legal trial, instead the hearing is administrative & educational in nature. (Although statements in the University process can be made 'discoverable' by the state and federal systems.)

Hearings are not designed to be adversarial proceedings, but rather are an attempt to ascertain the truth.

**Confidentiality and Privacy**

# Processes Overview

## Student Conduct Hearing

- Student Handbook Policy Violations (Non-Academic)
  - **Examples include: Drugs, Alcohol, Acts of Violence/Threats\*, Theft, etc.**
- Board determines any responsibility based on evidence and interviews.
- Board makes recommendations of outcomes to the University.
- Hearing flow is an administrative process (not legal) that is determined by the University.
- No outside individuals permitted to participate / attend hearing. (no lawyers, no parents); University party advisors permitted

# Processes Overview

## Student Conduct Hearing Flow

1. Presentation of the Complaint
2. Respondent Statement / Testimony
  1. Campus Judicial Board Questions
3. Witness(es) Testimony
  1. Respondent Questions
  2. Campus Judicial Board Questions
4. Respondent Closing Statement
5. Campus Judicial Board Deliberates
6. Findings and suggested outcomes provided to the Dean of Students
7. Outcomes sent to Respondent.
8. Appeal Process w/ Provost Office (if applicable)

# Processes Overview

## Title IX Hearing

- Title IX policy related violations
  - Nondiscrimination Policy
  - Harassment, and Sexual Misconduct Policy
  - Student Handbook
- Board determines any responsibility based on admissible and relevant evidence and interviews.
- Board makes recommendations of outcomes to the University.
- Hearing flow is an administrative process (not legal) that is determined by the Office of Civil Rights via the Department of Education.
- Outside parties permitted to participate (Lawyers/Counsel)

# Processes Overview

## Title IX Hearing Flow

1. Investigator Testimony
  1. Statement – CJB Questions – Complainant Questions – Respondent Questions
2. Complainant Testimony
  1. Statement – CJB Questions – Respondent Questions
3. Respondent Statement / Testimony
  1. Statement – CJB Questions – Complainant Questions
4. Witness Testimony
  1. CJB Questions – Complainant Questions – Respondent Questions
5. Complainant Closing Statement
6. Respondent Closing Statement
7. Campus Judicial Board Deliberates
8. Findings and suggested outcomes provided to the Dean of Students
9. Outcomes sent to all parties at same time.
10. Appeal Process w/ Provost Office (if applicable)

# Campus Conduct Board Process

Roles of those involved in board meeting:

- **Complainant:** Individual who brought forward the complaint.
- **Respondent:** The individual who allegedly violated policy.
- **Witness:** Individual with pertinent facts of the report.
- **Advisor:** Individual who provides advice and support to the involved parties.



# Campus Conduct Board Process

## Standard of Proof

- Preponderance of evidence (not “Beyond a Reasonable Doubt”)
- What is more likely than not to have occurred?
- **All proceedings must remain Confidential**
  - (even type of case being heard)
- Notes and documents are returned and destroyed after the meeting

# Deliberation

2 part process:

1. Determine if the respondent(s) are in violation of University policy.
2. If so, determine appropriate sanction(s)/outcome(s).

(Can bring past behavior/sanctions into consideration)

# Possible outcomes

## Warning:

A written statement expressing disapproval of the behavior and notice that on-going violations will result in additional outcomes.

## Disciplinary Probation:

A period of time specified for observing and evaluating a student's behavior, which may also include special conditions of various types (e.g., counseling, participation in educational programs, etc.). If a student continues to exhibit inappropriate behavior, they may be suspended or expelled.

# Possible outcomes

## Suspension:

- Students who are suspended must leave the University for a specified period of time. Special conditions of various types may also be included with a suspension.
- At the end of the period of suspension, a student may be allowed to return to the University upon proof that special conditions that were assigned have been fulfilled
- No refunds of tuition or fees, and financial aid is handled according to the policies of the Financial Aid Office

## Expulsion:

- When a student is expelled, they are permanently separated from the University. There are no refunds of tuition or fees, and financial aid is handled according to the policies of the Financial Aid Office.

# CONDUCT BOARD: OVERVIEW

- Review the evidence presented and make a determination/finding
  - Does the evidence support a finding that a provision of the policy was violated?
- An investigation has been conducted and you are reviewing the evidence and making a determination
  - What is your evidence: witness statements, photos, text messages, emails, videos, social media posts, witness demeanor, etc.
  - In Title IX hearings the investigator's report is a summary, but you cannot rely on it as evidence
  - The complainant and respondent must present the evidence that you will evaluate and you should be ready to ask questions in areas that you believe need clarification.

Yes, there can be many gray areas. How can you prepare for that?



# PRACTICE TIPS

OVERVIEW, NOTE TAKING, FRAMING  
THE QUESTION

# PRACTICE TIPS

- As you review the report in preparation for the hearing, note the areas where questions arise for you
- Write out the questions and note who might have the information you need
- Work on framing your questions - **the art of language**
- Inconsistent Statements - good idea to anticipate them
- May not always have the witness testify; good to know who else might have the information you need

# PRACTICE TIPS: NOTE TAKING

- Note-taking Suggestion:T-chart
  - Write evidence favoring the complainant in one column, and favoring the respondent in the other column.
    - You may have evidence from the same source in both columns
    - Align evidence on the same points across from one another in the T-chart
    - Note the source so you can revisit later if you still have questions
  - When there's conflict, make a credibility determination to see who you believe

Respondent	Complainant
Went to the bar at 9 pm.	Went to the bar at 8 pm
Met the complainant around midnight.	Drank about 5 strong mixed drinks and a shot before 9:30 pm
Complainant invited him in, he knew she wanted to have sex. They didn't talk about not wanting sex.	Met the Respondent sometime in the night
Complainant initiated kissing	Invited him to her house, but said she was not ready to have sex.
Complainant started touching him through his clothes	Kissed, laid on the bed.
Complainant was quiet during sex. He left because she was sleeping right after.	Felt really sick, can't remember what happened.
	Groggy, saw respondent on top of her, felt something inside her vagina. Not sure if it was a penis or a finger.
	Woke up the next morning and went to the hospital.



# PRACTICE TIPS: FRAMING THE QUESTION

- Sometimes the questions have to be asked - but do so with sensitivity
- Open-ended questions are good: let the witness tell you the story
- Can be specific
- Frame the question: when, where?
  - Specific, open-ended, framed: “I want to focus on the 10 minutes you were sitting on the couch.”
  - Instead of: What were you thinking?
  - Try: I would really like to understand what was happening in that moment? Can you walk me through the thoughts running through your head, if you had any in that moment? What were you feeling?

# PRACTICE TIPS: FRAMING THE QUESTION

- Why didn't you just leave?
- Why didn't you tell anyone right away?
- Why didn't you go to the police?
- Why didn't you tell him/her to stop?
- What were you wearing?
- Why were you drinking?

*What happened next? How did you get home?*


*Did you talk to anyone about it?*

*Were you able to talk to the police?*

*Gather the surrounding details*

*Not relevant*

*Were you drinking? (gather in the details)*



# **TITLE IX HEARING REQUIREMENTS: A HIGH BAR**

**ADVISOR OF CHOICE, DIRECTLY  
RELATED EVIDENCE, RELEVANCE,  
CROSS-EXAMINATION**

# ADVISOR OF CHOICE

- Who is an advisor?
  - Anyone the party asks to represent them: friend, family, lawyer, or Discrimination Complaint Advisor
  - Advisor, in most cases, will not be a support person
- Cases that go forward under our Harassment and Sexual Misconduct Policy require an advisor to complete cross-examinations
  - Does not apply for cases going forward under other policies
  - Advisor participation is limited to cross-examination of parties and witnesses only
    - Not opening/closing statements
    - Not objections to the panel
  - Advisors *MAY* speak to their own party as much as they want
  - Advisors *MAY* make reasonable requests in the judgment of the chair such as taking a break
- Hearing Panel must enforce rules of decorum and remove any advisor who acts inappropriately

# DIRECTLY RELATED EVIDENCE

- Directly Related Evidence:  
Documentation submitted to the Hearing Panel that is somehow related to the hearing.

This is more broad than “relevant” evidence.

- Not illegally obtained
- Investigator, Dean of Students, Human Resources, Title IX Coordinator have a right to redact information that is not relevant or protected by privilege.

# RELEVANCE

- Relevant: probative of any material fact concerning the allegations
  - Standard: a layperson's determination that a question is not relevant is made by applying logic and common sense, but not against a backdrop of legal expertise
  - Restrictions on questions about prior sexual history: not relevant UNLESS
    - Offered to prove that someone other than the respondent committed the conduct alleged, or
    - Questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent
  - Repetitions of things that have already been stated are not relevant
  - Information protected by a legally recognized privilege are not relevant unless parties gave voluntary written consent
    - Medical or psychological or similarly protected records

**- PARTY OR WITNESS STATEMENTS THAT HAVE NOT BEEN  
SUBJECTED TO CROSS EXAMINATION AT A LIVE HEARING ARE  
NOT RELEVANT**


# RELEVANCE: OBJECTIONS

- All parties can object for relevance.
- Parties are expected to make the objections on their own, and not through their advisors.
- Hearing Panel makes determination on relevance through the Chair, but all panel members should make suggestions.
  - Hearing panel will explain briefly why they made the determination they chose
  - Cannot challenge the determination on relevance in a hearing.
  - Hearing Panel decision is final
  - You can challenge an investigator's determination of relevance in the written response to the Hearing Panel and make a verbal argument at the hearing

# CROSS-EXAMINATIONS

- Only statements subject to cross-examination are relevant
- Statements not subject to cross-examination cannot be considered in a determination
  - If a party alleges a certain fact and refuses to answer a follow-up question on that fact, that fact cannot be considered in a determination
  - Written statements cannot be relied upon unless subject to cross-examination
    - Includes Police and SANE reports: Police and SANE nurses must participate in the hearing for their statements to be relied upon
    - Text messages /emails:when statements of both parties are intertwined, and one party submits to cross-examination and the other does not, only the statements of the individual who submitted to cross-examination can be relied upon.
    - Video evidence:where video evidence exists, the decision-maker may rely on the video even if parties do not subject themselves to cross-examination





# CONTENT KNOWLEDGE

CONSENT, INTOXICATION,  
NEUROBIOLOGY OF TRAUMA,  
CREDIBILITY DETERMINATIONS

# CONSENT

- The Indiana Criminal Code does not define consent in reference to sexual activity.
- Valpo Policy defines consent as “informed, freely given, and mutually understood. Consent requires an affirmative act or statement by each participant. Consent is not passive.”
  - Consent to one form of sexual activity does not imply consent to other forms of sexual activity
  - Consent can be withdrawn
  - A person who initially consents to sexual activity is deemed not to have consented to any sexual activity that occurs after he or she withdraws consent.
  - Consent to previous sexual activity does not imply consent to future sexual activity

# CONSENT

- Under Indiana law, THERE IS NO CONSENT and a sex crime is committed if:
  - The victim is compelled by force or imminent threat of force
  - The victim is unaware that the sexual intercourse or other sexual conduct is occurring; or
  - The victim is so mentally disabled or deficient that consent to sexual intercourse or other sexual conduct cannot be given (IC 35-42-4-1; 35-42-4-8)
- Additionally, under Valpo Policy there is NO CONSENT if
  - Coercion, intimidation, threats, and/or physical force are used
  - A person is mentally or physically incapacitated or impaired by alcohol or drugs such that the person cannot understand the fact, nature, or extent of the sexual situation
  - A person is asleep or unconscious

# CONSENT

- A great deal of gray area exists
- We require affirmative consent; consent is not passive
- Consent must be drawn from the “totality of the circumstances”
  - Can be verbal statements, physical reactions, texts, videos, crying, shaking of the head, etc.
  - Failure to resist is not consent
- Consent may be for some of the conduct, but not all
- Consent may be withdrawn at any time

# CONSENT

- Can come down to a credibility determination
- Your questions, if needed, are key
- Document your decision
- Consult with Title IX Coordinator

# CONSENT: EXAMPLES

## CLEAR CONSENT DETERMINATIONS

- Clear consent:
  - Being asked to engage and answering with a clear, sober
    - Yes!
    - Nodding “yes”
  - Inviting their partner(s) to engage
- Clear lack of consent
  - No!
  - Asleep
  - Silence
  - Drunk and vomiting

## GREY AREAS

- Someone is drinking, stumbling, slurring their words, and obviously intoxicated, but otherwise holding conversations. When asked whether they want to have sex, the person gives a verbal “yes” to engage in sexual activity.
- A complainant reports they “cant remember” whether they consented, but the respondent reports “they initiated the sexual contact”

# INTOXICATION/INCAPACITATION

- Goal today is not about making you an expert regarding intoxication or incapacitation
  - There are no bright line rules - except for unconsciousness
  - You must be able to identify evidence or evoke answers that suggest whether someone was more likely intoxicated or incapacitated
- Involves substances:
  - Alcohol, illegal drugs, prescribed medication, or a combination of substances

# INTOXICATION/INCAPACITATION

- Intoxication and Incapacitation are not the same
  - As an example: intoxication can range to have some alcohol to can't drive per law, but may still be able to make decisions
- Indiana description of INCAPACITATION:
  - The person is unaware that the sexual intercourse or other sexual conduct is occurring (IC 35-42-4-1).



# INTOXICATION/INCAPACITATION

-Why does intoxication matter?

- Can affect capacity to give consent
- Can affect recollection
- Can affect your assessment of witness credibility

# INTOXICATION/INCAPACITATION

- As a board do you have enough to make a decision regarding intoxication and incapacitation one way or another? If you are not sure, communicate with the Title IX Coordinator.
- Indicia of intoxication:
  - Slurred speech, off-balance when walking, glassy eyes, odor of alcohol from breath, vomiting, coherence, demeanor, etc.
- Indicia of incapacitation:
  - Unconscious, unable to articulate coherent sentences, going in and out of consciousness, unable to walk, cannot stand, involuntary urination, etc.

# INTOXICATION/INCAPACITATION

- Lots of gray
- Facts must be determined on a case by case basis
- You may consult with Title IX



# RESOURCES

POLICIES & HANDBOOKS,  
DEFINITIONS, & COMPLAINT  
FLOW CHART

# POLICIES: READ CLOSELY

- Student or Student Employee respondent:
  - Nondiscrimination Policy
  - Harassment, and Sexual Misconduct Policy
  - Student Guide to University Life
- Employee respondent
  - Nondiscrimination Policy
  - Harassment, and Sexual Misconduct Policy
  - Staff Employee Handbook
    - Prohibited Consensual Relationships, 2.6.3
    - Disciplinary Action 2.6.9
- Faculty respondent
  - Nondiscrimination Policy
  - Harassment, and Sexual Misconduct Policy
  - Faculty Handbook
    - Prohibited Consensual Relationships between faculty and students, Appendix P
    - Termination of Tenure and Tenure-Track Faculty, 2.3.10

# Thank-you...

- Thank you for your service to Valpo and our campus community!!
- Additional questions may be directed to either the Dean of Students or the Title IX office.

**The Lutheran University Association, Inc.**

**d/b/a Valparaiso University**

**Student Conduct System**

***Definitions***

*Student:* For the purposes of this process, the term “student” includes all persons taking courses at the University. Persons who withdraw after allegedly violating the ***Student Handbook***, who are not officially enrolled for a particular term but who have a continuing relationship with the University, or who have been notified of their acceptance for admission are considered “students,” although not enrolled in the University. Persons are considered “students” and are responsible for complying with the ***Student Handbook***, even between periods of their actual enrollment (such as summer, winter, and spring breaks), periods of deferred enrollment, and periods of non-actual enrollment, but with intent to enroll in the future.

*Jurisdiction:* The ***Student Handbook*** shall apply to conduct that occurs on University premises or property, at University-sponsored activities, and to off-campus conduct that adversely affects the University community and/or the pursuit of its objectives, or when otherwise required by law. Each student shall be responsible for his/her conduct from the time of application for admission through the actual awarding of a degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between actual enrollment (and even if their conduct is not discovered until after a degree is awarded). The ***Student Handbook*** shall apply to a student’s conduct even if the student withdraws from school while a disciplinary matter is pending. The dean of students or designee shall decide whether the student judicial system shall be applied to conduct occurring off-campus, on a case-by-case basis, in their sole discretion. The term “University property” or “University premises” includes all land, buildings, facilities, and other property in the possession of or owned, used, or controlled by the University (including adjacent streets and sidewalks.)

***Principles***

Each privilege of an individual places a reciprocal responsibility upon others: the responsibility to permit the individual to exercise the privilege. The student, as a member of an academic community, has both privileges and responsibilities. Within this community, the student’s most essential privilege is the privilege to learn. The student also has responsibilities to the members of the academic community, the most important of which is to refrain from interference with those privileges of others which are equally essential to the purposes and processes of the University.

The important consideration in student conduct proceedings is not merely the determination of whether a policy has been violated, or the imposition of a penalty. These elements are involved, but the ultimate consideration is the welfare of the members of the academic community. To achieve this goal, honesty, cooperation, trust, and responsibility of the highest order are called for among students, faculty, staff, and administrators.

***I. Authority and Scope***

The campus conduct system applies to all students, whether they are full time or part time, undergraduate or graduate. Students are expected to be responsible citizens, and to be accountable for their conduct and behavior. Students are also expected to follow all University

regulations, as well as local, state, and federal laws. When these expectations are not met, the University reserves the right to terminate or suspend a student's enrollment, revoke the student's privilege to reside in University housing or fraternity housing, or otherwise discipline a student whenever, in its opinion, it is in the best interests of the University.

- A. Alleged violations of the following non-academic University regulations may be adjudicated through the student conduct system:
  1. University Council regulations, including those which may also be local, state, or federal law.
  2. Student Senate regulations (including regulations of the governing boards which derive their authority from the Student Senate, e.g., House Councils, Interfraternity Council, Panhellenic Council, etc..)
  3. University residence hall and student life regulations.
- B. The following components characterize the student conduct system:
  1. *Administration*: The dean of students administers the conduct system. The dean of students, or their designee serves as the advisor of the Campus Judicial Board.
  2. *Knowledge of Regulation*: It is each student's responsibility to know academic and student life policies, regulations, procedures, and deadlines, as well as local, state, and federal laws.
  3. *Confidentiality*: All hearings are closed. Only students, faculty, or staff members of the University, as they are directly related to a specific case (as determined by the dean of students or the vice president for student life), may be present at a hearing. If it is alleged that a University student has harmed a person who is not a student, faculty, or staff member of the University, the person who is alleged to have been harmed may be allowed to attend and participate in a hearing, at the discretion of the dean of students or the vice president for student life. The conduct board officer or members of conduct boards will not discuss the proceeding outside of the hearing, unless such discussion is with the dean of students or the vice president for student life or is required by law. Either of these two individuals have the discretion to publish or disclose information about conduct proceedings, including the outcomes(s), in a form and manner they deem appropriate.
  4. *Impartiality*: A complainant or respondent may challenge a conduct board officer or conduct board member on the basis of bias or prejudice prior to the hearing. The dean of students will determine the validity of a challenge concerning a student conduct board member. The chair of the Campus Judicial Board will determine the validity of a challenge of one of its members. If the dean of students (when serving as a conduct board officer) or the chair of the Campus Judicial Board is challenged, the dean of students will determine the validity of the challenge. Depending on who is being challenged, the chair of the Campus Judicial Board, the dean of students, and the vice president for student life all have the discretion to establish a deadline for filing challenges. There are no appeals for decisions made regarding challenges.
  5. *Alternative Dispute Resolution*: The student conduct system provides the freedom to resolve alleged violations through mediation, counseling, or some other means. This also includes resolving cases that arise during the academic year prior to the formation of hearing boards, or that take place during the summer, or that include



special concerns about confidentiality. In all conduct and disciplinary matters, the dean of students, the vice president for student life, or their designate has absolute discretion to authorize the use of other procedures and penalties that are deemed appropriate.

## **II. Structure**

The student conduct system has several primary methods of adjudicating alleged violations of regulations. The method utilized for a particular case is determined in consultation with the dean of students or the vice president for student life, at their discretion.

### **A. Student Conduct Boards**

1. The Student Conduct Boards adjudicates allegations of violations of residence hall, student life, or Student Senate regulations for both residential and non-residential students.
2. The process of selecting members is established with the approval of the dean of students.
3. The Assistant Director of Student Conduct and Support serves as advisor.

### **B. Fraternity and Sorority Judicial Board**

1. There is a judicial board for fraternities and sororities which adjudicates allegations of violations of fraternity and sorority policies, inter/national policies or regulations, Fraternity and Sorority Risk Management policy, and ***Student Handbook*** policies.
2. The process of selecting members is established with the approval of the assistant vice-president of student life.
3. The director of student involvement and new student programs serves as advisor.

### **C. Dean of Students and Academic Deans**

1. The dean of students and academic deans may adjudicate alleged violations of University Council, residence hall, student life, or Student Senate regulations.

### **D. Campus Judicial Board**

1. The Campus Judicial Board may adjudicate alleged violations of University policy, expected behaviors set forth in this ***Student Handbook*** or other University publications, state, federal, or local law, University Council, residence hall, student life, or Student Senate regulations. The Campus Judicial Board does not adjudicate matters that are academic in nature or violations of the University's Honor Code.
2. The pool of members is made up of ten students nominated by the Student Senate, ten faculty members nominated by the provost, and five salaried staff members nominated by the president's designate at the beginning of each academic year. The dean of students may also nominate additional faculty, staff, and students for membership in the pool. The dean of students recommends to the provost one faculty or staff member from the pool to serve as the chair for the academic year.
3. In cases where sexual harassment or sexual assault is being alleged, the Title IX coordinator will participate in the adjudication process.

## **III. Interim Suspension**

When there is behavioral concern about a student's continued presence on campus, the assistant vice president for student life, the dean of students, or designee, in consultation with others at the University with knowledge of the student or responsibility for University matters may temporarily suspend the student following an individualized safety and risk analysis that determines an immediate threat to the physical or mental health or safety of any students or other individual

which justifies removal. The student will receive written notice from the assistant vice president for student life, dean of students or designee on the interim suspension of the student. The notice letter will state the terms of the interim suspension and provide the student the opportunity to meet with the vice president for student life or designee to challenge the decision in a post-suspension meeting immediately following their removal. At the post-suspension meeting, the reasons for the University's concern will be stated and the student will be given an opportunity to respond to the concerns. Appropriate University personnel may be present and/or consulted at this meeting. A parent, spouse or any person who would be of support to the student may, with the advance consent of the vice president for student life or designee and of the student, participate in the post-suspension meeting. Following the post-suspension meeting, the student will receive written notification of the decision whether to uphold or repeal the interim suspension. The interim suspension shall be upheld pending the post-suspension meeting outcome letter. The vice president for student life or designee's decision following the post-suspension meeting shall be final pending any subsequent hearing or disciplinary outcome.

#### **IV. Procedures**

Student Conduct procedures are designed to determine whether a student has violated a regulation, as opposed to determining guilt or liability in a civil or criminal proceeding. Conduct hearings are not designed to be adversarial proceedings, but rather are an attempt to ascertain the truth. All conduct hearings are informal in nature. Students are not allowed to be represented by, or to confer with, an attorney during a hearing. All participants are expected to be honest and to provide truthful information. Providing false information will liable students to disciplinary action. When there are behavioral concerns about a student's continued presence on campus, the vice president for student life may temporarily suspend the student, pending a hearing.

##### **A. Student Conduct Boards**

The development of allegation, notification, and hearing procedures are established with the approval of the dean of students.

##### **B. Fraternity and Sorority Judicial Board**

The development of allegation, notification, and hearing procedures are established with the approval of the assistant vice-president of student life.

##### **C. Dean of Students and Academic Deans**

Allegation, notification, and hearing procedures are determined at the discretion of the dean of students and academic deans.

##### **D. Campus Judicial Board**

1. *Filing an Allegation:* A student, faculty, or staff member (henceforth referred to as the "complainant") may allege in writing that a student has violated a regulation. Such allegations are filed with the dean of students. If it is alleged that a University student has harmed a person who is not a student, faculty, or staff member of the University, the vice president for student life or the dean of students will accept an allegation filed by the person who is alleged to have been harmed. After an allegation is made, the dean of students will determine whether there is sufficient evidence to pursue the allegation and that the alleged conduct is subject to the jurisdiction of the Campus Judicial Board. This may be discussed and determined through pre-adjudication meetings with the parties involved or with other persons deemed appropriate. The dean of students does not advise complainants about the content of their allegations. An allegation must ordinarily be made no later than ninety (90) days after the occurrence of the alleged violation of a regulation. However, the dean of students has the discretion to accept allegations made beyond this

- period of time when they deem it to be in the best interests of the University community.
2. *Notice of Allegation:* If the dean of students determines there is sufficient evidence to pursue the allegation and that the alleged conduct is subject to the jurisdiction of the Campus Judicial Board, the dean of students will provide written notice to the accused student (henceforth referred to as the “respondent”) that an allegation has been made and is being adjudicated through the student conduct system. The respondent has ten (10) calendar days from receipt of a complainant’s written complaint to submit a written response and any evidence to the dean of students.
  3. *Notice of Hearing:* The dean of students will notify the complainant and respondent in writing of the date, time, and location of the hearing. The hearing notification will also include the names of the hearing panel members. The hearing shall take place within thirty (30) calendar days from the date the written complaint was filed unless there is reasonable cause for a delay of the hearing process as determined by the dean of students.
  4. *Notice of Interim Measures:* The dean of students will notify the complainant and the respondent in writing of any interim measures such as academic, housing, and transportation accommodations, in addition to no contact directives, as determined by the dean of students and that are reasonably available.
  5. *Selection of a Hearing Panel:* The members of a hearing panel for a particular case are selected from the pool of members, by the dean of students and in consultation with the chair. A hearing panel consists of the chair and five (5) additional members; all six (6) members vote when making decisions. Two (2) alternate members may also be selected to serve in the event that an emergency prevents any of the members from participating. If any members believe they may have a conflict of interest in a particular case, they will decline their selection for that hearing panel.
  6. *Nature of the Proceeding:* Specific hearing procedures and format are determined at the discretion of the chair and with approval of the dean of students.
  7. *Appearance at a Hearing:* The complainant and respondent may each be accompanied by an advisor. The dean of students maintains a list of advisors for consideration, or the complainant and respondent may ask a University student, faculty, or staff member to serve in this capacity. The role of the advisor is only supportive in nature. Advisors are not allowed to speak on behalf of the individual whom they are accompanying (e.g., they may not provide information, ask questions of witnesses or the complainant or respondent, address the hearing panel, etc.). Violation of this prohibition may result in the chair removing these individuals from the hearing.
  8. *Failure to Appear:* If a complainant or respondent fails to appear at a scheduled hearing, the hearing board may proceed with the case, unless the chair excuses the absence.
  9. *Evidence:* The procedure for presenting evidence is established by the chair. Legal rules of evidence do not apply to these proceedings. There is no discovery process available in student conduct proceedings. The dean of students will determine, at their discretion, what (if any) information to disclose to a complainant or respondent in advance of a hearing. The chair has the discretion to exclude evidence including, but not limited to, that which regards the respondent’s character, that which constitutes remote hearsay or is otherwise inherently unreliable or incredible, or that which is deemed irrelevant or inflammatory. In cases of alleged sexual assault, evidence of previous sexual history

between the respondent and the complainant is admissible if the evidence is not deemed to be remote in time by the chair. Evidence of previous sexual history between the respondent and the complainant is admissible only when the chair deems this type of evidence to be relevant. A party's consent to previous sexual activity does not imply consent to the sexual activity at issue in the complaint.

10. *Presentation and Examination of Evidence*: The complainant and respondent, and their respective witnesses may present evidence in accordance with the procedure determined by the chair. The complainant and respondent may also ask questions of each other in accordance with the procedure determined by the chair. The chair may choose not to allow a party's question to the other party if the chair believes the question is inappropriate or will likely result in irrelevant evidence. Hearing board members may question anyone, also subject to the discretion of the chair.
11. *Witnesses*: Before the hearing, the complainant and respondent will be informed of the names of the witnesses who may appear. Both the complainant and the respondent will inform the dean of students in writing of the names of their respective witnesses. The deadline for receiving this information will be established at the discretion of the dean of students. Witnesses who have not been previously disclosed in writing to the dean of students may not be permitted to appear at the hearing, subject to the discretion of the chair.
12. *Burden of Proof*: A respondent may be found responsible for violating a regulation only when the evidence indicates that it is more likely than not that s/he violated a regulation.
13. *Deliberation*: A simple majority of the hearing panel members must vote in the affirmative in order to find that a student has violated a regulation. Should a tie vote occur, the matter will be referred to the vice president for student life for a decision.
14. *Notice of Decision*: Written notice of the hearing panel's determination and any accompanying sanction(s) shall be provided to the complainant and respondent within five (5) calendar days of the hearing panel's determination and any accompanying sanction(s). The complainant and respondent shall be notified of their opportunity to appeal to the provost. The dean of students shall have sole discretion to extend any and all deadlines referenced above upon written notice to both parties.
15. *Record Keeping*: Secretarial support is provided to keep evidence and any records of the proceedings. Both parties may be given access to a copy of the record if requested.

## **V. Sanctions**

Disciplinary actions are designed to educate students and to guide their behavior, as a reflection of University values. If a student is found to have violated a regulation, a sanction (or set of sanctions) is assigned. Student conduct records from all previous violations are available to hearing agents, in order to assist them in determining an appropriate sanction for current violations. Common sanctions are indicated below. However, hearing agents may deviate from these sanctions and may assign or recommend alternative sanctions.

### **A. Definitions**

1. *Warning*: A written statement expressing disapproval of the behavior and notice that ongoing violations will result in additional outcomes.
2. *Disciplinary Probation*: A period of time specified for observing and evaluating a student's behavior, which may also include special conditions of various types (e.g., counseling,

participation in educational programs, etc.). If a student continues to exhibit inappropriate behavior, s/he may be suspended or expelled.

3. *Suspension*: Students who are suspended must leave the University for a specified period of time. Special conditions of various types may also be included with a suspension. At the end of the period of suspension, a student may be allowed to return to the University upon proof that special conditions that were assigned have been fulfilled. The determination of whether the special conditions have been fulfilled is made by the dean of students or the vice president for student life or designee. When a student is suspended, there are no refunds of tuition or fees, and financial aid is handled according to the policies of the Financial Aid Office. If a student organization is suspended, it loses its recognition and standing for a specified period of time. After the suspension, the student organization will ordinarily have its status reinstated. Students need not have been the recipients of previous disciplinary sanctions before being suspended.
4. *Expulsion*: When a student is expelled, they are permanently separated from the University. There are no refunds of tuition or fees, and financial aid is handled according to the policies of the Financial Aid Office. If a student organization is expelled, it permanently loses its recognition and standing. Students need not have been the recipients of previous disciplinary sanctions before being expelled.

#### B. Assignment

1. Student Conduct Boards  
Student Conduct Boards may assign minor sanctions. Examples of minor sanctions include but are not limited to, warnings, written papers or agreements for behavioral change, monetary fines or restitution, attendance at educational programs, and community service hours. A sanction of disciplinary probation may also be recommended to the dean of students for approval.
2. Fraternity and Sorority Judicial Board  
The Fraternity and Sorority Judicial Board may assign minor sanctions. Examples of minor sanctions include, but are not limited to, warnings, monetary fines or restitution, attendance at educational programs, community service hours, and conduct probation. A sanction of removal of IFC/Panhellenic and/or university recognition may also be recommended to the assistant vice-president for student life for approval.
3. Vice President for Student Life, Assistant Vice-President of Student Life, Dean of Students and Academic Deans  
The vice president for student life, assistant vice-president of student life, dean of students, and academic deans may assign minor sanctions and also place a student on disciplinary probation. The dean of the student's college, or his/her designee, may assign additional sanctions, taking into account the professional conduct ramifications of the violation and its effect on the accused's continued enrollment in the school or college or ability to practice in the profession. These sanctions may include, but are not limited to, a warning, disciplinary probation, suspension, or expulsion from the school or college.
4. Campus Judicial Board  
The Campus Judicial Board may assign minor and major sanctions including disciplinary probation, suspension, or expulsion. When a suspension or expulsion has been approved, the dean of students has the discretion to require a student to leave campus for the entire

time that the decision is being appealed. The student's school or college will be notified of the outcome.

C. Fulfillment

Students are expected to fulfill assigned sanctions, and in accordance with established due dates. Failure to complete sanctions, or to complete them on time, may result in additional sanctions being assigned and/or the holding of grades, transcripts, and class registration.

D. Sanction-only Meetings

When a student admits violating a regulation, there is no need to conduct a formal hearing. However, a hearing officer or judicial board will convene in order to determine a sanction. Meeting in this manner is not a hearing and, therefore, is not bound by hearing procedures. The procedures to be used by a hearing officer or a conduct board for determining a sanction are informal and determined by the chair with approval of the dean of students. The hearing officer or Judicial Board may assign minor sanctions and/or disciplinary probation or suspension or expulsion. If the accused student is enrolled in a professional school or college, the dean of that school or college will be notified of the plea and outcome. The dean, or his/her designee, may assign additional sanctions, taking into account the professional conduct ramifications of the violation and its effect on the accused's continued enrollment in the school or college or ability to practice in the profession. These sanctions may include, but are not limited to, a warning, disciplinary probation, suspension, or expulsion from the school or college.

## VI. Appeals

A student who has been found to have violated a regulation may only appeal the decision if

1. Procedural irregularity that affected the outcome of the matter
2. New evidence that was not reasonably available at the time of the determination regarding responsibility or dismissal was made that could affect the outcome of the matter; and
3. The Valpo Office for Civil Rights, investigator(s), or decision-makers(s) had a conflict of interest or bias for or against complainants or respondents that affected the outcome of the matter.

The student must write and submit their appeal themselves. If a student chooses not to appeal, or their appeal is not received on time, the decision is final and binding upon all involved.

A. Student Conduct Boards

The procedure for appealing these cases to contact the Dean of Students office.

B. Fraternity and Sorority Judicial Board

The procedure for appealing cases to the Fraternity and Sorority Judicial Appeals Board is found in the Fraternity and Sorority Judicial Board Constitution.

C. Dean of Students and Academic Deans

Appeals of decisions from these cases are reviewed by the provost. In order to be reviewed, a written appeal must be received in the provost's office no later than 5 p.m. on the fifth (5th) calendar day after the respondent has been notified of the decision. The appeal should state with specificity the reason(s) why the decision should not stand. All decisions of the provost are final and binding.

D. **Campus Judicial Board**

Appeals of decisions from these cases are reviewed by the provost or his/her designee. The respondent's written appeal, or in cases of sexual assault and/or harassment, the complainant's written appeal, must be received by the provost's office no later than 5 p.m. on the fifth (5<sup>th</sup>) calendar day from the date of receipt or notification of the hearing panel's determination and any accompanying sanction(s). The provost or his/her designee may immediately dismiss the appeal if there is no basis for it. Both parties shall be immediately notified of such dismissal. Otherwise, upon receipt of an appeal, the provost or his/her designee shall provide the non-appealing party a copy of such appeal. The non-appealing party may then provide a written response within five (5) calendar days from the date of receipt of the appeal. The provost or his/her designee shall issue a written determination to the appealing and non-appealing parties within fifteen (15) calendar days of receipt of the appeal. All decisions of the provost or his/her designee are final and binding. The provost or his/her designee has the discretion to review the case on any basis and by any means, and then to render any decisions s/he deems appropriate.

**VII. *Records and Notification of Parents***

All student conduct records are included in a student's personnel file, which is maintained by the Dean of Students Office. These files are retained for five years after a student leaves the University, or until such time as deemed appropriate by the dean of students or the vice president for student life. When a student appears before a hearing agent, the dean of students has the discretion to notify the student's parents/guardians.



**The Lutheran University Association, Inc.,  
d/b/a Valparaiso University**

**Nondiscrimination Policy: Notice of Nondiscrimination, Reporting Procedures, and  
Complaint Process**

**I. NONDISCRIMINATION POLICY STATEMENT**

It is the policy of Valparaiso University that no person shall on the grounds of race, color, age, sex, gender identity, sexual orientation, pregnancy, disability, veteran status, religion,<sup>1</sup> national and ethnic origin, veteran status, or genetic information be excluded from participation in, be denied the benefits of, or be subjected to discrimination in employment or in any educational program or activity of the University. To that end, and in compliance with federal and state laws, the University prohibits any member of the faculty, staff, administration, student body, or visitors to campus, whether they are guests, patrons, independent contractors, or clients, from discriminating against any other such person or member of the University community in violation of this Policy. A person may also file a complaint of discrimination with the United States Department of Education's Office for Civil Rights regarding an alleged violation of Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, or Age Discrimination Act of 1975, by visiting [www2.ed.gov/about/offices/list/ocr/complaintintro.html](http://www2.ed.gov/about/offices/list/ocr/complaintintro.html), or calling 1-800-421-3481. The U.S. Department of Education Office for Civil Rights is also located at: Lyndon Baines Johnson Department of Education Bldg., 400 Maryland Avenue, SW Washington, DC 20202-1100.

Valparaiso University also prohibits harassment, and may consider it a form of discrimination, as set forth above, if it is unwelcome and sufficiently severe or pervasive so as to substantially interfere with a person's work, education, participation in a University activity, or purpose for being on campus, or is otherwise considered discrimination in violation of the law. Harassment prohibited by this Policy may include, but is not limited to, threats, physical contact, violence, pranks, jokes, slurs, epithets, derogatory comments, vandalism, or verbal, graphic, or written conduct directed at an individual or individuals. Even if actions are not directed at specific persons, a hostile environment may be created when the conduct is sufficiently severe, pervasive or persistent so as to unreasonably interfere with or limit the ability of an individual to work, study, participate in activities of the university, or achieve their purpose for being on campus. Furthermore, off campus incidents or incidents at non-University activities may be considered when determining the severity, pervasiveness, or persistence of the conduct that gives rise to hostility or harassment.

This Policy, and its procedures and processes, are administered by numerous University employees as mentioned throughout. All involved employees are to recuse themselves from a matter when there is a conflict of interest. Any involved employee may raise the issue of a potential conflict of interest to the University's General Counsel to determine whether an employee has a conflict of interest in any

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<sup>1</sup> An institution committed to its Lutheran tradition, the University reserves its right to promote the teachings of the church and to exercise preferences in admissions and employment-related practices in favor of Lutherans.



particular case, and the General Counsel may then replace that person or take other action to the extent necessary to abate the conflict and preserve impartiality.

**V. DISCRIMINATION RESOURCES AND REPORTING OPTIONS**

<b>CONFIDENTIAL RESOURCES<sup>2</sup></b>	<b>NON-CONFIDENTIAL RESOURCES</b>
<p><b>On Campus:</b>            (1) Counseling Center (<i>students only</i>)                ▪ 219. 464.5002            (2) University Pastors (<i>students and employees</i>)                ▪ 219.464.5093            (3) Employee Assistance Program (<i>employees only</i>)                • 800.538.3543</p>	<p><b>On Campus: Students and Employees</b>            (1) Valparaiso University Office for Civil Rights                Deondra.Devitt@valpo.edu                ▪ 219.464.6370                ▪ <a href="https://goo.gl/forms/U0AwS2FJj64MpKYI3">https://goo.gl/forms/U0AwS2FJj64MpKYI3</a>            (2) Valparaiso University Police Department                ▪ 219.464.5430            (3) Responsible Employees            (4) Discrimination Complaint Advisors  <b>Off Campus: Students and Employees</b>            (5) Porter County Prosecutor’s Office                • 219.465.3415</p>

**Confidential vs. Non-Confidential Resources**

Confidential resources do not share information about your report with anyone else without your permission or unless required by law (e.g., if there is an imminent threat to yourself or others, or abuse of a child.) A student or employee who has been a target or has been accused of discrimination, or harassment and wishes to keep his or her identity and information private and confidential, should seek a confidential resource listed above. Non-confidential resources are resources that are engaged to take administrative action on the complaint. The only way to impose a sanction is by making a non-confidential report. A student or employee who has been a target or has been accused of discrimination or harassment, and wishes to report an incident to the University or Police for the purpose of filing a complaint, beginning an investigation, or receiving disciplinary sanctions should seek a non-confidential resource listed above. The non-confidential resources will protect a student or employee’s privacy by limiting the people with whom they share the reported information; however, non-confidential resources cannot guarantee complete confidentiality, as they must notify and report to the Valparaiso University Office for Civil Rights.

**Non-Confidential Reporting Options**

**Valparaiso University Office for Civil Rights.** The Valparaiso University Office for Civil Rights coordinates the University’s compliance with Title VI of the Civil Rights Act of 1964, Title VII of the Civil

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<sup>2</sup> Confidential Resources will report crimes to appropriate University personnel for inclusion in the annual crime statistics disclosure, though the victim’s name will be withheld from the report. Further, all University publicly-available recordkeeping excludes personally-identifiable information to the extent permitted by law.

Rights Act of 1964, the Age Discrimination Act of 1975, and most applicable civil rights laws.<sup>3</sup> The Office for Civil Rights has four primary duties:

- (1) Assures that the proper University processes, related to a potential claim of discrimination or harassment are followed so that an accurate determination and proper sanctions can be made;
- (2) Serves as a neutral fact finder, treating the complainant and respondent in a fair and respectful manner, upon notice of a potential claim of discrimination or harassment;
- (3) Provides advice, consultation, and the results of any fact finding endeavor to University personnel responsible for determining if this Policy has been violated and sanctions as the result of such violation; and
- (4) Educates and trains the University community on this Policy.

In the execution of these duties, the Valparaiso University Office for Civil Rights is responsible for monitoring, advising, and overseeing all complaints involving discrimination and harassment and identifying and addressing any patterns or systemic problems that arise during the review or administration of any aforementioned complaints.

The Valparaiso University Office for Civil Rights is not a victim's advocate, administers his/her duties in a neutral unbiased manner, and makes no determination as to whether there has been a violation of this Policy and or what sanctions should be implemented. The Office is also responsible for assessing the campus climate, implementing and coordinating any remedial or interim measures with the proper University administrator, and providing training to campus community members. The Office will be available to meet and provide assistance to individuals, who believe they have been a target or victim of discrimination or harassment, *but the Valparaiso University Office for Civil Rights is not an emergency contact person that provides immediate or after business hours assistance*. For emergency assistance, contact the Valparaiso University Police, or Porter Hospital. The Office for Civil Rights is adequately trained to deal with issues arising from discrimination or harassment on campus, has a thorough understanding of the grievance processes, and is available as a general resource in addition to overseeing the administration of a discrimination, harassment, and sexual misconduct complaint processes.

The Valparaiso Office for Civil Rights is located at 134 Kretzmann Hall, and can be contacted at 219-464-6370 (office), Deondra.Devitt@valpo.edu, or by completing an intake form at <https://goo.gl/forms/U0AwS2FJj64MpKYI3>.

**Valparaiso University Police.** Valparaiso University does not tolerate violence and strongly encourages all persons who feel they may have been a victim of violence while on campus or participating in a University endeavor to report the incident to the Valparaiso University Police Department. Victims may notify proper law enforcement authorities, including Valparaiso University Police Department and local police; be assisted by Valparaiso University Police Department in notifying law enforcement authorities

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<sup>3</sup> The Office for Civil Rights does not serve as the disability rights or ADA/Section 504 Coordinator for the University. The Director of Access and Accommodations Resource Center serves as the University's ADA/Section 504 Coordinator and can be contacted at 219-464-6496 or [aarc@valpo.edu](mailto:aarc@valpo.edu). The Executive Director & Chief Human Resources Officer handles those aspects of ADA/Section 504 compliance involving employees of the University.

if the victim so chooses; and decline to notify such authorities. DCAs and the Valparaiso University Office for Civil Rights will assist a victim in notifying the Valparaiso University Police Department and/or local police if requested by the complainant.

**Responsible Employees.** Certain “Responsible Employees” have a duty to promptly report when the responsible employee knows or reasonably should know of a possible discrimination or harassment. Responsible Employees are those:

- (1) who have the authority to take action to redress discrimination or harassment;
- (2) who have been given the duty of reporting incidents of discrimination or harassment or any other misconduct to the Valparaiso University Office for Civil Rights or other appropriate school designee.

Responsible Employees include the following: faculty, adjunct faculty, administrators, department chairs, Discrimination Complaint Advisors (DCAs), resident assistants (RAs), and resident life and student affairs staff. Responsible Employees must promptly report incidents of discrimination or harassment to the Valpo Office for Civil Rights. Failure to report constitutes a violation of this Policy and may subject the violator to sanctions.

Responsible Employees may report incidents by completing the Valparaiso University Office for Civil Rights Intake Form available at: <https://goo.gl/forms/U0AwS2FJj64MpKYI3>. Furthermore, Indiana law requires that anyone who has reason to believe a minor (under 18 years of age) has been sexually assaulted immediately report the matter to the Valparaiso University Police Department or other local law enforcement.

**Discrimination Complaint Advisors (DCAs).** DCAs are appointed by the Title IX Coordinator. A list of current DCAs can be obtained from the Title IX website at [valpo.edu/titleix](http://valpo.edu/titleix). If invoked, the role of the DCA is to stay in close contact with the individual and serve as a resource for information about procedures, services, and techniques for resolving the situation. The DCA is responsible for providing impartial assistance, identifying, and discussing the options an individual who feels he or she has been discriminated against or harassed, or an individual who has been accused of discrimination, harassment, or sexual misconduct. These options include both an Informal and Formal Complaint/Resolution Process. The DCA will report complaints to the Title IX Coordinator, who will provide further assistance and oversight into procedures as required.

**Porter County Prosecutor’s Office.** If you have been the victim of a hate crime, you can also contact the Porter County Prosecutor’s office at 219.465.3415. The Prosecutor’s office does not report to Valparaiso University. If you would like to make a report at Valparaiso University, you will need to file separately from your call to the Prosecutor’s office.

### **Confidential Resources.**

#### **Counseling Center (Students Only).**

The Counseling Center provides counseling and psychotherapy services to full-time undergraduate and graduate students with personal, interpersonal, family, and academic performance issues. In addition

to individual counseling and consultation, Counseling Center staff offer numerous educational presentations through outreach services; psychiatric availability for students in counseling who require medications; and psychological crisis coverage for the University community. The Counseling Center hours are 8 a.m.- noon and 1 - 5 p.m. Monday through Friday. Their office is located in Alumni Hall at 1602 LaPorte Avenue (across from Lankenau Hall). They can be reached by email at [Counseling.Center@valpo.edu](mailto:Counseling.Center@valpo.edu) by phone at 219.464.5002, or on their website at [valpo.edu/counseling-services/](http://valpo.edu/counseling-services/).

**University Pastors (Students and Employees).** Valparaiso University pastoral counselors are individuals associated with the Lutheran religious denomination and is functioning within the scope of that recognition as a pastoral counselor. To contact the University Pastors for confidential counseling, call 219.464.5093.

**Northwest Health-Porter Emergency Room (Students and Employees).** Porter Hospital is the local city hospital. Porter may charge for services. Medical personnel will call the VUPD. A person choosing this option for requesting assistance may expect appropriate professionals to fill the following roles:

- Emergency Room personnel will conduct a physical examination, treat any injuries, gather physical evidence of the assault and supply aftercare instructions;
- VUPD officer will interview relevant parties, including the victim, to initiate an official investigation; and

**Employee Assistance Program (EAP) (Employees Only).** EAP is short-term counseling available for employees. Services are provided as a benefit with no charge to employees. Call the Employee Assistance Program at 800.538.3543 to develop a solution to help resolve your concerns in up to three sessions.

### **Available Reporting Options**

Employees and students can file a Formal Complaint anytime. Employees and students may file an Informal or Formal complaint pursuant to the Formal Complaint/Resolution Processes as proscribed below. Only formal complaints may be filed in the case of a student complainant against an employee respondent. Employees and students may also file a criminal complaint with the Valparaiso University Police Department.

The Valparaiso University Office for Civil Rights may take all reasonable steps and the University may have a legal obligation to investigate a potential violation of this Policy in the absence of a Formal Complaint or known alleged victim. The Office may determine there is a pattern of discrimination or harassment, or an immediate, continuing or broader threat/danger to the campus community. In such a case, the Valpo Office for Civil Rights may file a Formal Complaint on behalf of the University, against an accused employee or student. All reporting mechanisms may also apply to any student or employee who has been discriminated or harassed by another student or employee off campus or during a non-University activity. Finally, the University has the authority to take interim action against any alleged violator while the applicable complaint processes is pending. The purpose of any interim

action is to separate the complainant from the alleged violator or alleviate any potential danger while the applicable process is pending. Failure to comply with an interim action shall constitute a violation of this Policy, subjecting the violator to sanctions.

### **Supportive Measures**

Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint, or where no formal complaint has been filed.

With the advice and consultation of the Valparaiso University Office for Civil Rights, and where appropriate, the Office of Student Affairs, or Human Resource Services, assists students or employees with interim measures such as academic, housing, and transportation accommodations, in addition to no contact directives, that are reasonably available. Regardless of whether a student or employee decides to report an incident of discrimination, supportive measures and accommodations are available upon the victim's request and will be implemented when they are reasonably available.

At any time, a student or employee may seek a court-issued protective order at the Porter County Clerk's Office located at 16 East Lincolnway, Suite 209, Valparaiso, Indiana 46383. If an order of protection, no contact order, restraining order, or another similar lawful order issued by a criminal, civil, or tribal court is obtained, a copy should be provided to Valparaiso University Police Department or the Valparaiso University Office for Civil Rights. The University and Valparaiso University Police Department will take all legal and reasonable steps to implement such an order.

In cases where University officials have reasonable fears about campus safety due to a Respondent's continued presence on campus following a complaint under this policy, the University reserves the right to implement an interim separation or suspension pending the case investigation, hearing, and appeal. In cases against students, the Vice President of Student Life or their designee can enact an interim suspension following the procedures in the "Interim Suspension" portion of the Student Judicial System Policy located in the *Student Handbook*. In cases against employees, the Vice President or Provost over the Respondent may postpone the sanctions or suspend the violator, with pay, until the time to appeal the determination has expired or the appeal process has been exhausted.

## **II. RETALIATION, MALICIOUS COMPLAINTS, FALSE INFORMATION**

It is a violation of this Policy to retaliate against an individual who makes a good faith report or files a complaint pursuant to this Policy. Retaliation includes intimidation, threats, coercion, or discrimination against any individual for the purpose of interfering with any right or privilege secured by this Policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing. A retaliation complaint will be considered a separate claim from the original complaint, with separate proceedings and subjecting the alleged violator to separate disciplinary action.

However, any individual who knowingly or recklessly files a false complaint claiming a violation of this Policy, or who knowingly or recklessly provides false information in the implementation of the process to enforce this Policy, may be subject to disciplinary action.

### **III. INVOLUNTARY WITHDRAWAL/DISMISSAL OF COMPLAINTS**

The Valparaiso University Office for Civil Rights may unilaterally withdraw or dismiss any complaint or filing in the following circumstances by providing written notice of the dismissal and reasons therefore simultaneously to the parties:

1. The complaint or filing's allegations would not constitute a violation of this Policy;
2. The complaint or filing is used to raise matters that exceed the scope or purpose of this Policy, or that are otherwise irrelevant, unresponsive, or unrelated to the administration of the complaint resolution process under this Policy;
3. The complaint or filing is frivolous or otherwise arises (in whole or in part) out of bad faith, retaliation, speculation, or abuse of the complaint resolution process;
4. The complaint or filing is redundant or unnecessarily duplicative;
5. The complaint was previously resolved;
6. The complainant notifies the Office in writing that the complainant would like to withdraw the formal complaint or any allegations therein;
7. The Respondent is no longer enrolled or employed by the University;
8. Specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein; and/or
9. For purposes of consolidation of formal complaints against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of discrimination or harassment arise out of the same facts or circumstances.

The Office may unilaterally reinstate any complaint or filing that is withdrawn or dismissed.

### **IV. SANCTIONS/DISCIPLINE**

Violations of this Policy can be very serious matters having far-reaching effects on the lives and careers of individuals or success of students. Employees, students, and guests who violate this Policy are subject to disciplinary action. Possible sanctions for a person found to be in violation of this Policy include, but are not limited to, the following:

- (1) Oral or written reprimand;
- (2) Required attendance at a harassment/discrimination sensitivity program;
- (3) Oral or written warning;
- (4) Loss of salary or benefits or demotion;
- (5) Transfer or change of job, class, residential assignment, or location, including removing the person from being in a position to retaliate or further harass or discriminate against the complainant;
- (6) Suspension, probation, termination, dismissal, expulsion, or removal from campus; or

- (7) Other action Valparaiso University deems appropriate under the circumstances including termination of contractual arrangements with the University.

While counseling is not considered a sanction, it may be offered or required in combination with sanctions. If a student or student groups are found to be in violation of this Policy, any of the sanctions set forth in the *Student Handbook* may also be involved. Failure to comply with sanctions shall constitute a violation of this Policy and will ordinarily result in further disciplinary action.

***For sanctions following formal complaints against students.*** The Committee will recommend sanctions after the hearing. The Dean of Students will review sanction(s) recommended and may modify the sanction(s) if so inclined.

***For sanctions following formal complaints against faculty or staff.*** The Committee will recommend sanctions after the hearing. The employee's respective Vice President or Provost will review sanction(s) recommended and may modify the sanction(s) if so inclined. However, should the Provost seek to impose suspension or expulsion of a tenure or tenure-track faculty member, additional process may be due pursuant to the *Faculty Handbook*.<sup>4</sup>

## **VI. INFORMAL DISCRIMINATION & HARASSMENT COMPLAINT/RESOLUTION PROCESS**

### **Purpose**

Using the Informal Complaint/Resolution Process for a discrimination, harassment, or sexual misconduct complaint is not required or necessarily encouraged, but the alleging individual may prefer to attempt to resolve the matter utilizing this Process. The purpose of this Process is to expeditiously resolve the matter to the satisfaction of the complainant without having to undergo a Formal Complaint/Resolution Process.

### **Process**

To invoke this Process, the complainant must file a Formal Complaint Form at: [https://valpo.guardianconduct.com/incident-reporting?incident\\_type=Title%20IX%20Complaint](https://valpo.guardianconduct.com/incident-reporting?incident_type=Title%20IX%20Complaint). However, the complainant may also contact the Valparaiso University Office for Civil Rights, an advisor, or a Discrimination Complaint Advisor to assist in filing a Formal Complaint Form. For complaints against students, the Dean of Students or their designee, will facilitate the process. For complaints against employees, the Executive Director of Human Resource Services, or their designee, will facilitate the process. In all cases, the complaint will be forwarded to the Respondent.

The informal process is voluntary for all parties. If the Complainant and the Respondent are able to reach a resolution, the results will be documented, signed by both parties, retained by the Title IX Coordinator and the matter will be resolved. If it is not resolved informally and the Respondent is a student or students, it will be immediately routed to the Dean of Students to be administered through the Campus Judicial Process (See the University's Student Guide to University Life) If it is not resolved informally and the Complainant and Respondent are employees, the process below will commence.

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<sup>4</sup> To the extent there are any inconsistencies between the *Nondiscrimination Policy* and other University grievance, complaint, or discipline procedures, the *Nondiscrimination Policy* will control.



Again, a complaint by a student against an employee cannot be resolved informally and the process below will immediately commence.

The Executive Director & Chief Human Resources Officer or designee will investigate employee claims and meet with the Complainant. Assuming all facts alleged are true, if the complainant does not meet the thresholds under Section IV of this Policy, the complaint may be voluntarily dismissed. The alleged violator(s) may submit a written response to the Executive Director & Chief Human Resources Officer, attach additional evidence to the response, and name any additional witnesses. Any written response must be submitted to the Executive Director & Chief Human Resources Officer within ten (10) calendar days after the alleged violator received a copy of the Form. The Executive Director & Chief Human Resources Officer will immediately forward a copy of the written response to the Complainant. All members of the Valpo community should understand that this Policy is not intended to keep them from filing a criminal complaint if they so choose. The University's process is separate from a criminal investigation or other criminal proceedings. The University's responsibilities under this Policy are not relieved if a criminal complaint is filed in court or if there is an outside law enforcement agency investigating the matter. Further, the University can find a violation of this Policy even if the criminal standard for conviction cannot be met.

## **VII. FORMAL DISCRIMINATION & HARASSMENT COMPLAINT/RESOLUTION PROCESS**

### **Purpose**

The purpose of this Process is to provide avenues for formally addressing and resolving claims of discrimination, harassment, or sexual misconduct, and taking action against a student or employee who has violated the University's policy that prohibits discrimination, harassment, or sexual misconduct. This Process applies to any student, employee, visitor or guest wanting to make a complaint against a student or employee, but this Process does not apply to any tenure-track faculty member claiming that he/she was denied tenure or not renewed as the result of prohibited discrimination or harassment. Such complaints are made pursuant to procedures set forth in the *Faculty Handbook*.

### **Confidentiality**

The Valpo Office for Civil Rights is in the best position to evaluate confidentiality requests, though the University may reasonably determine that another employee would be more appropriate. In the event a complainant requests confidentiality or asks that a complaint not be investigated, the University will take all reasonable steps to investigate and respond to the complaint consistent with a request for confidentiality or a request not to pursue an investigation. If a complainant insists that his or her name not be disclosed to the alleged perpetrator, the University's ability to respond may be limited. The University reserves the right to initiate an investigation despite a complainant's request for confidentiality in limited circumstances involving serious or repeated conduct or where the alleged perpetrator may pose a threat to the campus community, as determined by the Valpo Office for Civil Rights and appropriate University administrator.

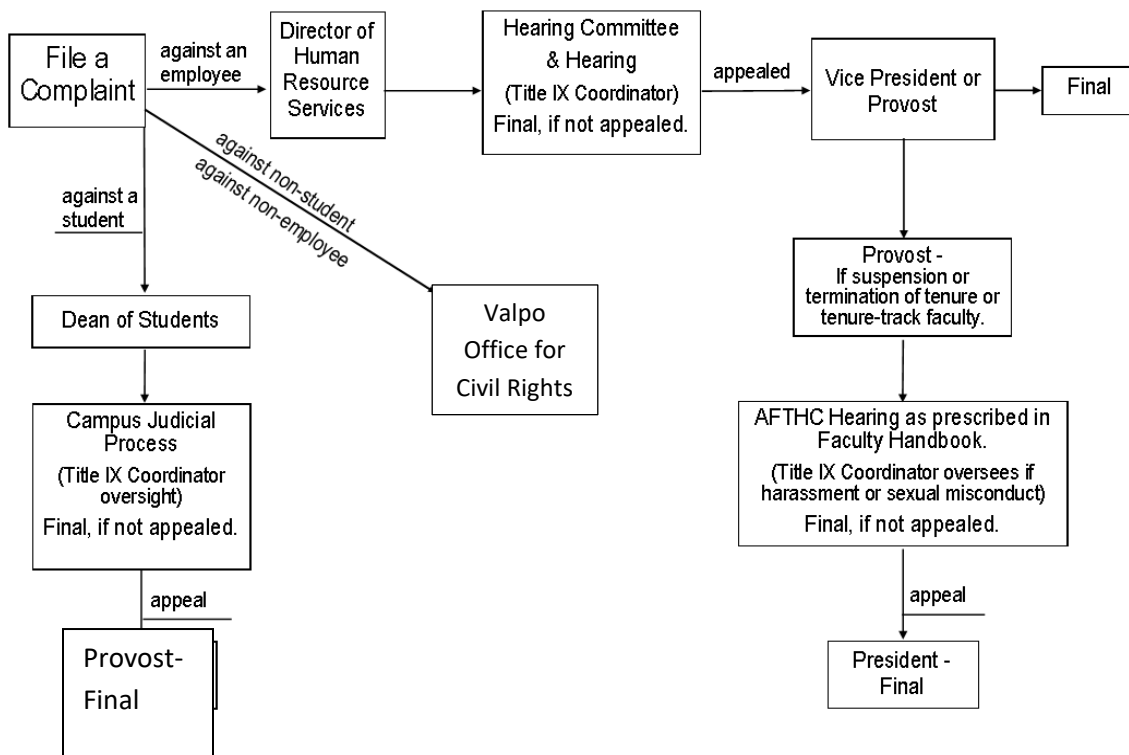
### **Starting the Process**



A Formal Complaint Form can be obtained online at: <https://goo.gl/forms/1PSijcvfsHsGENkh2>. The Form will require the complainant to set forth sufficient details of the incident(s), along with alleged violators, witnesses, expert witnesses, evidence (included or attached), and relief sought. Complainants are encouraged to file their complaint in a timely manner to preserve evidence. Assuming all facts as alleged are true, if the complaint does not meet the thresholds under Section IV of this Policy, the complaint may be involuntarily dismissed. The Complainant may submit a written response to the Executive Director & Chief Human Resources Officer for complaints against employees, or to the Dean of Students or their designee for complaints against students (hereinafter the Coordinating Party), attach additional evidence to the response, and name any additional witnesses. Any written response to the complaint must be submitted to Coordinating Party ten (10) calendar days after the respondent received a copy of the Form. The Coordinating Party will immediately forward a copy of the written response to the Complainant. All members of the Valpo community should understand that this Policy is not intended to keep them from filing a criminal complaint if they so choose. The University's process is separate from a criminal investigation or other criminal proceedings. The University's responsibilities under this Policy are not relieved if a criminal complaint is filed in court or if there is an outside law enforcement agency investigating the matter. Further, the University can find a violation of this Policy even if the criminal standard for a conviction cannot be met.

## **Discrimination, Harassment**

### **Formal Complaint/Resolution Process at a Glance**



### **Investigation and Procedures**

The University investigation and resolution proceedings shall be prompt, fair, and impartial. During the investigation and resolution of a complaint, the complainant and respondent shall have equal rights. They include:

- (1) equal opportunity to identify and have considered witnesses, expert witnesses, and other relevant evidence;
- (2) similar and timely access to all information considered by the Committee;
- (3) equal opportunity to review any statements or evidence provided by the other party; and
- (4) equal access to review and comment upon any information independently developed by an investigator or the Committee.

The University will strive to resolve a complaint within sixty (60) calendar days of receiving it, though certain resolutions may take longer depending on the circumstances. If resolution will take longer than sixty (60) calendar days, the parties will be given notice and an explanation in writing. The University's internal investigation is separate from the investigation of outside law enforcement agencies, and the University will only delay its investigation due to an outside investigation if particular circumstances warrant such a delay. Delays for this reason will typically not exceed 3–10 calendar days.

Investigations will be completed by the Valparaiso University Police Department for complaints against students, and by the Human Resource Services for complaints against employees. In all cases, the Valpo Office for Civil Rights will provide consultation and oversight of the investigation.

Both parties will have an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint. Prior to the hearing, the University through the Coordinating Party will send to each party and the party's advisor the Investigative Report.

### Hearing

The Campus Judicial Board procedures for complaints against students is convened by the Dean of Students or their designee and are described in the *Student Guide to University Life*. The Employee Discrimination Hearing Committee shall consist of three (3) employees randomly chosen by the Valparaiso University Office for Civil Rights from a pool of at least ten (10) employees appointed by the Valparaiso University Office for Civil Rights. The pool of employees receives annual training on issues related to discrimination, investigation, and the hearing process. The pool shall consist of at least five (5) employees, and five (5) tenured or tenure-track faculty members. If the alleged violator is a faculty member, the Employee Discrimination Hearing Committee shall consist of all faculty. For other employees, it shall consist of at least one (1) faculty member and one (1) employee. Hereinafter, the decision-making body, whether it is the Campus Judicial Board for students or the Employee Discrimination Hearing Committee for employees, shall be referred to as "the Committee."

The Committee may dismiss any complaint by majority vote if, assuming the allegations were true, it would not constitute a violation of the University's Policy against discrimination or harassment. The

President of the University may appoint outside legal counsel or a consultant to guide or direct the Committee. The Valparaiso University Office for Civil Rights shall oversee the process, may provide the Committee advice and consultation on the process, but shall have no authority over the Committee. The Valparaiso University Office for Civil Rights or designee in the Dean of Students or Human Resource Services shall choose the chair of the Committee.

Should a Committee member have a conflict of interest in hearing the matter, he or she must withdraw from the matter. In such a case, the withdrawing Committee member will be replaced by a non-conflicted similarly situated person.

The Committee will facilitate a hearing to determine, by a preponderance of the evidence, whether the complainant was discriminated against or harassed in violation of University policy.

At the hearing, standard courtroom procedures and rules of evidence will not apply. If a complainant or a respondent fails to appear at a scheduled hearing, the Committee may proceed with the case, unless the Chair excuses the absence.

At the Hearing, the Committee must review the Investigative Report; separately interview and question the complainant and alleged violator(s); and call to attendance available witnesses they determine might have relevant information. The complainant and the respondent(s) may have advisors of their choice at the hearing or any related meeting. The advisor may be, but is not required to be, an attorney. Members of the Committee may make negative inferences regarding responsibility from any alleged violator's refusal to participate in the process, refusal to submit to cross-examination, or answer questions from the Committee members.

When requested, the University will make arrangements so that the complainant and the alleged violator(s) do not have to be present in the same room at the same time, but hearings must be live either in person or with audio-visual technology.

### **Determination**

Immediately following the hearing, the Committee shall meet and render a determination by a majority vote. Within five (5) calendar days after the hearing, the Committee's determination shall be written by the Chair, set forth justification for the decision, and signed by each member stating that a majority of the Committee supported the decision. A determination against the violator shall set forth in writing: (1) the final determination; (2) appeal procedures; (3) any sanctions. If the Committee finds that the Respondent's conduct violates other university policies, the Committee may recommend sanctions to the Respondent's immediate supervisor or the Dean of Students or designee. The matter shall be final and binding unless appealed.

In cases against employees, the Vice President or Provost over the Respondent may postpone the sanctions or suspend the violator, with pay, until the time to appeal the determination has expired or the appeal process has been exhausted. The Chair may attach any relevant documents to the written determination. Both the complainant and the respondent shall be simultaneously notified. In cases

against students, the Vice President for Student Life or designee may execute an interim suspension pending appeal under the Policies Regarding Psychological Issues of the *Student Handbook*.

A copy of the Committee's written determination shall be provided to the Valpo Office for Civil Rights and either the Dean of Students or the immediate supervisor, depending on the Respondent's relationship with the University.

When an individual admits violating this Policy, the Committee will not hold a hearing. However, the Committee will convene to determine appropriate sanctions. Meeting in this manner is not a hearing and, therefore, is not bound by hearing procedures. The procedures to be used by the Committee for determining a sanction are informal and determined by the Chair with approval of the Valparaiso University Office for Civil Rights.

### **Appeals Process**

The complainant or respondent can appeal the Committee's determination by submitting a written appeal to the respondent's respective Vice President or Provost within five (5) calendar days from the date of receipt of the Committee's determination. The appeal must be dated, signed by the party appealing, set forth reasons why the Committee's determination is unjustified, and include a copy of the determination. The Vice President or Provost will immediately forward a copy of the appeal to the Chair of the Committee, the Valparaiso University Office for Civil Rights, the Coordinating Party, and the non-appealing party. The Chair will provide the Vice President or Provost a written response within five (5) calendar days from the date of his/her receipt of the appeal, and the non-appealing party may provide a written response within five (5) calendar days from the date of his/her receipt of the appeal.

The respective Vice President or Provost has the discretion to review the determination of the Committee limited to the following circumstances:

1. Procedural irregularity that affected the outcome of the matter
2. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made that could affect the outcome of the matter; and
3. The Valpo Office for Civil Rights, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondent that affected the outcome of the matter.

The Valparaiso University Office for Civil Rights will be available to provide the Vice President or Provost advice. The Vice President or Provost shall issue a written determination within fifteen (15) days of his/her receipt of the appeal. A copy of the written decision shall be provided to the appealing party, the non-appealing party, the Valparaiso University Office for Civil Rights, and the parties' personnel or student files. All decisions of the Vice President or Provost are final and binding. However, the decisions of a Provost that support a determination that a faculty member violated the University's policy against discrimination, harassment, or sexual misconduct may be subject to additional process pursuant to the *Faculty Handbook*.

**The Lutheran University Association, Inc.,  
d/b/a Valparaiso University**

**Harassment and Sexual Misconduct Policy: Notice of Nondiscrimination, Reporting  
Procedures, and Complaint Process**

**I. NONDISCRIMINATION AND HARASSMENT POLICY STATEMENT**

It is the policy of Valparaiso University that no person shall on the grounds of sex, gender identity, pregnancy, or sexual orientation be excluded from participation in, be denied the benefits of, or be subjected to discrimination in employment or in any educational program or activity of the University. To that end, and in compliance with federal and state laws, the University prohibits any member of the faculty, staff, administration, student body, or visitors to campus, whether they are guests, patrons, independent contractors, or clients, from discriminating against any other such person or member of the University community in violation of this Policy. Both men and women can be perpetrators of sexual harassment. A person may also file a complaint of discrimination with the United States Department of Education's Office for Civil Rights regarding an alleged violation of Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Age Discrimination Act of 1975, or Title IX of the Higher Education Amendments of 1972 by visiting [www2.ed.gov/about/offices/list/ocr/complaintintro.html](http://www2.ed.gov/about/offices/list/ocr/complaintintro.html), or calling 1-800-421-3481. The U.S. Department of Education Office of Civil Rights is also located at: Lyndon Baines Johnson Department of Education Bldg., 400 Maryland Avenue, SW Washington, DC 20202-1100.

Valparaiso University also prohibits harassment, and may consider it a form of discrimination, as set forth above, if it is unwelcome and sufficiently severe or pervasive so as to substantially interfere with a person's work, education, participation in a University activity, or purpose for being on campus, or is otherwise considered discrimination in violation of the law. Harassment prohibited by this Policy may include, but is not limited to, threats, physical contact, violence, pranks, jokes, slurs, epithets, derogatory comments, vandalism, or verbal, graphic, or written conduct directed at an individual or individuals. Even if actions are not directed at specific persons, a hostile environment may be created when the conduct is sufficiently severe, pervasive or persistent so as to unreasonably interfere with or limit the ability of an individual to work, study, participate in activities of the university, or achieve their purpose for being on campus. Furthermore, off campus incidents or incidents at non-University activities may be considered when determining the severity, pervasiveness, or persistence of the conduct that gives rise to hostility or harassment.

This Policy, and its procedures and processes, are administered by numerous University employees as mentioned throughout. All involved employees are to recuse themselves from a matter when there is a conflict of interest. Any involved employee may raise the issue of a potential conflict of interest to the University's General Counsel to determine whether an employee has a conflict of interest in any particular case, and the General Counsel may then replace that person or take other action to the extent necessary to abate the conflict and preserve impartiality.

## II. PROHIBITED HARASSMENT AND SEXUAL MISCONDUCT POLICY STATEMENT

Harassment on the basis of sex, as later defined under this Policy, is a violation of federal and state law. Valparaiso University strives to create a safe and nondiscriminatory environment where individuals treat one another with respect and, therefore, does not tolerate sexual harassment on campus or within the scope of its educational programs or activities<sup>1</sup>. Individuals who believe they are victims of sexual harassment are strongly urged to promptly report such incidents as set forth under the reporting procedures below. Valparaiso University will promptly investigate every formal sexual harassment complaint in a timely manner and, when there is a finding of sexual harassment, take corrective action to stop the harassment and prevent the misconduct from recurring, and correct any discriminatory effects of such harassment. The severity of the corrective action will depend on the circumstances of the particular case.

The determination of what constitutes sexual harassment will vary with the facts and circumstances of a particular case but generally involves unwanted sexual attention. Any person may be subject to sexual harassment, and one can be sexually harassed by a member of any gender. Sexual harassment is defined as conduct on the basis of sex that satisfies one or more of the following:<sup>2</sup>

- (1) conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
- (2) unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity; or
- (3) Sexual assault,<sup>3</sup> dating violence,<sup>4</sup> domestic violence,<sup>5</sup> or stalking.<sup>6</sup>

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<sup>1</sup> Education program or activity includes locations, events, or circumstances over which the recipient exercised 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 a postsecondary institution (34 CFR 106.44(a)) and off-campus activities that substantially affect on-campus access to educational programs or activities, such as the off-campus sexual assault of a student in the same class as the respondent.

<sup>2</sup>34 CFR 160.30

<sup>3</sup> An offense classified as forcible or nonforcible sex offense under the uniform crime reporting system of the FBI (20 USC 1092(f)(6)(A)(v) including rape, fondling, incest, or statutory rape. In the State of Indiana, sexual assault is captured in Sexual Battery laws under IC 35-42-4-8. Statutory rape is defined at IC 35-42-4-3, and rape is defined in IC 35-42-4-1.

<sup>4</sup> 34 USC 12291(a)(10) Dating violence means violence committed by a person—(A)who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B)where the existence of such a relationship shall be determined based on a consideration of the following factors: (i)The length of the relationship (ii)The type of relationship. (iii)The frequency of interaction between the persons involved in the relationship.

<sup>5</sup> 34 USC 12291(a)(8) The term "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 cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, 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 jurisdiction.

<sup>6</sup> 34 USC 12291(a)(30) The term "stalking" means engaging in a course of conduct directed at a specific person that would cause a reasonable person to—(A)fear for his or her safety or the safety of others; or (B)suffer substantial emotional distress.

Sexual harassment prohibited by this Policy may take different forms. Examples might include:

- (1) Direct or implied threats that submission to sexual advances will be a condition of advancement or promotion in any endeavor, including but not limited to employment, work status, promotion, or academic grades;
- (2) Direct propositions of a sexual nature;
- (3) Unnecessary touching, hugging, or brushing against another person's body;
- (4) Sexually explicit statements, questions, or jokes; that a reasonable person ;
- (5) Remarks of a sexual nature about a person's clothing or body, sexual activity, sexual orientation, gender identity, failure to conform to stereotypical notions of masculinity or femininity, or previous sexual experience;
- (6) Physical assault or violence.

Sexual violence is a form of prohibited sexual harassment. Sexual violence includes physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent because of his or her drug or alcohol use, because of his or her temporary or permanent mental or physical incapacity, or because of his or her youth. Consent is informed, freely given, and mutually understood. Consent requires an affirmative act or statement by each participant. Consent is not passive.

There is no consent if:

- coercion, intimidation, threats, and/or physical force are used.
- a person is mentally or physically incapacitated or impaired by alcohol or drugs such that the person cannot understand the fact, nature, or extent of the sexual situation.
- a person is asleep or unconscious.

Consent to one form of sexual activity does not imply consent to other forms of sexual activity. Consent can be withdrawn. A person who initially consents to sexual activity is deemed not to have consented to any sexual activity that occurs after he or she withdraws consent. Finally, consent to previous sexual activity does not imply consent to future sexual activity.

Sexual violence includes sexual assault, rape, sexual battery, sexual abuse, and sexual coercion. Some examples of sexual violence include:

- Rape or sexual assault: sexual intercourse of any type with a person that has not consented to the intercourse.
- Sexual touching of any type with a person that has not consented to the touching.
- Sexual touching or intercourse of any type committed by force, threat, coercion or intimidation.
- Sexual touching or sexual intercourse of any type with a person who is asleep or unconscious for any reason including, but not limited to, drug or alcohol use.
- Exceeding the scope of consent by engaging in a different form of sexual activity than a person has consented to.
- Knowingly transmitting a sexually transmitted disease such as HIV to another person through sexual activity.
- Secretly videotaping sexual activity.



- Participating in any activity that will likely result in any type of sexual touching or intercourse with a person by force, without the person’s consent, or when the person is asleep or unconscious because of drug or alcohol use.

Sexual harassment does not include:

- (1) Discussions, communications, or actions that are sexual in nature but part of a legitimate academic exchange of ideas or artistic performance. As a University that values academic freedom and expression, there may be times when debates or performances of this type are acceptable and even encouraged; or
- (2) Any other harassment not based on sex, sexual orientation, or gender identity; but may still be subject to discipline under another Valparaiso University policy.

The University does not support any incidents of harassment even though the incident may not constitute sexual harassment. As such, it reserves the right to punish the instigator of such an incident under a different theory, for example, lacking collegiality. If there is any question whatsoever, the incident should be reported and the grievance process should be followed.

**V. SEXUAL MISCONDUCT RESOURCES AND REPORTING OPTIONS**

<b>CONFIDENTIAL RESOURCES<sup>7</sup></b>	<b>NON-CONFIDENTIAL RESOURCES</b>
<p><b>On Campus:</b></p> <p>(1) Sexual Assault Awareness &amp; Facilitative Education Office (SAAFE) (students only)</p> <ul style="list-style-type: none"> <li>▪ Crisis Line: 219.386.3128</li> <li>▪ Office: 219.464.6860</li> <li>▪ SAAFE.office@valpo.edu</li> </ul> <p>(2) Counseling Center (students only)</p> <ul style="list-style-type: none"> <li>▪ 219. 464.5002</li> </ul> <p>(3) University Pastors (students and employees)</p> <ul style="list-style-type: none"> <li>▪ 219.464.5093</li> </ul> <p>(4) Student Health Center (students only)</p> <ul style="list-style-type: none"> <li>▪ 219.464.5060</li> </ul> <p>(5) Employee Assistance Program (employees only)</p> <ul style="list-style-type: none"> <li>• 800.538.3543</li> </ul> <p><b>Off Campus: Students and Employees</b></p> <p>(6) The Caring Place</p> <ul style="list-style-type: none"> <li>▪ 219.464.2128</li> </ul> <p>(7) National Sexual Assault Hotline</p>	<p><b>On Campus: Students and Employees</b></p> <p>(1) Title IX Coordinator</p> <ul style="list-style-type: none"> <li>▪ <a href="mailto:Title9@valpo.edu">Title9@valpo.edu</a></li> <li>▪ 219.464.6370</li> <li>▪ <a href="https://goo.gl/forms/U0AwS2FJj64MpKYI3">https://goo.gl/forms/U0AwS2FJj64MpKYI3</a></li> </ul> <p>(2) Valparaiso University Police Department</p> <ul style="list-style-type: none"> <li>▪ 219.464.5430</li> </ul> <p>(3) Responsible Employees</p> <p>(4) Discrimination Complaint Advisors</p> <p><b>Off Campus: Students and Employees</b></p> <p>(5) Porter County Prosecutor’s Office</p> <ul style="list-style-type: none"> <li>• 219.465.3415</li> </ul>

<sup>7</sup> Confidential Resources will report crimes to appropriate University personnel for inclusion in the annual crime statistics disclosure, though the victim’s name will be withheld from the report. Further, all University publicly-available recordkeeping excludes personally-identifiable information to the extent permitted by law.



<ul style="list-style-type: none"> <li>▪ 800.656.HOPE</li> </ul> <p>(8) RAINN (Rape Abuse Incest Nat'l Network)</p> <ul style="list-style-type: none"> <li>▪ 800.799.7233</li> </ul> <p>(9) Porter Hospital Emergency Room</p> <ul style="list-style-type: none"> <li>• 219.983.8300</li> </ul>	
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### **Confidential vs. Non-Confidential Resources**

Confidential resources do not share information about your report with anyone else without your permission or unless required by law (e.g., if there is an imminent threat to yourself or others, or abuse of a child.) A student or employee who has been a target or has been accused of discrimination, harassment, or sexual misconduct, and wishes to keep his or her identity and information private and confidential, should seek a confidential resource listed above. Non-confidential resources are resources that are engaged to take administrative action on the complaint. The only way to impose a sanction is by making a non-confidential report. A student or employee who has been a target or has been accused of discrimination, harassment, or sexual misconduct, and wishes to report an incident to the University or Police for the purpose of filing a complaint, beginning an investigation, or receiving disciplinary sanctions should seek a non-confidential resource listed above. The non-confidential resources will protect a student or employee’s privacy by limiting the people with whom they share the reported information; however, non-confidential resources cannot guarantee complete confidentiality, as they must notify and report to the Title IX Coordinator.

### **Non-Confidential Reporting Options**

***Title IX Coordinator.*** The Title IX Coordinator coordinates the University’s compliance with Title IX of the Higher Education Amendments of 1972, Title VI of the Civil Rights Act of 1964, Title VII of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, and most applicable civil rights laws.<sup>8</sup> The Title IX Coordinator is appointed by the President and has four primary duties:

- (1) Assures that the proper University processes, related to a potential claim of discrimination, harassment, or sexual misconduct are followed so that an accurate determination and proper sanctions can be made;
- (2) Serves as a neutral fact finder, treating the alleged victim and accused in a fair and respectful manner, upon notice of a potential claim of discrimination or harassment;
- (3) Provides advice, consultation, and the results of any fact finding endeavor to University personnel responsible for determining if this Policy has been violated and sanctions as the result of such violation; and
- (4) Educates and trains the University community on this Policy.

In the execution of these duties, the Title IX Coordinator is responsible for monitoring, advising, and overseeing all complaints involving discrimination harassment, and sexual misconduct, and identifying

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<sup>8</sup> The Title IX Coordinator does not serve as the disability rights or ADA/Section 504 Coordinator for the University. The Director of Access and Accommodations Resource Center serves as the University’s ADA/Section 504 Coordinator and can be contacted at 219-464-6496 or [aarc@valpo.edu](mailto:aarc@valpo.edu). The Executive Director & Chief Human Resources Officer handles those aspects of ADA/Section 504 compliance involving employees of the University.

and addressing any patterns or systemic problems that arise during the review or administration of any aforementioned complaints.

The Title IX Coordinator is not a victim's advocate, administers his/her duties in a neutral unbiased manner, and makes no determination as to whether there has been a violation of this Policy and or what sanctions should be implemented. The Title IX Coordinator is also responsible for assessing the campus climate, implementing and coordinating any remedial or interim measures with the proper University administrator, and providing training to campus community members. The Title IX Coordinator will be available to meet and provide assistance to individuals, who believe they have been a target or victim of discrimination, harassment, or sexual misconduct, *but the Title IX Coordinator is not an emergency contact person that provides immediate assistance for anyone who has been sexually assaulted or is a victim of a crime*. Emergency care concerns should be directed to the Valparaiso University Police or Porter Hospital. The Title IX Coordinator is adequately trained to deal with issues arising from discrimination, harassment, or sexual misconduct on campus, has a thorough understanding of the grievance processes, and is available as a general resource in addition to overseeing the administration of a discrimination, harassment, and sexual misconduct complaint processes.

The Title IX Coordinator is located at 134 Kretzmann Hall, and can be contacted at 219-464-6370 (office), Title9@valpo.edu, or by completing an intake form at <https://goo.gl/forms/U0AwS2FJj64MpKYI3>.

**Valparaiso University Police.** Valparaiso University does not tolerate violence and strongly encourages all persons who feel they may have been a victim of violence while on campus or participating in a University endeavor to report the incident to the Valparaiso University Police Department. Victims may notify proper law enforcement authorities, including Valparaiso University Police Department and local police; be assisted by Valparaiso University Police Department in notifying law enforcement authorities if the victim so chooses; and decline to notify such authorities. Discrimination Complaint Advisors (as defined below) and the Title IX Coordinator will assist a victim in notifying the Valparaiso University Police Department and/or local police if requested by the victim.

An individual who believes they have been a victim of sexual violence is encouraged to immediately contact the Valparaiso University Police Department at 219.464.5430. An officer will:

- Provide for the person's immediate need for safety;
- Call a counselor/advocate to come on campus to speak with the person;
- Provide transportation to the emergency room if requested;
- Gather information pertaining to the incident;
- Advise the person on obtaining a restraining order, and by request, notify someone with authority over the assailant so contact between the two parties can be limited; and
- Call the Title IX Coordinator to assist in the matter.

An individual is not required to report the Valparaiso University Police Department immediately;

however, it is important to preserve any evidence of the incident as it may be necessary to prosecute a crime or obtain an order of protection. An individual is strongly encouraged not to shower, douche, brush teeth, eat, or change clothing in an effort to preserve physical evidence. If a victim changes clothes, a victim is encouraged to put all clothing wearing at the time of the incident into a paper bag.

**Responsible Employees.** Certain “Responsible Employees” have a duty to promptly report when the responsible employee knows or reasonably should know of a possible discrimination, harassment, or sexual misconduct. Responsible Employees are those;

- (1) who have the authority to take action to redress discrimination, harassment or sexual misconduct;
- (2) who have been given the duty of reporting incidents of discrimination, harassment or sexual misconduct such as sexual violence, sexual harassment, domestic violence, dating violence, stalking, or any other misconduct to the Title IX Coordinator or other appropriate school designee.

Responsible Employees include the following: faculty, adjunct faculty, administrators, department chairs, Discrimination Complaint Advisors (DCAs), resident assistants (RAs), and resident life and student affairs staff. Responsible Employees must promptly report incidents of discrimination, harassment, and sexual misconduct to the Title IX Coordinator in the Valparaiso University Office for Civil Rights. Failure to report constitutes a violation of this Policy and may subject the violator to sanctions.

Responsible Employees may report incidents by completing the Valparaiso University Office for Civil Rights Intake Form available at: <https://goo.gl/forms/U0AwS2FJj64MpKYI3>. Furthermore, Indiana law requires that anyone who has reason to believe a minor (under 18 years of age) has been sexually assaulted immediately report the matter to the Valparaiso University Police Department or other local law enforcement.

**Discrimination Complaint Advisors (DCAs).** DCAs are appointed by the Title IX Coordinator. A list of current DCAs can be obtained from the Title IX website at [valpo.edu/titleix](http://valpo.edu/titleix). If invoked, the role of the DCA is to stay in close contact with the individual and serve as a resource for information about procedures, services, and techniques for resolving the situation. The DCA is responsible for providing impartial assistance, identifying, and discussing the options an individual who feels he or she has been discriminated against, harassed, or a target of sexual misconduct or an individual who has been accused of discrimination, harassment, or sexual misconduct might wish to follow. These options include both an Informal and Formal Complaint/Resolution Process. The DCA will report complaints to the Title IX Coordinator, who will provide further assistance and oversight into procedures as required.

**Porter County Prosecutor’s Office.** If you have been assaulted, you can also contact the Porter County Prosecutor’s office at 219.465.3415. The Prosecutor’s office does not report to Valparaiso University. If you would like to make a report at Valparaiso University, you will need to file separately from your call to the Prosecutor’s office.

### **Confidential Resources.**

**Sexual Assault Awareness and Facilitative Education (SAAFE) Office (Students Only).** SAAFE is an on-campus crisis center that provides advocacy services for those who have been affected by sexual harassment. For emergencies, call the crisis line at 219.386.3128. For non-emergencies during business hours, call 219.464.6860 or email the office at [SAAFE.office@valpo.edu](mailto:SAAFE.office@valpo.edu).

**University Pastors (Students and Employees).** Valparaiso University pastoral counselors are individuals associated with the Lutheran religious denomination and is functioning within the scope of that recognition as a pastoral counselor. To contact the University Pastors for confidential counseling, call 219.464.5093.

**Counseling Center (Students Only).**

The Counseling Center provides counseling and psychotherapy services to full-time undergraduate and graduate students with personal, interpersonal, family, and academic performance issues. In addition to individual counseling and consultation, Counseling Center staff offer numerous educational presentations through outreach services; psychiatric availability for students in counseling who require medications; and psychological crisis coverage for the University community. The Counseling Center hours are 8 a.m.- noon and 1 - 5 p.m. Monday through Friday. Their office is located in Alumni Hall at 1602 LaPorte Avenue (across from Lankenau Hall). They can be reached by email at [Counseling.Center@valpo.edu](mailto:Counseling.Center@valpo.edu) by phone at 219.464.5002, or on their website at [valpo.edu/counseling-services/](http://valpo.edu/counseling-services/).

**Porter Emergency Room (Students and Employees).** Porter Hospital is the local city hospital. Porter may charge for services. Medical personnel will call the VUPD. A person choosing this option for requesting assistance may expect appropriate professionals to fill the following roles:

- Emergency Room personnel will conduct a physical examination, treat any injuries, gather physical evidence of the assault and supply aftercare instructions;
- VUPD officer will interview relevant parties, including the victim, to initiate an official investigation; and
- For students, the SAAFE and/or Counseling Center advocate will provide emotional support, safeguard the student's right to make choices, assist the person in examining alternatives and begin the recovery and re-empowerment process.

**Employee Assistance Program (EAP) (Employees Only).** EAP is short-term counseling available for employees. Services are provided as a benefit with no charge to employees. Call the Employee Assistance Program at 800.538.3543 to develop a solution to help resolve your concerns in up to three sessions.

**Off-campus services available to assault victims. (Students and Employees).** If you have been assaulted, you may also contact any of the following off-campus services and hotlines which will not report back to Valparaiso University.

- National Sexual Assault Hotline 1.800.656.HOPE

- Sexual Assault Recovery Project 219.465.3408
- Victim’s Assistance Unit 219.465.3433
- Porter Starke Services 219.531.3500

**Available Reporting Options**

Employees and students can file an Informal or Formal Complaint anytime. Employees and students may file an Informal or Formal complaint pursuant to the Informal and Formal Complaint/Resolution Processes as proscribed below. Only formal complaints may be filed in the case of a student complainant against an employee respondent. Employees and students may also file a criminal complaint with the Valparaiso University Police Department.

The Title IX Coordinator may take all reasonable steps and the University may have a legal obligation to investigate a potential violation of this Policy in the absence of an Informal or Formal Complaint or known alleged victim. The Title IX Coordinator may determine there is a pattern of discrimination, harassment, or sexual misconduct, or an immediate, continuing or broader threat/danger to the campus community. In such a case, the Title IX Coordinator may file a Formal Complaint on behalf of the University, against an accused employee or student. All reporting mechanisms may also apply to any student or employee who has been discriminated, harassed, or a target of sexual misconduct by another student or employee off campus or during a non-University activity. Finally, the University has the authority to take interim action against any alleged violator while the applicable complaint processes is pending. The purpose of any interim action is to separate the complainant from the alleged violator or alleviate any potential danger while the applicable process is pending. Failure to comply with an interim action shall constitute a violation of this Policy, subjecting the violator to sanctions.

**Supportive Measures**

Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint, or where no formal complaint has been filed.

With the advice and consultation of the Title IX Coordinator, and where appropriate, the SAAFE Office, the Office of Student Affairs, or Human Resource Services, assists students or employees with interim measures such as academic, housing, and transportation accommodations, in addition to no contact directives, that are reasonably available. Regardless of whether a student or employee decides to report an incident of sexual misconduct, supportive measures and accommodations are available upon the victim’s request and will be implemented when they are reasonably available.

At any time, a student or employee may seek a court-issued protective order at the Porter County Clerk’s Office located at 16 East Lincolnway, Suite 209, Valparaiso, Indiana 46383. If an order of protection, no contact order, restraining order, or another similar lawful order issued by a criminal, civil, or tribal court is obtained, a copy should be provided to Valparaiso University Police Department or the Title IX Coordinator. The University and Valparaiso University Police Department will take all legal and reasonable steps to implement such an order.

In cases where University officials have reasonable fears about campus safety due to a Respondent's continued presence on campus following a complaint under this policy, the University reserves the right to implement an interim separation or suspension pending the case investigation, hearing, and appeal. In cases against students, the Vice President of Student Life or their designee can enact an interim suspension following the procedures in the "Interim Suspension" portion of the Student Judicial System Policy located in the *Student Handbook*. In cases against employees, the Vice President or Provost over the Respondent may postpone the sanctions or suspend the violator, with pay, until the time to appeal the determination has expired or the appeal process has been exhausted.

### **III. RETALIATION, MALICIOUS COMPLAINTS, FALSE INFORMATION**

It is a violation of this Policy to retaliate against an individual who makes a good faith report or files a complaint pursuant to this Policy. Retaliation includes intimidation, threats, coercion, or discrimination against any individual for the purpose of interfering with any right or privilege secured by title IX, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing. A retaliation complaint will be considered a separate claim from the original complaint, with separate proceedings and subjecting the alleged violator to separate disciplinary action.

However, any individual who knowingly or recklessly files a false complaint claiming a violation of this Policy, or who knowingly or recklessly provides false information in the implementation of the process to enforce this Policy, may be subject to disciplinary action.

### **IV. INVOLUNTARY WITHDRAWAL/DISMISSAL OF COMPLAINTS**

The Title IX Coordinator may unilaterally withdraw or dismiss any complaint or filing in the following circumstances by providing written notice of the dismissal and reasons therefore simultaneously to the parties:

1. The complaint or filing's allegations would not constitute a violation of this Policy;
2. The complaint or filing is used to raise matters that exceed the scope or purpose of this Policy, or that are otherwise irrelevant, unresponsive, or unrelated to the administration of the complaint resolution process under this Policy;
3. The complaint or filing is frivolous or otherwise arises (in whole or in part) out of bad faith, retaliation, speculation, or abuse of the complaint resolution process;
4. The complaint or filing is redundant or unnecessarily duplicative;
5. The complaint was previously resolved;
6. The complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein;
7. The Respondent is no longer enrolled or employed by the University;
8. Specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein; and/or
9. For purposes of consolidation of formal complaints against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances.

The Title IX Coordinator may unilaterally reinstate any complaint or filing that is withdrawn or dismissed.

## V. SANCTIONS/DISCIPLINE

Violations of this Policy can be very serious matters having far-reaching effects on the lives and careers of individuals or success of students. Employees, students, and guests who violate this Policy are subject to disciplinary action. Possible sanctions for a person found to be in violation of this Policy include, but are not limited to, the following:

- (1) Oral or written reprimand;
- (2) Required attendance at a harassment/discrimination sensitivity program;
- (3) Oral or written warning;
- (4) Loss of salary or benefits or demotion;
- (5) Transfer or change of job, class, residential assignment, or location, including removing the person from being in a position to retaliate or further harass or discriminate against the complainant;
- (6) Suspension, probation, termination, dismissal, expulsion, or removal from campus; or
- (7) Other action Valparaiso University deems appropriate under the circumstances including termination of contractual arrangements with the University.

While counseling is not considered a sanction, it may be offered or required in combination with sanctions. If a student or student groups are found to be in violation of this Policy, any of the sanctions set forth in the *Student Handbook* may also be involved. Failure to comply with sanctions shall constitute a violation of this Policy and will ordinarily result in further disciplinary action.

***For sanctions following formal complaints against students.*** The Committee will recommend sanctions after the hearing. The Dean of Students will review sanction(s) recommended and may modify the sanction(s) if so inclined.

***For sanctions following formal complaints against faculty or staff.*** The Committee will recommend sanctions after the hearing. The employee's respective Vice President or Provost will review sanction(s) recommended and may modify the sanction(s) if so inclined. However, should the Provost seek to impose suspension or expulsion of a tenure or tenure-track faculty member, additional process may be due pursuant to the *Faculty Handbook*.<sup>9</sup>

## VI. INFORMAL HARASSMENT, AND SEXUAL MISCONDUCT COMPLAINT/RESOLUTION PROCESS

### Purpose

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<sup>9</sup> To the extent there are any inconsistencies between the *Harassment and Sexual Misconduct Policy* and other University grievance, complaint, or discipline procedures, the *Harassment and Sexual Misconduct Policy* will control.



Using the Informal Complaint/Resolution Process for a discrimination, harassment, or sexual misconduct complaint is not required or necessarily encouraged, but the alleging individual may prefer to attempt to resolve the matter utilizing this Process. The purpose of this Process is to expeditiously resolve the matter to the satisfaction of the complainant without having to undergo a Formal Complaint/Resolution Process. Students must use the formal complaint process, not an informal complaint, to resolve allegations that an employee sexually harassed a student.<sup>10</sup>

### **Process**

To invoke this Process, the complainant must file an Informal Complaint Form at: <https://goo.gl/forms/cZZ9yNM30tCb4RqC2>. However, the complainant may also contact the Title IX Coordinator, an advisor, or the SAAFE office (students only), to assist in filing an Informal Complaint Form. For complaints against students, the Dean of Students or their designee, will facilitate the process. For complaints against employees, the Executive Director of Human Resource Services, or their designee, will facilitate the process. In all cases, the complaint will be forwarded to the Respondent.

If the matter does not result in the Complainant's desired outcome, he or she may agree to a different outcome, or reject the resolution and file a Formal Complaint. If the alleging individual is satisfied with the outcome or it results in his/her desired outcome, the results will be documented and shared with the Title IX Coordinator and the matter will be resolved.

## **VII. FORMAL HARASSMENT, AND SEXUAL MISCONDUCT COMPLAINT/RESOLUTION PROCESS**

### **Purpose**

The purpose of this Process is to provide avenues for formally addressing and resolving claims of harassment, or sexual misconduct, and taking action against a student or employee who has violated the University's policy that prohibits harassment, or sexual misconduct. This Process applies to any student, employee, visitor or guest wanting to make a complaint against a student or employee, but this Process does not apply to any tenure-track faculty member claiming that he/she was denied tenure or not renewed as the result of prohibited harassment. Such complaints are made pursuant to procedures set forth in the *Faculty Handbook*.

### **Confidentiality**

The Title IX Coordinator is in the best position to evaluate confidentiality requests, though the University may reasonably determine that another employee would be more appropriate. In the event a complainant requests confidentiality or asks that a complaint not be investigated, the University will take all reasonable steps to investigate and respond to the complaint consistent with a request for confidentiality or a request not to pursue an investigation. If a complainant insists that his or her name not be disclosed to the alleged perpetrator, the University's ability to respond may be limited. The University reserves the right to initiate an investigation despite a complainant's request for confidentiality in limited circumstances involving serious or repeated conduct or where the alleged

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<sup>10</sup> 34 CFR 106.45



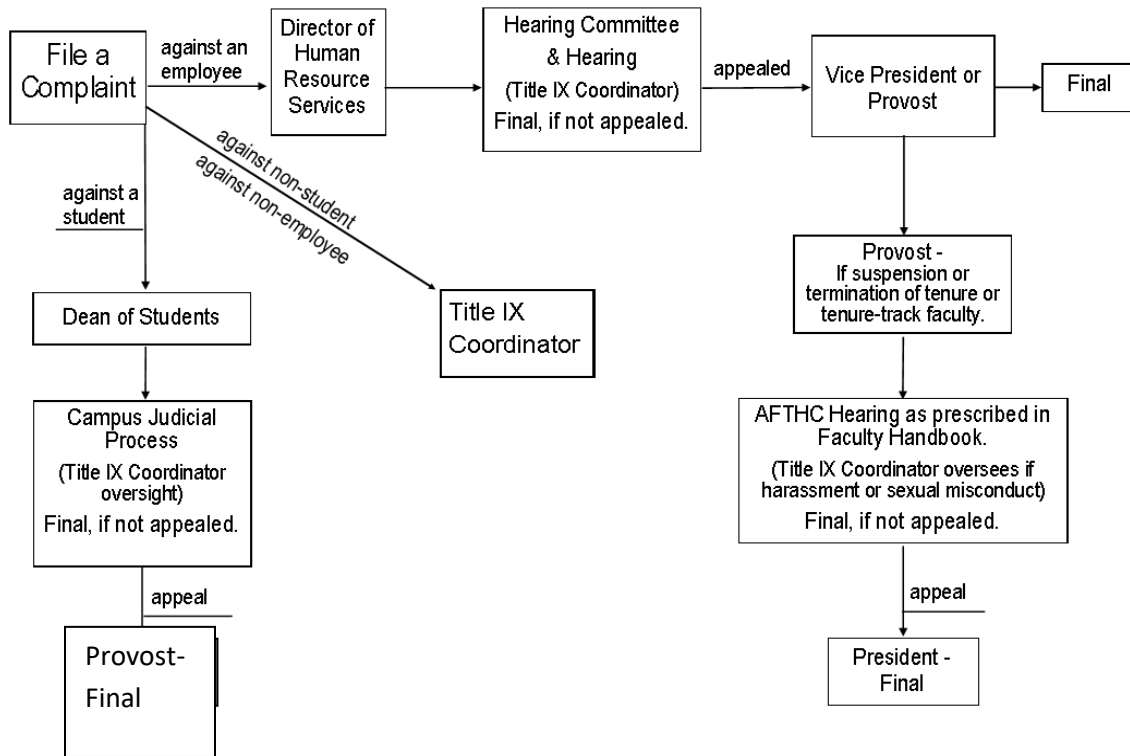
perpetrator may pose a threat to the campus community, as determined by the Title IX Coordinator and appropriate University administrator.

### **Starting the Process**

A Formal Complaint Form can be obtained online at: <https://goo.gl/forms/1PSiicvfsHsGENkh2>. The Form will require the complainant to set forth sufficient details of the incident(s), along with alleged violators, witnesses, expert witnesses, evidence (included or attached), and relief sought. Complainants are encouraged to file their complaint in a timely manner to preserve evidence. The Executive Director & Chief Human Resources Officer or designee will investigate the claims and meet with the Complainant. Assuming all facts as alleged are true, if the complaint does not meet the thresholds under Section IV of this Policy, the complaint may be involuntarily dismissed. The alleged violator(s) may submit a written response to the Executive Director & Chief Human Resources Officer, attach additional evidence to the response, and name any additional witnesses. Any written response must be submitted to the Executive Director & Chief Human Resources Officer within ten (10) calendar days after the alleged violator received a copy of the Form. The Executive Director & Chief Human Resources Officer will immediately forward a copy of the written response to the Complainant. All members of the Valpo community should understand that this Policy is not intended to keep them from filing a criminal complaint if they so choose. The University's process is separate from a criminal investigation or other criminal proceedings. The University's responsibilities under this Policy are not relieved if a criminal complaint is filed in court or if there is an outside law enforcement agency investigating the matter. Further, the University can find a violation of this Policy even if the criminal standard for a conviction cannot be met.

## Discrimination, Harassment, Sexual Misconduct

### Formal Complaint/Resolution Process at a Glance



### Investigation and Procedures

The University investigation and resolution proceedings shall be prompt, fair, and impartial. During the investigation and resolution of a complaint, the complainant and respondent shall have equal rights. They include:

- (1) equal opportunity to identify and have considered witnesses, expert witnesses, and other relevant evidence;
- (2) similar and timely access to all information considered by the Committee;
- (3) equal opportunity to review any statements or evidence provided by the other party; and
- (4) equal access to review and comment upon any information independently developed by an investigator or the Committee.

The University will strive to resolve a complaint within sixty (60) calendar days of receiving it, though certain resolutions may take longer depending on the circumstances. If resolution will take longer than sixty (60) calendar days, the parties will be given notice and an explanation in writing. The University's internal investigation is separate from the investigation of outside law enforcement agencies, and the University will only delay its investigation due to an outside investigation if particular circumstances warrant such a delay. Delays for this reason will typically not exceed 3–10 calendar days.

Preceding the interview for allegations potentially constituting sexual harassment, the parties will receive notice of the allegations including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting sexual harassment, and the date and location of the alleged incident, if known.<sup>11</sup> The Respondent is presumed not responsible for the alleged conduct unless or until a determination regarding responsibility is made at the conclusion of the grievance process.<sup>12</sup>

Investigations will be completed by the Valparaiso University Police Department for complaints against students, and by the Human Resource Services for complaints against employees. In all cases, the Title IX Coordinator will provide consultation and oversight of the investigation.

Both parties will have an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which the University does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, hereinafter called the Investigative Report. Prior to the hearing, the University through either the Dean of Students or their designee or Human Resource Services or their designee will send to each party and the party's advisor the Investigative Report. The parties will have at least ten (10) days to submit a written response to the Dean of Students, Human Resource Services, or their designee. The party's submissions shall be added to the Investigative Report. The Investigative Report will be made available to all parties at least ten (10) days prior to a hearing.

### **Hearing**

The Campus Judicial Board procedures for complaints against students is convened by the Dean of Students or their designee and are captured in the *Student Guide to University Life*. The Employee Discrimination Hearing Committee shall consist of three (3) employees randomly chosen by the Title IX Coordinator from a pool of at least 10 (10) employees appointed by the Title IX Coordinator. The pool of employees receives annual training on issues related to sexual misconduct, investigation, and the hearing process. The pool shall consist of at least five (5) employees, and five (5) tenured or tenure-track faculty members. If the alleged violator is a faculty member, the Employee Discrimination Hearing Committee shall consist of all faculty. For other employees, it shall consist of at least one (1) faculty member and one (1) employee. Hereinafter, the decision-making body, whether it is the Campus Judicial Board for students or the Employee Discrimination Hearing Committee for employees, shall be referred to as "the Committee."

The Committee may dismiss any complaint by majority vote if, assuming the allegations were true, it would not constitute a violation of the University's Policy against discrimination, harassment, or sexual misconduct. The President of the University may appoint outside legal counsel or a consultant to guide or direct the Committee. The Title IX Coordinator shall oversee the process, may provide the

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<sup>11</sup> 34 CFR 106.45

<sup>12</sup> 34 CFR 106.45

Committee advice and consultation on the process, but shall have no authority over the Committee. The Title IX Coordinator or designee in the Dean of Students or Human Resource Services shall choose the chair of the Committee.

Should a Committee member have a conflict of interest in hearing the matter, he or she must withdraw from the matter. In such a case, the withdrawing Committee member will be replaced by a non-conflicted similarly situated person.

The Committee will facilitate a hearing to determine, by a preponderance of the evidence, whether the complainant was discriminated against, harassed, or a target of sexual misconduct in violation of University policy.

At the hearing, standard courtroom procedures and rules of evidence will not apply, except all evidence must be relevant. Before a complainant, respondent, or witness answers a cross-examination or other question, the decision-maker must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.<sup>13</sup> In cases of alleged sexual misconduct, questioning about the complainant's sexual predisposition or prior sexual behavior are not relevant and will not typically be permitted, especially when the purpose is purely to show the complainant's sexual predisposition. However, in certain circumstances it may be permissible, such as if offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent. If a complainant or a respondent fails to appear at a scheduled hearing, the Committee may proceed with the case, unless the Chair excuses the absence.

At the Hearing, the Committee must review the Investigative Report; separately interview and question the complainant and alleged violator(s); and call to attendance available witnesses and expert witnesses they determine might have relevant information. The complainant and the respondent(s) may have advisors of their choice at the hearing or any related meeting. The advisor may be, but is not required to be, an attorney. If a party does not obtain their own advisor, the University will appoint one for them from the Discrimination Complaint Advisors. Advisors are required to cross-examine all parties and witnesses, but may not answer questions on behalf of their party or otherwise participate in the hearing. Members of the Committee may not make negative inferences regarding responsibility from any alleged violator's refusal to participate in the process or refusal to submit to cross-examination, or answer questions from the Committee members.

When requested, the University will make arrangements so that the complainant and the alleged violator(s) do not have to be present in the same room at the same time, but hearings must be live either in person or with audio-visual technology. The University will create either an audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection or review at their request.

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<sup>13</sup> 34 CFR 106.45

## Determination

Immediately following the hearing, the Committee shall meet and render a determination by a majority vote. Within five (5) calendar days after the hearing, the Committee's determination shall be written by the Chair, identify the allegations potentially constituting sexual harassment, a description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held, findings of fact supporting the determination, conclusions regarding the application of the recipient's code of conduct to the facts, a statement of, and rationale for, the results as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the recipient imposes on the respondent, and whether remedies designed to restore or preserve equal access to the University's education program or activity will be provided by the recipient to the complainant, and the University's procedures and permissible bases of the complainant and respondent to appeal. If the Committee finds that the Respondent's conduct violates other university policies, the Committee may recommend sanctions to the Respondent's immediate supervisor or the Dean of Students or designee. The matter shall be final and binding unless appealed.

In cases against employees, the Vice President or Provost over the Respondent may postpone the sanctions or suspend Respondent, with pay, until the time to appeal the determination has expired or the appeal process has been exhausted. The Chair may attach any relevant documents to the written determination. Both the complainant and the respondent shall be simultaneously notified. In cases against students, the Vice President for Student Life or designee may execute an interim suspension pending appeal under the Policies Regarding Psychological Issues of the *Student Handbook*.

A copy of the Committee's written determination shall be provided to the Title IX Coordinator and either the Dean of Students or the immediate supervisor, depending on the Respondent's relationship with the University.

When an individual admits violating this Policy, the Committee will not hold a hearing. However, the Committee will convene to determine appropriate sanctions. Meeting in this manner is not a hearing and, therefore, is not bound by hearing procedures. The procedures to be used by the Committee for determining a sanction are informal and determined by the Chair with approval of the Title IX Coordinator.

## Appeals Process

The complainant or respondent can appeal the Committee's determination by submitting a written appeal to the respondent's respective Vice President or Provost within five (5) calendar days from the date of receipt of the Committee's determination. The appeal must be dated, signed by the party appealing, set forth reasons why the Committee's determination is unjustified, and include a copy of the determination. The Vice President or Provost will immediately forward a copy of the appeal to the Chair of the Committee, the Title IX Coordinator, the Dean of Students or Human Resource Services as appropriate, and the non-appealing party. The Chair will provide the Vice President or Provost a written response within five (5) calendar days from the date of his/her receipt of the appeal, and the

non-appealing party may provide a written response within five (5) calendar days from the date of his/her receipt of the appeal.

The respective Vice President or Provost has the discretion to review the determination of the Committee limited to the following circumstances:

1. Procedural irregularity that affected the outcome of the matter
2. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made that could affect the outcome of the matter; and
3. The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondent that affected the outcome of the matter.

The Title IX Coordinator will be available to provide the Vice President, Provost, or COO advice. The Vice President, Provost, or COO shall issue a written determination within fifteen (15) days of his/her receipt of the appeal. A copy of the written decision shall be provided to the appealing party, the non-appealing party, the Title IX Coordinator, and the parties' personnel or student files. All decisions of the Vice President or Provost are final and binding. However, the decisions of a Provost that support a determination that a faculty member violated the University's policy against discrimination, harassment, or sexual misconduct may be subject to additional process pursuant to the *Faculty Handbook*.