

# GVSU's Procedures for Responding to Reports of Harassment, Discrimination, Retaliation, & Sexual Misconduct (including Sexual Assault, Intimate Partner Violence, Stalking, & Sexual Exploitation)

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## **General Procedures**

### **A. Introduction**

GVSU is committed to providing an educational environment, a workplace, programs, and activities that are free from all forms of harassment, discrimination, retaliation, and sexual misconduct. GVSU's *Policy Prohibiting Harassment, Discrimination, Retaliation, & Sexual Misconduct* ("the Policy") prohibits all forms of harassment and discrimination under Title IX of the Education Amendments of 1972, 2020 Title IX Regulations (34 CFR § 106), Section 304 of the Violence Against Women Reauthorization Act of 2013 (VAWA), Title VII of the Civil Rights Act of 1964, and other applicable statutes, including the Elliott-Larsen Civil Rights Act, Michigan PA 453 of 1976. The Policy prohibits a broad continuum of behaviors, some of which are not legally prohibited but which reflect GVSU's standards and expectations for a positive working and learning environment.

### **B. Applicable Scope**

These procedures apply to complaints alleging violation of GVSU's *Policy Prohibiting Harassment, Discrimination, Retaliation, & Sexual Misconduct*, which prohibits all forms of discrimination. Sometimes, discrimination involves exclusion from or different treatment in activities, such as admission, athletics, or employment. Other times, discrimination takes the form of harassment or, in the case of sex-based discrimination, can encompass sexual harassment, sexual assault, stalking, sexual exploitation, dating violence or domestic violence. When an alleged violation of the policy is reported, the allegations are subject to resolution using GVSU's "Process A: Formal Grievance Process Under 2020 Title IX Regulations," "Process B: Grievance Process for University Sexual Misconduct," or "Process C: Resolution Process for Discrimination & Harassment," as determined by the Title IX Coordinator, and as detailed in these procedures.

When the Respondent is a member of the GVSU community, a grievance process may be available regardless of the status of the Complainant, who may or may not be a member of the GVSU community. This community includes, but is not limited to, students,<sup>1</sup> student organizations, faculty, administrators, staff, and third parties such as guests, visitors, volunteers, invitees, and campers. The accompanying procedures may be applied to incidents, to patterns, and/or to the campus climate, all of which may be addressed and investigated in accordance with these procedures.

### **C. Title IX Coordinator**

GVSU's Title IX Coordinator<sup>2</sup> oversees implementation of GVSU's *Policy Prohibiting Harassment, Discrimination, Retaliation, & Sexual Misconduct*. The Title IX Coordinator has the primary responsibility for monitoring GVSU's compliance under Title IX of the Education Amendments of 1972, 2020 Title IX Regulations (34 CFR § 106), Section 304 of the Violence Against Women Reauthorization Act of 2013 (VAWA), Title VII of the Civil Rights Act of 1964, and other applicable statutes, including Elliott Larsen Civil Rights Act; ensuring appropriate education and training; coordinating GVSU's efforts related to the intake, investigation, resolution, and implementation of supportive measures to eliminate, remediate,

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<sup>1</sup> For the purpose of the Policy and these procedures, GVSU defines "student" as any individual who has accepted an offer of admission, or who is registered or enrolled for credit or non-credit bearing coursework, and who maintains an ongoing relationship with GVSU.

<sup>2</sup> Anywhere these procedures indicate "Title IX Coordinator," GVSU may substitute a trained designee.

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and prevent discrimination, harassment, and retaliation. The Title IX Coordinator is available to meet with any student, employee, or third party to discuss GVSU's *Policy Prohibiting Harassment, Discrimination, Retaliation, & Sexual Misconduct* and these procedures.

## D. Independence and Conflict of Interest

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

To raise any concern involving bias or potential conflict of interest by the Title IX Coordinator, contact Jesse Bernal, Vice President for Inclusion and Equity, or designee, by email at [bernalje@gvsu.edu](mailto:bernalje@gvsu.edu) or by phone at (616) 331-3296. Concerns involving bias or a potential conflict of interest by any other member of the Office for Title IX and Institutional Equity team should be raised with the Title IX Coordinator.

Reports of misconduct or discrimination committed by the Title IX Coordinator should be reported to Jesse Bernal, Vice President for Inclusion and Equity, or designee, by email at [bernalje@gvsu.edu](mailto:bernalje@gvsu.edu) or by phone at (616) 331-3296. Reports of misconduct or discrimination committed by any other member of the Office for Title IX and Institutional Equity team should be reported to the Title IX Coordinator.

## E. Notice/Complaints of Discrimination, Harassment, Retaliation, and/or Sexual Misconduct

GVSU encourages anyone who experiences or becomes aware of discrimination, harassment, retaliation, and/or sexual misconduct to report the incident using any of the following options:

1. File a complaint with, or give verbal notice to GVSU's [Title IX Coordinator](#). Such a report can be made at any time (including during non-business hours) by using the phone number or email address, or by mail to the office address, listed for the Title IX Coordinator:

### Title IX Coordinator

[titleix@gvsu.edu](mailto:titleix@gvsu.edu)

(616) 331-9530

Office for Title IX & Institutional Equity

4015 James H. Zumberge Hall

[www.gvsu.edu/titleix](http://www.gvsu.edu/titleix)

2. Report online, using the form posted at [www.gvsu.edu/titleix/report](http://www.gvsu.edu/titleix/report). Anonymous reports are accepted, but can give rise to a need to investigate. GVSU works to provide supportive measures to all Complainants, however that may not be possible with an anonymous report. Because reporting carries no obligation to initiate a formal response, and as GVSU respects Complainant requests to dismiss complaints unless there is a compelling threat to health and/or safety, the Complainant is largely in control and should not fear a loss of privacy by making a report that allows GVSU to discuss and/or provide supportive measures.
3. GVSU classifies most employees as Mandated Reporters of any knowledge they have that a member of the community is experiencing sexual misconduct, including sexual assault, stalking, intimate partner violence (dating/domestic violence), sexual exploitation, sexual harassment, or gender-based harassment. GVSU's *Policy Prohibiting Harassment, Discrimination, Retaliation, &*

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*Sexual Misconduct* details which employees have this responsibility and their duties, accordingly.

The Office for Title IX and Institutional Equity team members listed above are Officials with Authority and accept notice or complaints on behalf of GVSU.

## **F. Supportive Measures**

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

Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the parties to restore or preserve access to GVSU's education programs or activities, including measures designed to protect the safety of all parties or GVSU's educational environment, and/or deter harassment, discrimination, and/or retaliation.

The Title IX Coordinator promptly makes supportive measures available to the parties upon receiving notice or a complaint. At the time that supportive measures are offered, GVSU will inform the Complainant, in writing, that they may file a formal complaint with GVSU either at that time or in the future, if they have not done so already. The Title IX Coordinator works with the Complainant to ensure that their wishes are taken into account with respect to the supportive measures that are planned and implemented.

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

These actions may include, but are not limited to:

- Education to the institutional community or community subgroup(s)
- Altering campus housing assignment(s)
- Altering work arrangements for employees or student-employees
- Providing campus safety escorts
- Providing transportation accommodations
- Academic adjustments, extensions of deadlines, or other course/program-related adjustments
- Class schedule modifications, withdrawals, or leaves of absence
- Increased security and monitoring of certain areas of the campus
- Any other actions deemed appropriate by the Title IX Coordinator

Even when the Respondent is not a member of GVSU's community, supportive measures, remedies, and resources may be accessible to the Complainant by contacting the Title IX Coordinator.

## **G. Emergency Removal**

GVSU can act to remove a student Respondent entirely or partially from its education program or activities on an emergency basis when an individualized safety and risk analysis has determined that an immediate threat to the physical health or safety of any student or other individual justifies removal.



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This risk analysis is performed by the Title IX & Institutional Equity Advisory Group (TAG) using its standard objective violence risk assessment procedures.

In all cases in which an emergency removal is imposed, the student will be given notice of the action and the option to request to meet with the Title IX Coordinator prior to such action/removal being imposed, or as soon thereafter as reasonably possible, to show cause why the action/removal should not be implemented or should be modified.

This meeting is not a hearing on the merits of the allegation(s), but rather is an administrative process intended to determine solely whether the emergency removal is appropriate. When this meeting is not requested, objections to the emergency removal will be deemed waived. A Complainant and their Advisor may be permitted to participate in this meeting if the Title IX Coordinator determines it is equitable to do so. This section also applies to any restrictions that a coach or athletic administrator may place on a student-athlete arising from allegations related to Title IX. There is no appeal process for emergency removal decisions.

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

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

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

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

Where the Respondent is an employee, existing provisions for interim action are applicable.

## **H. Promptness**

All allegations are acted upon promptly by GVSU once it has received notice or a formal complaint. There are always exceptions and extenuating circumstances that can cause a resolution to take longer, but GVSU will avoid all undue delays within its control.

Any time the general timeframes for resolution outlined in these procedures will be delayed, GVSU will provide written notice to the parties of the delay, the cause of the delay, and an estimate of the anticipated additional time that will be needed as a result of the delay.

# GVSU's Procedures for Responding to Reports of Harassment, Discrimination, Retaliation, & Sexual Misconduct (including Sexual Assault, Intimate Partner Violence, Stalking, & Sexual Exploitation)

## I. Privacy

Every effort is made by GVSU to preserve the privacy of reports.<sup>3</sup> GVSU will not share the identity of any individual who has made a report or complaint of harassment, discrimination, or retaliation; any Complainant, any individual who has been reported to be the perpetrator of sex discrimination, any Respondent, or any witness, except as permitted by the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g; FERPA regulations, 34 CFR part 99; or as required by law; or to carry out the purposes of 34 CFR Part 106, including the conducting of any investigation, hearing, or grievance/resolution proceeding arising under these policies and procedures.

GVSU reserves the right to determine which GVSU officials have a legitimate educational interest in being informed about incidents that fall within the Policy and these procedures, pursuant to the Family Educational Rights and Privacy Act (FERPA).

In order to preserve the parties' rights and privacy, only a small group of officials who need to know will typically be told about the complaint.

## J. Time Limits on Reporting

There is no time limit on reporting harassment, discrimination and/or retaliation to the Title IX Coordinator. However, if the Respondent is no longer subject to GVSU's jurisdiction and/or significant time has passed, the ability to investigate, respond to, and provide remedies may be more limited or impossible.

Acting on reports significantly impacted by the passage of time (including, but not limited to, the rescission or revision of policy) is at the discretion of the Title IX Coordinator, who may document allegations for future reference, offer supportive measures and/or remedies, and/or engage in informal or formal action, as appropriate.

When a report is affected by significant time delay, GVSU will typically apply the policy in place at the time of the alleged misconduct and the procedures in place at the time the report is made.

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<sup>3</sup> For the purpose of these procedures, privacy and confidentiality has a distinct meaning. **Privacy** means that information related to a complaint will be shared with a limited number of GVSU employees who "need to know" in order to assist in the assessment, investigation, and resolution of the report. All employees who are involved in GVSU's response to notice under these procedures receive specific training and guidance about sharing and safeguarding private information in accordance with state and federal law. The privacy of student education records will be protected in accordance with the Family Educational Rights and Privacy Act ("FERPA"). The privacy of employee records will be protected in accordance with Human Resources policies. **Confidentiality** exists in the context of laws that protect certain relationships, including those who provide services related to medical and clinical care, mental health providers, and counselors. The law creates a privilege between certain health care providers, mental health care providers, attorneys, spouses, and others, with their patients, clients, and spouses. When information is shared by a Complainant with a Confidential Resource, the Confidential Resource cannot reveal the information to any third party except when an applicable law or a court order requires or permits disclosure of such information. For example, information may be disclosed when: (i) the individual gives written consent for its disclosure; (ii) there is a concern that the individual will likely cause serious physical harm to self or others; or (iii) the information concerns conduct involving suspected abuse or neglect of a minor under the age of 18, elders, or individuals with disabilities. Non-identifiable information may be shared by Confidential Resources for statistical tracking purposes as required by the federal Clery Act. Other information may be shared as required by law.

## **K. When a Complainant Does Not Wish to Proceed**

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

The Title IX Coordinator has ultimate discretion over whether GVSU proceeds when the Complainant does not wish to do so, and the Title IX Coordinator may sign a formal complaint to initiate a grievance process upon completion of an appropriate violence risk assessment.

The Title IX Coordinator's decision should be based on results of the violence risk assessment that show a compelling risk to health and/or safety that requires GVSU to pursue formal action to protect the community. A compelling risk to health and/or safety may result from evidence of patterns of misconduct, predatory conduct, threats, abuse of minors, use of weapons, and/or violence. GVSU may be compelled to act on alleged employee misconduct irrespective of a Complainant's wishes.

The Title IX Coordinator must also consider the effect that non-participation by the Complainant may have on the availability of evidence and GVSU's ability to pursue a resolution under these procedures, fairly and effectively.

When the Title IX Coordinator executes the written complaint, they do not become the Complainant. The Complainant is the individual who is alleged to be the victim of conduct that could constitute a violation of the Policy.

When GVSU proceeds, the Complainant may have as much or as little involvement in the process as they wish. The Complainant retains all rights of a Complainant under these procedures irrespective of their level of participation.

Note that GVSU's ability to remedy and respond to notice may be limited if the Complainant does not want GVSU to proceed with an investigation and/or grievance process. The goal is to provide the Complainant with as much control over the process as possible, while balancing GVSU's obligation to protect its community.

In cases in which the Complainant requests no formal action and the circumstances allow GVSU to honor that request, GVSU will offer supportive measures to the Complainant, but will not otherwise pursue formal action.

If the Complainant elects to take no action, they can change that decision if they decide to pursue a formal complaint at a later date. Upon making a formal complaint, a Complainant has the right, and can expect, to have allegations taken seriously by GVSU, and to have the incidents investigated and properly resolved through these procedures. Please consider that delays may cause limitations on access to evidence, or present issues with respect to the status of the parties.

## **L. Amnesty for Complainants and Witnesses**

To encourage reporting and participation in the process, GVSU offers parties and witnesses amnesty from minor policy violations – such as underage consumption of alcohol or the use of illicit drugs –



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related to the incident. Amnesty does not apply to more serious allegations such as physical abuse of another or illicit drug distribution.

## **M. Recordkeeping**

GVSU will maintain for a period of seven years records of:

1. Each investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required under federal regulation;
2. Any disciplinary sanctions imposed on the Respondent;
3. Any remedies provided to the Complainant designed to restore or preserve equal access to GVSU's education program or activity;
4. Any appeal and the result therefrom; and
5. Any actions, including any supportive measures, taken in response to a report or formal complaint of prohibited behavior, including:
  - a. The basis for all conclusions that the response was not deliberately indifferent;
  - b. Any measures designed to restore or preserve equal access to GVSU's education program or activity; and
  - c. If no supportive measures were provided to the Complainant, document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

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

## **N. Disabilities Accommodations in the Resolution Process**

GVSU is committed to providing reasonable accommodations and support to qualified students, employees, or others with disabilities to ensure equal access to GVSU's resolution process.

Anyone needing such accommodations or support should contact Disability Support Resources, who will review the request and, in consultation with the person requesting the accommodation and the Title IX Coordinator, determine which accommodations are appropriate and necessary for full participation in the process.

## **O. Revision of the Policy and Procedures**

The Policy and these procedures supersede any previous policies addressing harassment, discrimination, retaliation, and/or sexual misconduct and will be reviewed and updated annually by the Title IX Coordinator. GVSU reserves the right to make changes to this document as necessary, and once those changes are posted online, they are in effect.

During the resolution process, the Title IX Coordinator may make minor modifications to procedures that do not materially jeopardize the fairness owed to any party, such as to accommodate summer schedules. The Title IX Coordinator may also vary procedures materially with notice (on the institutional website, with the appropriate effective date identified) upon determining that changes to law or regulation require policy or procedural alterations not reflected in the Policy and these procedures.

If government laws or regulations change – or court decisions alter – the requirements in a way that impacts this document, this document will be construed to comply with the most recent government regulations or holdings. This document does not create legally enforceable protections beyond the protection of the background state and federal laws which frame such policies and codes, generally.

## **PROCESS A: Formal Grievance Process Under 2020 Title IX Regulations**

### **A. Overview**

GVSU will act on any formal notice/complaint of violation of the *Policy Prohibiting Harassment, Discrimination, Retaliation, & Sexual Misconduct* ("the Policy") that is received by the Title IX Coordinator. Impacted parties will be sent a timely notice for any meetings at which they may be present.

The procedures below apply **only** to qualifying allegations of sexual harassment (including sexual assault, dating violence, domestic violence, and stalking, as defined above) involving students, staff, administrators, or faculty members.

When jurisdiction does not fall within Process A, as determined by the Title IX Coordinator, Process B or Process C may be applied.

### **B. Notice/Complaint**

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

A Formal Complaint means a document submitted or signed by the Complainant or signed by the Title IX Coordinator alleging a policy violation by a Respondent and requesting that GVSU investigate the allegation(s). A complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information in these procedures, or as described in this section. As used in this paragraph, the phrase "document filed by a Complainant" means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by GVSU) that contains the Complainant's physical or digital signature, or otherwise indicates that the Complainant is the person filing the complaint, and requests that GVSU investigate the allegations.

If notice is submitted in a form that does not meet this standard, the Title IX Coordinator will contact the Complainant to ensure that it is filed correctly.

The Title IX Coordinator will initiate at least one of two responses:

- A. Offering supportive measures because the Complainant does not want to file a formal complaint; and/or
- B. A Formal Grievance Process including an investigation and a hearing (upon submission of a formal complaint).

GVSU uses the Formal Grievance Process to determine whether or not the Policy has been violated. This is a prompt, fair, and impartial process from the initial investigation to the final result. All proceedings are conducted in a manner that is consistent with these procedures and transparent to impacted parties. If a violation is found, GVSU will promptly implement effective remedies designed to ensure that it is not deliberately indifferent to harassment or discrimination, their potential recurrence, or their effects.

## **C. Initial Assessment**

Following receipt of notice or a complaint of an alleged violation of the Policy, the Title IX Coordinator engages in an initial assessment, typically within one to five business days. The steps in an initial assessment can include:

- If notice is given, the Title IX Coordinator seeks to determine if the person impacted wishes to make a formal complaint, and will assist them to do so, if desired.
  - If they do not wish to do so, the Title IX Coordinator determines whether to initiate a complaint because a violence risk assessment indicates a compelling threat to health and/or safety.
- If a formal complaint is received, the Title IX Coordinator assesses its sufficiency and works with the Complainant to make sure it is correctly completed.
- The Title IX Coordinator reaches out to the Complainant to offer supportive measures.
- The Title IX Coordinator works with the Complainant to ensure they are aware of the right to have an Advisor.
- The Title IX Coordinator works with the Complainant to determine whether the Complainant prefers a supportive and remedial response or a formal investigation and grievance process.
  - If a supportive and remedial response is preferred, the Title IX Coordinator works with the Complainant to identify their wishes, assesses the request, and implements accordingly. No Formal Grievance Process is initiated, though the Complainant can elect to initiate one later, if desired.
  - If a Formal Grievance Process is preferred, the Title IX Coordinator determines if the misconduct alleged falls within the scope of Title IX:
    - If it does, the Title IX Coordinator will initiate the formal investigation and grievance process.
    - If it does not, the Title IX Coordinator determines that Title IX does not apply (and will “dismiss” that aspect of the complaint, if any), assesses which policies may apply, which resolution process is applicable, and will refer the matter accordingly. Please note that dismissing a complaint under Title IX is solely a procedural requirement under Title IX, and does not limit GVSU’s authority to address a complaint with an appropriate process and remedies.

### **1. Title IX & Institutional Equity Advisory Group (TAG)**

The Title IX & Institutional Equity Advisory Group (TAG), assembled and chaired by the Title IX Coordinator, is comprised of employees critical to the mission of the Policy and these procedures. The group may include the Title IX Coordinator, a civil rights investigator, a representative of the Grand Valley Police Department, a representative from the Division of Legal, Compliance & Risk Management, and others as determined by the Title IX Coordinator.

The Title IX Coordinator consults as necessary with TAG in order to review, assess risk, and advise on a course of action regarding reports alleging violations of the Policy. TAG has access to certain otherwise confidential information, including law enforcement records, criminal history record, GVSU disciplinary, academic and/or personnel records, and any other information or evidence known to GVSU or to law enforcement. TAG may seek additional information about the reported incident through any other legally permissible means.

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## **2. Violence Risk Assessment**

The Title IX Coordinator may determine that a Violence Risk Assessment (VRA) should be conducted in consultation with TAG as part of the initial assessment. A VRA can aid in critical and/or required determinations, including:

- Emergency removal of a Respondent on the basis of immediate threat to physical health/safety;
- Whether the Title IX Coordinator should pursue/sign a formal complaint absent a willing/able Complainant; and/or
- Whether the Respondent poses a threat to the physical health or safety of any student, other individual, or campus community.

## **3. Dismissal (Mandatory and Discretionary)<sup>4</sup>**

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

- i. The conduct alleged in the formal complaint would not constitute sexual harassment as defined in the Policy, even if proved; and/or
- ii. The conduct did not occur in an educational program or activity controlled by GVSU (including buildings or property controlled by recognized student organizations), and/or GVSU does not have control of the Respondent; and/or
- iii. The conduct did not occur against a person in the United States; and/or
- iv. At the time of filing a formal complaint, a complainant is not participating in or attempting to participate in the education program or activity of GVSU<sup>5</sup>.

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

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

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

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

## **4. Counterclaims**

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

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<sup>4</sup> These dismissal requirements are mandated by the 2020 Title IX Regulations, 34 CFR §106.45.

<sup>5</sup> Such a Complainant is still entitled to supportive measures, but the formal grievance process is not applicable.

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Counterclaims determined to have been reported in good faith will be processed using the grievance procedures below. Investigation of such claims may take place after resolution of the underlying initial allegation, in which case a delay may occur.

Counterclaims may also be resolved through the same investigation as the underlying allegation, at the discretion of the Title IX Coordinator. When counterclaims are not made in good faith, they will be considered retaliatory and may constitute a violation of the Policy.

## **D. Right to an Advisor**

The parties may each have an Advisor<sup>6</sup> of their choice present with them for all meetings, interviews, and hearings within the resolution process, if they so choose. The Advisor may be a friend, mentor, family member, attorney, or any other individual a party chooses to advise, support, and/or consult with them throughout the resolution process, as long as the Advisor is eligible and available.<sup>7</sup> While the advisors may provide support and advice to the parties at any meeting and/or proceeding, they may not speak on behalf of the parties at any meeting and/or proceeding, or otherwise participate in, or in any manner disrupt, such meetings and/or proceedings.

The Title IX Coordinator will also offer to assign an Advisor for any party if the party so chooses.

Parties also have the right to choose not to have an Advisor in the initial stages of the resolution process, prior to a hearing.

Choosing an Advisor who is also a witness in the process creates potential for bias and conflict-of-interest. A party who chooses an Advisor who is also a witness can anticipate that issues of potential bias will be explored by the hearing Decision-maker(s).

GVSU may permit parties to have more than one Advisor upon special request to the Title IX Coordinator. The decision to grant this request is at the sole discretion of the Title IX Coordinator and will be granted equitably to all parties.

### **1. Advisors in Hearings/GVSU-Appointed Advisor**

Under the 2020 Title IX Regulations (34 CFR § 106), a form of indirect questioning is required during the hearing, but must be conducted by the parties' Advisors. The parties are not permitted to directly question each other or any witnesses. If a party does not have an Advisor for a hearing, GVSU will appoint a trained Advisor for the limited purpose of conducting any questioning of the other party and witnesses.

A party may reject this appointment and choose their own Advisor, but they may not proceed without an Advisor. If the party's Advisor will not conduct questioning, GVSU will appoint a trained Advisor who will do so thoroughly, regardless of the participation or non-participation of the advised party in the

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<sup>6</sup> This could include an attorney, advocate, or support person (witnesses are not entitled to Advisors within the process, though they can be advised externally).

<sup>7</sup> "Available" means the party cannot insist on an Advisor who simply doesn't have inclination, time, or availability. Also, the Advisor cannot have institutionally conflicting roles, such as being a Title IX administrator who has an active role in the matter, or a supervisor who must monitor and implement sanctions.



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hearing itself. Extensive questioning of the parties and witnesses will also be conducted by the Decision-maker(s) during the hearing.

## **E. Grievance Process Pool**

The Formal Grievance Process relies on a pool of individuals ("the Pool") to carry out the process. The Title IX Coordinator appoints the Pool, which acts with independence, impartiality, and is free from bias. Members of the Pool receive annual training based on their respective roles, on topics including dating violence, domestic violence, sexual assault, stalking, and on how to conduct an investigation and hearing process that protects the safety of impacted parties and promotes accountability. The materials used to train all members of the Pool are publicly posted here: [www.gvsu.edu/titleix/materials](http://www.gvsu.edu/titleix/materials). External, trained third-party neutral professionals may also be used to serve in pool roles.

Members of the Pool are trained annually, and can serve in the following roles, at the direction of the Title IX Coordinator:

- To provide appropriate intake of and initial guidance pertaining to complaints
- To act as an Advisor to the parties
- To perform or assist with initial assessment
- To serve as an Investigator
- To serve as a Hearing Chair
- To serve as a Decision-maker
- To serve as a Appeal Chair

## **F. Formal Grievance Process**

### **1. Resolution Timeline**

Our goal is to complete the resolution process approximately within a eighty-to-one hundred (80-100) business day time period. While ensuring the integrity and completeness of an investigation, as well as consideration of law enforcement and other pertinent factors of the investigation, temporary delay may occur. Pertinent factors may include: accommodation of the availability of witness, account for university breaks or vacations, complexities of a case, (the number of witnesses and volume of information provided by the parties) or other legitimate reasons.

### **2. Notice of Investigation**

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

The NOI will include:

- a) A meaningful summary of all of allegations,
- b) The identity of the involved parties (if known),
- c) The precise misconduct being alleged,
- d) The date and location of the alleged incident(s) (if known),
- e) The specific policies implicated,
- f) A description of the applicable procedures,

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- g) A statement that GVSU presumes the Respondent is not responsible for the reported misconduct unless and until the evidence supports a different determination,
- h) A statement that determinations of responsibility are made at the conclusion of the process and that the parties will be given an opportunity to inspect and review all directly related and/or relevant evidence obtained during the review and comment period,
- i) A statement about GVSU's policy on retaliation,
- j) Information on the need for each party to have an Advisor of their choosing and suggestions for ways to identify an Advisor,
- k) A statement informing the parties that GVSU's Policy prohibits knowingly making false statements, including knowingly submitting false information during the resolution process,

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

Notice will be made in writing and may be delivered by one or more of the following methods: in person or emailed to the parties' GVSU-issued email accounts. Once emailed, and/or received in-person, notice will be presumptively delivered.

### **3. Appointment of Investigators**

Once the decision to commence a formal investigation is made, the Title IX Coordinator will appoint one or more investigators to conduct a prompt, thorough, fair, and impartial investigation.

### **4. Recording of Interviews**

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

### **5. Overview of the Investigation**

All investigations are thorough, reliable, impartial, prompt, and fair. Investigations involve interviews with all relevant parties and witnesses; obtaining available, relevant evidence; and identifying sources of expert information, as necessary.

During the investigation, the parties will have an equal opportunity to be heard, to submit information and corroborating evidence, to identify witnesses who may have relevant information, and to submit questions that they believe should be directed by the investigator to each other or to any witness. The investigator will notify and seek to meet separately with the complainant, the respondent, and third-party witnesses, and will gather other relevant and available evidence and information, including without limitation, electronic or other records of communications between the parties or witness (via voice-mail, text message, email and social media sites), photographs (including those stored in computers, phones, tablets, etc.), and medical records (subject to the consent of the applicable party).

All parties have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence and expert witnesses, and to fully review and respond to all evidence on the record.

Although in-person interviews for parties and all potential witnesses are ideal, circumstances (e.g., study abroad, summer break) may require individuals to be interviewed remotely. Skype, Zoom, FaceTime, WebEx, or similar technologies may be used for interviews if the Investigator(s) determine that

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timeliness or efficiency dictate a need for remote interviewing. GVSU will take appropriate steps to reasonably ensure the security/privacy of remote interviews.

## **6. Draft Investigation Report**

The investigator(s) will write a comprehensive investigation report fully summarizing the investigation, all witness interviews, and addressing all relevant evidence. Appendices including relevant physical or documentary evidence will be included.

Prior to the conclusion of the investigation, parties will be provided with a secured electronic or hard copy of the draft investigation report as well as an opportunity to inspect and review all of the evidence obtained as part of the investigation that is directly related to the reported misconduct, including evidence upon which GVSU does not intend to rely in reaching a determination, for a ten (10) business day review and comment period so that each party may meaningfully respond to the evidence. The parties may elect to waive the full ten days.

## **7. Final Investigation Report**

The Investigator will incorporate any relevant feedback, make any necessary revisions, and finalize the report, and the final report is then shared with all parties and their Advisors through secure electronic transmission or hard copy. The parties are also provided with a file of any directly related evidence that was not included in the report.

## **8. Hearing Decision-makers**

The Title IX Coordinator will designate a three-member panel from the Pool, with one of the three members appointed as Chair.

The Decision-makers will not have had any previous involvement with the investigation. The Title IX Coordinator may serve as an administrative facilitator of the hearing if their previous roles in the matter do not create a conflict of interest. Otherwise, a designee may fulfill this role.

## **9. Evidentiary Considerations in the Hearing**

Any evidence that the Decision-makers determine is relevant and credible may be considered. The hearing does not consider: 1) incidents not directly related to the possible violation, unless they evidence a pattern; 2) the character of the parties; or 3) questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

## **10. Notice of Hearing**

The hearing will be scheduled and held at least ten (10) business days from when the final investigation report is sent to the parties. The Title IX Coordinator will send notice of the hearing to the parties. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered. The notice will include the date, time, and location of the hearing, along with other information pertinent to the hearing.

## **11. Alternative Hearing Participation Options**

If a party or parties prefer not to attend or cannot attend the hearing in person, the party should request alternative arrangements from the Title IX Coordinator at least five (5) business days prior to the hearing. Additionally, the Title IX Coordinator can arrange to use technology for some or all attendees without compromising the fairness of the hearing.

## **12. Pre-Hearing Preparation**

The parties will be given a list of the names of the Decision-maker(s) at least five (5) business days in advance of the hearing. All objections to any Decision-maker must be raised in writing, detailing the rationale for the objection, and must be submitted to the Title IX Coordinator as soon as possible and no later than two (2) business days prior to the hearing. Decision-makers will only be removed if the Title IX Coordinator concludes that their bias or conflict of interest precludes an impartial hearing of the allegation(s).

Any witness scheduled to participate in the hearing must have been first interviewed by the Investigator(s). Any evidence offered at the hearing must have been submitted to investigator(s) during the investigation.

During the ten (10) business day period prior to the hearing, the parties have the opportunity for continued review and comment on the final investigation report and available evidence.

## **13. Pre-Hearing Meetings**

The Chair may convene a pre-hearing meeting(s) with the parties and their Advisors to invite them to submit the questions the parties wish to ask at the hearing, so that the Chair can rule on their relevance ahead of time. However, this advance review opportunity does not preclude the Advisors from asking a question for the first time at the hearing or from asking for a reconsideration based on any new information or statements offered at the hearing. The Chair must document and share with each party their rationale for any exclusion or inclusion at a pre-hearing meeting.

The Chair, only with full agreement of the parties, may decide in advance of the hearing that certain witnesses do not need to be present if their statements can be adequately summarized by the Investigator(s) in the investigation report or during the hearing.

At each pre-hearing meeting with a party and their Advisor, the Chair will consider arguments that evidence identified in the final investigation report as relevant is, in fact, not relevant. Similarly, evidence identified as directly related but not relevant by the Investigator(s) may be argued to be relevant. The Chair may rule on these arguments pre-hearing and will exchange those rulings between the parties prior to the hearing to assist in preparation for the hearing.

## **14. Hearing Procedures**

At the hearing, the Decision-makers have the authority to hear and make determinations on all allegations of harassment, discrimination, retaliation, and/or sexual misconduct.

Participants at the hearing will include the Chair, any additional panelists, the hearing facilitator, the Investigator(s) who conducted the investigation, the parties, Advisors to the parties, any called witnesses, anyone providing authorized accommodations or assistive services, and anyone else deemed appropriate by the Chair.

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The Chair will answer all questions of procedure. Anyone appearing at the hearing to provide information will respond to questions on their own behalf.

The Chair will allow witnesses who have relevant information to appear at a portion of the hearing in order to respond to specific questions from the Decision-maker(s) and the parties and the witnesses will then be excused.

## **15. Joint Hearings**

In hearings involving more than one Respondent or in which two (2) or more Complainants have accused the same individual of substantially similar conduct, the default procedure will be to hear the allegations jointly.

However, the Title IX Coordinator may permit the investigation and/or hearings pertinent to each Respondent to be conducted separately if there is a compelling reason to do so. In joint hearings, separate determinations of responsibility will be made for each Respondent with respect to each alleged policy violation.

## **16. Statements and Questioning**

Parties and witnesses will submit to indirect questioning by the Decision-makers and then by the parties through their Advisors. All questions are subject to a relevance determination by the Chair. Any party or witness may choose not to answer questions at the hearing, either because they do not attend the hearing, or because they attend but refuse to participate in some or all questioning. The Decision-maker(s) can only rely on whatever relevant evidence is available through the investigation and hearing in making the ultimate determination of responsibility.

The Decision-makers may not draw any inference solely from a party's or witness's absence from the hearing or refusal to answer questions.

If a party's Advisor of choice refuses to comply with GVSU's established rules of decorum for the hearing, GVSU may require the party to use a different Advisor. If a GVSU-provided Advisor refuses to comply with the rules of decorum, GVSU may provide that party with a different Advisor to conduct cross-examination on behalf of that party.

## **17. Recording Hearings**

Hearings (but not deliberations) are recorded by GVSU for purposes of review in the event of an appeal. The parties may not record the proceedings and no other unauthorized recordings are permitted.

The Decision-makers, the parties, their Advisors, and appropriate administrators of GVSU will be permitted to listen to the recording in a controlled environment determined by the Title IX Coordinator. No person will be given or be allowed to make a copy of the recording without permission of the Title IX Coordinator.

## **18. Deliberation, Decision-making, and Standard of Proof**

The Decision-makers will deliberate in closed session to determine whether the Respondent is responsible or not responsible for the policy violation(s) in question. A simple majority vote is required to determine the finding. The preponderance of the evidence standard of proof is used. The hearing facilitator may be invited to attend the deliberation by the Chair, but is there only to facilitate procedurally, not to address the substance of the allegations.



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When there is a finding of responsibility on one or more of the allegations, the Decision-makers will review any previously submitted party impact statements and any pertinent conduct history and will determine the appropriate sanction(s).

The Chair will then prepare a written deliberation statement and deliver it to the Title IX Coordinator, detailing the determination, rationale, the evidence used in support of its determination, the evidence not relied upon in its determination, credibility assessments, and any sanctions.

This statement must be submitted to the Title IX Coordinator within three (3) business days of the end of deliberations. If the Title IX Coordinator grants an extension, parties will be notified.

## 19. Notice of Outcome

Using the deliberation statement, the Title IX Coordinator will work with the Chair to prepare a Notice of Outcome. The Notice of Outcome, which includes the final determination, rationale, and any applicable sanction(s), will be shared simultaneously with the parties and their Advisors within three (3) business days of receiving the deliberation statement. Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official GVSU records, or emailed to the parties' GVSU-issued email account. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

The Notice of Outcome will include information on when the results are considered by GVSU to be final, any changes that occur prior to finalization, and the relevant procedures and bases for any available appeal options.

## 20. Sanctions

The sanctions will be implemented as soon as is feasible, either upon the outcome of any appeal or the expiration of the window to appeal without an appeal being requested.

The sanctions described in these procedures are not exclusive of, and may be in addition to, other actions taken or sanctions imposed by external authorities.

### a) Student Sanctions

The following lists the range of sanctions that may be imposed upon students:

- *Warning:* A formal statement that the conduct was unacceptable and a warning that further violation of any GVSU policy, procedure, or directive will result in more severe sanctions/responsive actions.
- *Professional Assessment:* Completion of a professional assessment that could help the respondent or GVSU ascertain the respondent's ongoing supervision or support needed to successfully participate in the GVSU community.
- *Probation:* A written reprimand for violation of institutional policy, providing for more severe disciplinary sanctions in the event that the student is found in violation of any institutional policy, procedure, or directive within a specified period of time. Terms of the probation will be articulated and may include denial of specified social privileges, exclusion from co-curricular activities, exclusion from designated areas of campus, no-contact orders, and/or other measures deemed appropriate.
- *Suspension:* Termination of student status for a definite period of time not to exceed two

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years and/or until specific criteria are met.

- *Expulsion*: Permanent termination of student status and revocation of rights to be on campus for any reason or to attend GVSU-sponsored events.
- *Withholding Diploma*: GVSU may withhold a student's diploma for a specified period of time and/or deny a student participation in commencement activities.
- *Other Actions*: In addition to or in place of the above sanctions, GVSU may assign any other sanctions as deemed appropriate.

## **b) Employee Sanctions/Responsive Actions**

The following lists the range of sanctions that may be imposed upon employees:

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

## **21. Withdrawal or Resignation While Charges Pending**

**Students:** Should a student decide to not participate in the resolution process, the process proceeds absent their participation to a reasonable resolution. Should a student Respondent permanently withdraw from GVSU, GVSU may dismiss the formal complaint or any allegations therein, at any time during the investigation or hearing.

- a) If the formal complaint is dismissed, GVSU will continue to address and remedy any systemic issues or concerns that may have contributed to the alleged violation(s), and any ongoing effects of the alleged harassment, discrimination, retaliation, and/or sexual misconduct. The student who withdraws or leaves while the process is pending may not return to GVSU. Such exclusion applies to all campuses of GVSU. Admissions will be notified that they cannot be readmitted. They may also be barred from GVSU property and/or events.

If the resolution process continues, that student is not permitted to return to GVSU unless and until all sanctions have been satisfied.

- a) **Employees:** Should an employee Respondent resign with unresolved allegations pending, GVSU may dismiss the formal complaint or any allegations therein, at any time during the

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investigation or hearing.

If the formal complaint is dismissed, GVSU will continue to address and remedy any systemic issues or concerns that contributed to the alleged violation(s), and any ongoing effects of the alleged harassment, discrimination, retaliation, and/or sexual misconduct. The employee who resigns with unresolved allegations pending is not eligible for rehire with GVSU or any campus of GVSU, and the records retained by the Title IX Coordinator and Human Resources will reflect that status. All GVSU responses to future inquiries regarding employment references for that individual will include that the former employee resigned during a pending disciplinary matter.

## **22. Appeals**

Any party may file a request for appeal ("Request for Appeal"), in writing to the Title IX Coordinator within three (3) business days of the delivery of the Notice of Outcome.

A single Appeal Decision-maker chosen from the Pool will be designated by the Title IX Coordinator to Chair the appeal. No Appeal Chair will have been involved in the process previously.

The Request for Appeal will be forwarded to the Appeal Chair for consideration to determine if the request meets the grounds for appeal (a Review for Standing). This review is not a review of the merits of the appeal, but solely a determination as to whether the request meets the grounds and is timely filed.

### **a) Grounds for Appeal**

Appeals are limited to the following grounds:

- i. Procedural irregularity that affected the outcome of the matter;
- ii. 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
- iii. The Title IX Coordinator, Investigator(s), or Decision-maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent that affected the outcome of the matter.

If any of the grounds in the Request for Appeal do not meet the grounds in these procedures, that request will be denied by the Appeal Chair and the parties and their Advisors will be notified in writing of the denial and the rationale.

If any of the grounds in the Request for Appeal meet the grounds in these procedures, then the following parties will be notified in writing: the Complainant and Respondent, their respective Advisors, the Title IX Coordinator, and, when appropriate, the Investigators and/or the original Decision-maker(s).

The other party(ies) and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigators and/or the original Decision-maker(s) will be mailed, emailed, and/or provided a hard copy of the request with the approved grounds and then be given three (3) business days to submit a response to the portion of the appeal that was approved and involves them. All responses will be forwarded by the Chair to all parties for review and comment.

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The non-appealing party (if any) may also choose to raise a new ground for appeal at this time. If so, that will be reviewed to determine if it meets the grounds in these procedures by the Appeal Chair and either denied or approved. If approved, it will be forwarded to the party who initially requested an appeal, the Investigator(s) and/or original Decision-maker(s), as necessary, who will submit their responses in three (3) business days, which will be circulated for review and comment by all parties.

Neither party may submit any new requests for appeal after this time period. The Appeal Chair will collect any additional information needed and all documentation regarding the approved grounds and the subsequent responses, and the Appeal Chair will render a decision in no more than three (3) business days, barring exigent circumstances. All decisions apply the preponderance of the evidence standard.

A Notice of Appeal Outcome will be sent to all parties simultaneously including the decision on each approved ground and rationale for each decision. The Notice of Appeal Outcome will specify the finding on each ground for appeal, any specific instructions for remand or reconsideration, any sanctions that may result which GVSU is permitted to share according to state or federal law, and the rationale supporting the essential findings to the extent GVSU is permitted to share under state or federal law.

Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official institutional records, or emailed to the parties' GVSU-issued email account. Once mailed, emailed and/or received in-person, notice will be presumptively delivered.

## **b) Sanctions Status During the Appeal**

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

## **b) Appeal Considerations**

- Decisions on appeal are to be deferential to the original decision-maker, remanding on the finding only when there is clear error and on the sanction(s)/responsive action(s) only if there is a compelling justification to do so.
- Appeals are not intended to provide for a full re-hearing (de novo) of the allegation(s). In most cases, appeals are confined to a review of the written documentation or record of the original hearing and pertinent documentation regarding the specific grounds for appeal.
- An appeal is not an opportunity for Appeal Decision-makers to substitute their judgment for that of the original Decision-maker(s) merely because they disagree with the finding and/or sanction(s).
- The Appeal Decision-maker may consult with the Title IX Coordinator on questions of procedure or rationale, for clarification, if needed. Documentation of all such consultation will be maintained.
- Appeals granted based on new evidence should normally be remanded to the original Investigator(s) and/or Decision-maker(s) for reconsideration.
- Once an appeal is decided, the outcome is final: further appeals are not permitted, even if a decision or sanction is changed on remand (except in the case of a new hearing). When appeals result in no change to the finding or sanction, that decision is final.
- In rare cases where a substantive error cannot be cured by the original Decision-maker(s) (as in cases of bias), the appeal may order a new hearing with a new Decision-maker(s).

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- The results of a remand to a Decision-maker(s) cannot be appealed. The results of a new hearing can be appealed, once, on any of the three available appeal grounds.
- In cases where the appeal results in reinstatement to GVSU or resumption of privileges, all reasonable attempts will be made to restore the respondent to their prior status.

## **23. Long-Term Remedies/Other Actions**

Following the conclusion of the resolution process, and in addition to any sanctions implemented, the Title IX Coordinator may implement additional long-term remedies or actions with respect to the parties and/or the campus community that are intended to stop the behavior, remedy the effects, and prevent reoccurrence.

These remedies/actions may include, but are not limited to:

- Referral to counseling and health services
- Referral to the Employee Assistance Program
- Education to the individual and/or the community
- Permanent alteration of housing assignments
- Permanent alteration of work arrangements for employees
- Provision of campus safety escorts
- Climate surveys
- Policy/procedural modification and/or training
- Provision of transportation accommodations
- Implementation of long-term contact limitations between the parties
- Implementation of adjustments to academic deadlines, course schedules, etc.

At the discretion of the Title IX Coordinator, certain long-term support or measures may also be provided to the parties even if no policy violation is found. When no policy violation is found, the Title IX Coordinator will address any remedies owed by GVSU to the Respondent to ensure no effective denial of educational access.

GVSU will maintain the privacy of any long-term remedies/actions/measures, provided privacy does not impair GVSU's ability to provide these services.

## **24. Failure to Comply with Sanctions and/or Interim and Long-term Remedies and/or Responsive Actions**

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

Failure to abide by the sanction(s)/action(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanction(s)/action(s), including suspension, expulsion, and/or termination from GVSU.

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



## **PROCESS B: Grievance Process for University Sexual Misconduct**

### **A. Overview**

GVSU will act on any formal notice/complaint of violation of the *Policy Prohibiting Harassment, Discrimination, Retaliation, & Sexual Misconduct* ("the Policy") that is received by the Title IX Coordinator. Impacted parties will be sent a timely notice for any meetings at which they may be present.

These procedures outlining Process B are applicable **only** when Process A is inapplicable, or offenses subject to Process A have been dismissed, as determined by the Title IX Coordinator.

### **B. Notice/Complaint**

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

The Complainant may request in writing that GVSU initiate Process B: Grievance Process for University Sexual Misconduct. A written request means a document filed/signed by the Complainant or signed by the Title IX Coordinator alleging a policy violation by a Respondent and requesting that GVSU investigate the allegation(s). A complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, or by using the contact information in these procedures. As used in this paragraph, the phrase "document filed by a Complainant" means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by GVSU) that contains the Complainant's physical or digital signature, or otherwise indicates that the Complainant is the person filing the complaint, and requests that GVSU investigate the allegations under Process B.

If notice is submitted in a form that does not meet this standard, the Title IX Coordinator will contact the Complainant to ensure that it is filed correctly.

The Title IX Coordinator will initiate at least one of two responses:

1. Offering supportive measures because the Complainant does not want to file a written request; and/or
2. Process B: Grievance Process for University Sexual Misconduct, including an investigation and a hearing (upon submission of a written request).

GVSU uses the Grievance Process to determine whether or not the Policy has been violated. This is a prompt, fair, and impartial process from the initial investigation to the final result. All proceedings are conducted in a manner that is consistent with these procedures and transparent to impacted parties. If a violation is found, GVSU will promptly implement effective remedies designed to ensure that it is not deliberately indifferent to harassment or discrimination, their potential recurrence, or their effects.

## **C. Initial Assessment**

Following receipt of notice or a complaint of an alleged violation of the Policy under Process B, the Title IX Coordinator engages in an initial assessment, typically within one to five business days. The steps in an initial assessment can include:

- If notice is given, the Title IX Coordinator seeks to determine if the person impacted wishes to make a written request, and will assist them to do so, if desired.
  - If they do not wish to do so, the Title IX Coordinator determines whether to initiate a complaint because a violence risk assessment indicates a compelling threat to health and/or safety.
- If a written request is received, the Title IX Coordinator assesses its sufficiency and works with the Complainant to make sure it is correctly completed.
- The Title IX Coordinator reaches out to the Complainant to offer supportive measures.
- The Title IX Coordinator works with the Complainant to ensure they are aware of the right to have an Advisor.
- The Title IX Coordinator works with the Complainant to determine whether the Complainant prefers a supportive and remedial response or an investigation and grievance process.
  - If a supportive and remedial response is preferred, the Title IX Coordinator works with the Complainant to identify their wishes, assesses the request, and implements accordingly. No Grievance Process is initiated, though the Complainant can elect to initiate one later, if desired.
  - If a Grievance Process is preferred, the Title IX Coordinator determines if the misconduct alleged falls within the scope of University Sexual Misconduct:
    - If it does, the Title IX Coordinator will initiate the grievance process outlined under Process B.
    - If it does not, the Title IX Coordinator determines that the University Sexual Misconduct section of the Policy does not apply, assesses which policies may apply, which resolution process is applicable, and will refer the matter accordingly.

### **1. Title IX & Institutional Equity Advisory Group (TAG)**

The Title IX & Institutional Equity Advisory Group (TAG), assembled and chaired by the Title IX Coordinator, is comprised of employees critical to the mission of the Policy. The group may include the Title IX Coordinator, civil rights investigator(s), a representative of the Grand Valley Police Department, a representative from the Division of Legal, Compliance & Risk Management, and others as determined by the Title IX Coordinator.

The Title IX Coordinator consults as necessary with TAG in order to review, assess risk, and advise on a course of action regarding reports alleging violations of the Policy. TAG has access to certain otherwise confidential information, including law enforcement records, criminal history record, GVSU disciplinary, academic and/or personnel records, and any other information or evidence known to GVSU or to law enforcement. TAG may seek additional information about the reported incident through any other legally permissible means.

### **2. Violence Risk Assessment**

The Title IX Coordinator may determine that a Violence Risk Assessment (VRA) should be conducted in consultation with TAG as part of the initial assessment. A VRA can aid in critical and/or required determinations, including:

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- Emergency removal of a Respondent on the basis of immediate threat to physical health/safety;
- Whether the Title IX Coordinator should pursue/sign a written request absent a willing/able Complainant; and/or
- Whether the Respondent poses a threat to the physical health or safety of any student, other individual, or campus community.

### 3. Counterclaims

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

Counterclaims determined to have been reported in good faith will be processed using the grievance procedures below. Investigation of such claims may take place after resolution of the underlying initial allegation, in which case a delay may occur.

Counterclaims may also be resolved through the same investigation as the underlying allegation, at the discretion of the Title IX Coordinator. When counterclaims are not made in good faith, they will be considered retaliatory and may constitute a violation of the Policy.

### D. Right to an Advisor

The parties may each have an Advisor<sup>8</sup> of their choice present with them for all meetings, interviews, and hearings within the Grievance Process, to advise, support, and/or consult with them throughout the Grievance Process, as long as the Advisor is eligible and available.<sup>9</sup> While the advisors may provide support and advice to the parties at any meeting and/or proceeding, they may not speak on behalf of the parties at any meeting and/or proceeding, or otherwise participate in, or in any manner disrupt, such meetings and/or proceedings.

Parties also have the right to choose not to have an Advisor.

Choosing an Advisor who is also a witness in the process creates potential for bias and conflict-of-interest. A party who chooses an Advisor who is also a witness can anticipate that issues of potential bias will be explored by the hearing Decision-maker(s).

### E. Grievance Process Pool

The Grievance Process relies on a pool of individuals ("the Pool") to carry out the process. The Title IX Coordinator appoints the Pool, which acts with independence, impartiality, and is free from bias. Members of the Pool receive annual training based on their respective roles, on topics including dating violence, domestic violence, sexual assault, stalking, and on how to conduct an investigation and hearing

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<sup>8</sup> This could include an attorney, advocate, or support person (witnesses are not entitled to Advisors within the process, though they can be advised externally).

<sup>9</sup> "Available" means the party cannot insist on an Advisor who simply doesn't have inclination, time, or availability. Also, the Advisor cannot have institutionally conflicting roles, such as being a Title IX administrator who has an active role in the matter, or a supervisor who must monitor and implement sanctions.

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process that protects the safety of impacted parties and promotes accountability. External, trained third-party neutral professionals may also be used to serve in pool roles.

Members of the Pool are trained annually, and can serve in in the following roles, at the direction of the Title IX Coordinator:

- To provide appropriate intake of and initial guidance pertaining to complaints
- To act as an Advisor to the parties
- To perform or assist with initial assessment
- To serve as an Investigator
- To serve as a Hearing Chair
- To serve as a Decision-maker
- To serve as an Appeal Chair

## **F. Grievance Process**

### **1. Resolution Timeline**

Our goal is to complete the resolution process approximately within a sixty-to-ninety (60-90) business day time period. While ensuring the integrity and completeness of an investigation, as well as consideration of law enforcement and other pertinent factors of the investigation, temporary delay may occur. Pertinent factors may include: accommodation of the availability of witness, account for university breaks or vacations, complexities of a case, (the number of witnesses and volume of information provided by the parties) or other legitimate reasons.

At any point during the investigation, if it is determined there is no reasonable cause to believe that university policy has been violated, the Title IX Coordinator has authority to terminate the investigation and end resolution proceedings.

### **2. Notice of Investigation**

The Title IX Coordinator will provide written notice of the investigation and allegations (the "NOI") to the Respondent upon commencement of the Grievance Process. This facilitates the Respondent's ability to prepare for the interview and to identify and choose an Advisor to accompany them. The NOI is also copied to the Complainant, who is to be given advance notice of when the NOI will be delivered to the Respondent. The NOI will include a) a meaningful summary of all of allegations, b) the identity of the involved parties (if known), c) the precise misconduct being alleged, d) the date and location of the alleged incident(s) (if known), e) the specific policies implicated, f) a description of the applicable procedures, g) a statement about GVSU's policy on retaliation, and h) a copy of the policy and these procedures. When the Respondent is a GVSU employee, a copy of the Notice of Investigation will be shared with the employee's Appointing Officer, and/or Executive Officer, and Human Resources.

### **3. Appointment of Investigators**

Once the decision to commence a formal investigation is made, the Title IX Coordinator will appoint one or more investigators to conduct a prompt, thorough, fair, and impartial investigation.

### **4. Overview of the Investigation**

All investigations are thorough, reliable, impartial, prompt, and fair. Investigations involve interviews with all relevant parties and witnesses; obtaining available, and relevant evidence, as necessary.

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During the investigation, the parties will have an equal opportunity to be heard, to submit information and corroborating evidence, to identify witnesses who may have relevant information, and to submit questions that they believe should be directed by the investigator to each other or to any witness. The investigator will notify and seek to meet separately with the complainant, the respondent, and third-party witnesses, and will gather other relevant and available evidence and information, including without limitation, electronic or other records of communications between the parties or witness (via voice-mail, text message, email and social media sites), photographs (including those stored in computers, phones, tablets, etc.), and medical records (subject to the consent of the applicable party).

All parties have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence, and to fully review and respond to all relevant evidence on the record.

Although in-person interviews for parties and all potential witnesses are ideal, circumstances (e.g., study abroad, summer break) may require individuals to be interviewed remotely. Skype, Zoom, FaceTime, WebEx, or similar technologies may be used for interviews if the Investigator(s) determine that timeliness or efficiency dictate a need for remote interviewing. GVSU will take appropriate steps to reasonably ensure the security/privacy of remote interviews.

## **5. Recording of Interviews**

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

## **6. Draft investigation Report**

The investigator(s) will write a comprehensive investigation report fully summarizing the investigation, all witness interviews, and addressing all relevant evidence. Appendices including relevant physical or documentary evidence will be included.

Prior to the conclusion of the investigation, parties will be provided with a secured electronic or hard copy of the draft investigation report including all relevant evidence obtained as part of the investigation that is directly related to the reported misconduct, for a five (5) business day review and comment period so that each party may meaningfully respond to the evidence. The parties may elect to waive the full five days. The Investigator(s) will incorporate any relevant feedback, may elect to respond in writing in the investigation report to the parties' submitted responses and/or to share the responses between the parties for additional responses.

## **7. Final Investigation Report**

The final report will be shared with parties simultaneously through secure electronic transmission or hard copy. When the Respondent is a GVSU employee, a copy of the Final Investigation Report will be shared with the employee's Appointing Officer, and/or Executive Officer, and Human Resources. Investigator(s) will include in the report one of the following conclusions, by a preponderance of the evidence:

- a) Not Substantiated: the investigation found insufficient evidence to substantiate the behavior that was the subject of the complaint. The investigation will be closed and documented in accordance with applicable GVSU policies. This conclusion may be appealed.
- b) Substantiated: the investigation found sufficient evidence to substantiate the behavior that was the subject of the complaint. In instances where the alleged conduct, if found



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responsible, could result in suspension or expulsion and credibility is an issue that is material to the outcome, the Respondent is provided the opportunity for an Administrative Hearing.

- i. *Accept*: The Respondent may accept this conclusion at which point sanctions will be assigned as described in these procedures, if applicable.
- ii. *Contest with Hearing*: The Respondent may contest this conclusion and request an Administrative Hearing to determine whether or not the alleged behavior is a violation of policy. The matter is referred to an Administrative Hearing.
- iii. *Contest without Hearing*: The Respondent may contest this conclusion and submit a written statement in lieu of a hearing. In selecting this option, the Respondent waives the right to be present at an administrative hearing and cross-examine the other party and witnesses. No other hearing is provided and the matter is referred to an administrative panel for determination of whether the alleged behavior is a violation of policy.

## **8. Hearing Decision-makers**

The Title IX Coordinator will designate a three-member panel from the Pool, with one of the three members appointed as Chair.

The Decision-makers will not have had any previous involvement with the investigation. The Title IX Coordinator may serve as an administrative facilitator of the hearing if their previous roles in the matter do not create a conflict of interest. Otherwise, a designee may fulfill this role.

## **9. Evidentiary Considerations in the Hearing**

Any evidence that the investigation determined as relevant will be considered. Examples of evidence that is not relevant include: 1) incidents not directly related to the possible violation, unless they evidence a pattern; 2) the character of the parties; or 3) questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

## **10. Notice of Hearing**

The Title IX Coordinator will send notice of the hearing to the parties at least ten (10) business days before the date of the hearing. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered. The notice will include the date, time, and location of the hearing, along with other information pertinent to the hearing.

## **11. Alternative Hearing Participation Options**

If a party or parties prefer not to attend or cannot attend the hearing in person, the party should request alternative arrangements from the Title IX Coordinator at least five (5) business days prior to the hearing. Additionally, the Title IX Coordinator can arrange to use technology for some or all attendees without compromising the fairness of the hearing.

## **12. Pre-Hearing Preparation**

The parties will be given a list of the names of the Decision-makers at least five (5) business days in advance of the hearing. Objections to any Decision-maker must be raised in writing, detailing the rationale for the objection, and must be submitted to the Title IX Coordinator no later than two (2)

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business days prior to the hearing. A Decision-maker will only be removed if the Title IX Coordinator concludes that they are unable to hear the case fairly and impartially.

Any witness invited to participate in the hearing must have been first interviewed by the Investigator(s). Any evidence offered at the hearing must have been submitted to investigator(s) during the investigation.

## **13. Recording Hearings**

Hearings (but not deliberations) are recorded by GVSU for purposes of an internal review in the event of an appeal. The parties may not record the proceedings and no other unauthorized recordings are permitted. The recording becomes the property of GVSU.

## **14. Hearing Procedures**

At the hearing, the Decision-makers have the authority to hear and make determinations on all allegations of harassment, discrimination, retaliation, and/or sexual misconduct.

Participants at the hearing will include the Chair, any additional panelists, the hearing facilitator, the Investigator(s) who conducted the investigation, the parties, any Advisors to the parties, any called witnesses, anyone providing authorized accommodations or assistive services, and anyone else deemed appropriate by the Chair.

The Chair will answer all questions of procedure. Anyone appearing at the hearing to provide information will respond to questions on their own behalf.

The Chair will allow witnesses who have relevant information to appear at a portion of the hearing in order to respond to specific questions from the Decision-makers and the parties and the witnesses will then be excused.

## **15. Statements and Questioning**

Parties and witnesses present at the hearing will submit to indirect questions by the Decision-makers and then by the parties. All questions are subject to a relevance determination by the Chair.

The Decision-makers may not draw any inference solely from a party's or witness's absence from the hearing or refusal to answer questions.

## **16. Deliberation, Decision-making, and Standard of Proof**

The Decision-makers will deliberate in closed session to determine whether the Respondent is responsible or not responsible for the policy violation(s) in question. A simple majority vote is required to determine the finding. The preponderance of the evidence standard of proof is used. The hearing facilitator may be invited to attend the deliberation by the Chair, but is there only to facilitate procedurally, not to address the substance of the allegations.

The Chair will then prepare a written deliberation statement and deliver it to the Title IX Coordinator, detailing the determination, rationale, the evidence used in support of its determination, credibility assessments, and any sanction(s). If the Complainant did not attend the hearing and the investigation conclusion relied on an assessment of the parties' credibility, the sanction of suspension or dismissal may not be imposed. When the Respondent is a GVSU employee, Decision-makers should consult with Human Resources and/or the Office of the Provost regarding any sanction decisions, where applicable.

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This statement must be submitted to the Title IX Coordinator within three (3) business days of the end of deliberations. If the Title IX Coordinator grants an extension, parties will be notified.

## 17. Notice of Outcome

Using the deliberation statement, the Title IX Coordinator will work with the Chair to prepare a Notice of Outcome. The Notice of Outcome, which includes the final determination, rationale, and any applicable sanction(s), will be shared simultaneously with the parties within three (3) business days of receiving the deliberation statement. Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official GVSU records, or emailed to the parties' GVSU-issued email account. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered. When the Respondent is a GVSU employee, a copy of the Notice of Outcome will be shared with the employee's Appointing Officer, and/or Executive Officer, and Human Resources.

The Notice of Outcome will include information on when the results are considered by GVSU to be final, any changes that occur prior to finalization, and the relevant procedures and bases for any available appeal options.

## 18. Sanctions

Sanctions will be implemented as soon as is feasible, either upon the outcome of any appeal or the expiration of the window to appeal without an appeal being requested.

The sanctions described in these procedures are not exclusive of, and may be in addition to, other actions taken or sanctions imposed by external authorities.

### c) Student Sanctions

The following lists the range of sanctions that may be imposed upon students:

- *Warning:* A formal statement that the conduct was unacceptable and a warning that further violation of any GVSU policy, procedure, or directive will result in more severe sanctions/responsive actions.
- *Professional Assessment:* Completion of a professional assessment that could help the respondent or GVSU ascertain the respondent's ongoing supervision or support needed to successfully participate in the GVSU community.
- *Probation:* A written reprimand for violation of institutional policy, providing for more severe disciplinary sanctions in the event that the student is found in violation of any institutional policy, procedure, or directive within a specified period of time. Terms of the probation will be articulated and may include denial of specified social privileges, exclusion from co-curricular activities, exclusion from designated areas of campus, no-contact orders, and/or other measures deemed appropriate.
- *Suspension:* Termination of student status for a definite period of time not to exceed two years and/or until specific criteria are met. Students who return from suspension are automatically placed on probation through the remainder of their tenure as a student at GVSU.
- *Expulsion:* Permanent termination of student status and revocation of rights to be on campus for any reason or to attend GVSU-sponsored events.
- *Withholding Diploma:* GVSU may withhold a student's diploma for a specified period of time

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and/or deny a student participation in commencement activities if the student has an allegation pending or as a sanction if the student is found responsible for an alleged violation.

- *Other Actions:* In addition to or in place of the above sanctions, GVSU may assign any other sanctions as deemed appropriate.

## **d) Employee Sanctions/Responsive Actions**

The following lists the range of sanctions that may be imposed upon employees:

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

## **19. Withdrawal or Resignation While Charges Pending**

- b)** Students: If a student has an allegation pending for violation of the Policy, GVSU may place a hold on a student's ability to graduate and/or to receive an official transcript/diploma.

Should a student decide to not participate in the resolution process, the process proceeds absent their participation to a reasonable resolution. Should a student Respondent permanently withdraw from GVSU, GVSU may dismiss the written request for resolution or any allegations therein, at any time during the investigation or hearing.

If the written request for resolution is dismissed, GVSU will continue to address and remedy any systemic issues, variables that may have contributed to the alleged violation(s), and any ongoing effects of the alleged harassment, discrimination, retaliation, and/or sexual misconduct. The student who withdraws or leaves while the process is pending may not return to GVSU. Such exclusion applies to all campuses of GVSU. A hold will be placed on their ability to be readmitted. They may also be barred from GVSU property and/or events.

If the resolution process continues, that student is not permitted to return to GVSU unless and until all sanctions have been satisfied.

- c)** Employees: Should an employee Respondent resign with unresolved allegations pending, GVSU may dismiss the written request for resolution or any allegations therein, at any time

during the investigation or hearing.

If the written request for resolution is dismissed, GVSU will continue to address and remedy any systemic issues, variables that contributed to the alleged violation(s), and any ongoing effects of the alleged harassment, discrimination, retaliation, and/or sexual misconduct. The employee who resigns with unresolved allegations pending is not eligible for rehire with GVSU or any campus of GVSU, and the records retained by the Title IX Coordinator and Human Resources will reflect that status. All GVSU responses to future inquiries regarding employment references for that individual will include that the former employee resigned during a pending disciplinary matter.

## **20. Appeals**

Any party may file a request for appeal ("Request for Appeal"), in writing to the Title IX Coordinator within three (3) business days of the delivery of the Notice of Outcome.

A single Appeal Decision-maker chosen from the Pool will be designated by the Title IX Coordinator to Chair the appeal. No Appeal Chair will have been involved in the process previously.

The Request for Appeal will be forwarded to the Appeal Chair for consideration to determine if the request meets the grounds for appeal (a Review for Standing). This review is not a review of the merits of the appeal, but solely a determination as to whether the request meets the grounds and is timely filed.

### **a) Grounds for Appeal**

Appeals are limited to the following grounds:

- i. Procedural irregularity that affected the outcome of the matter
- ii. 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

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

If any of the grounds in the Request for Appeal meet the grounds in these procedures, then the following parties will be notified in writing: the Complainant, the Respondent, the Title IX Coordinator, and, when appropriate, the Investigators and/or the original Decision-maker(s).

The other party(ies), the Title IX Coordinator, and, when appropriate, the Investigators and/or the original Decision-maker(s) will be mailed, emailed, and/or provided a hard copy of the request with the approved grounds and then be given three (3) business days to submit a response to the portion of the appeal that was approved and involves them.

The Appeal Chair will collect any additional information needed and all documentation regarding the approved grounds and the subsequent responses, and the Appeal Chair will render a decision in no more than three (3) business days, barring exigent circumstances. All decisions apply the preponderance of the evidence standard.



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A Notice of Appeal Outcome will be sent to all parties simultaneously including the decision on each approved ground and rationale for each decision. The Notice of Appeal Outcome will specify the finding on each ground for appeal, any specific instructions for remand or reconsideration, which GVSU is permitted to share according to state or federal law, and the rationale supporting the essential findings to the extent GVSU is permitted to share under state or federal law.

Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official institutional records, or emailed to the parties' GVSU-issued email account. Once mailed, emailed and/or received in-person, notice will be presumptively delivered. When the Respondent is a GVSU employee, a copy of the Notice of Appeal Outcome will be shared with the employee's Appointing Officer, and/or Executive Officer, and Human Resources.

## **b) Sanctions Status During the Appeal**

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

## **c) Appeal Considerations**

- Decisions on appeal are to be deferential to the original decision-maker, remanding on the finding only when there is clear error and on the sanction(s)/responsive action(s) only if there is a compelling justification to do so.
- Appeals are not intended to provide for a full re-hearing (de novo) of the allegation(s). In most cases, appeals are confined to a review of the written documentation or record of the original hearing and pertinent documentation regarding the specific grounds for appeal.
- An appeal is not an opportunity for Appeal Decision-makers to substitute their judgment for that of the original Decision-maker(s) merely because they disagree with the finding and/or sanction(s).
- The Appeal Decision-maker may consult with the Title IX Coordinator on questions of procedure or rationale, for clarification, if needed. Documentation of all such consultation will be maintained.
- Appeals granted based on new evidence should normally be remanded to the original Investigator(s) and/or Decision-maker(s) for reconsideration.
- Once an appeal is decided, the outcome is final: further appeals are not permitted, even if a decision or sanction is changed on remand (except in the case of a new hearing). When appeals result in no change to the finding or sanction, that decision is final.
- In rare cases where a substantive error cannot be cured by the original Decision-maker(s) (as in cases of bias), the appeal may order a new hearing with a new Decision-maker(s).
- The results of a remand to a Decision-maker(s) cannot be appealed. The results of a new hearing can be appealed, once, on any of the available appeal grounds.
- In cases where the appeal results in reinstatement to GVSU or resumption of privileges, all reasonable attempts will be made to restore the respondent to their prior status.

## **21. Long-Term Remedies/Other Actions**

Following the conclusion of the resolution process, and in addition to any sanctions implemented, the Title IX Coordinator may implement additional long-term remedies or actions with respect to the parties and/or the campus community that are intended to stop the behavior, remedy the effects, and prevent reoccurrence.

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These remedies/actions may include, but are not limited to:

- Referral to counseling and health services
- Referral to the Employee Assistance Program
- Education to the individual and/or the community
- Permanent alteration of housing assignments
- Permanent alteration of work arrangements for employees
- Provision of campus safety escorts
- Climate surveys
- Policy/procedural modification and/or training
- Provision of transportation accommodations
- Implementation of long-term contact limitations between the parties
- Implementation of adjustments to academic deadlines, course schedules, etc.

At the discretion of the Title IX Coordinator, certain long-term support or measures may also be provided to the parties even if no policy violation is found. When no policy violation is found, the Title IX Coordinator will address any remedies owed by GVSU to the Respondent to ensure no effective denial of educational access.

GVSU will maintain the privacy of any long-term remedies/actions/measures, provided privacy does not impair GVSU's ability to provide these services.

## **22. Failure to Comply with Sanctions and/or Interim and Long-term Remedies and/or Responsive Actions**

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

Failure to abide by the sanction(s)/action(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanction(s)/action(s), including suspension, expulsion, and/or termination from GVSU.

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

## **PROCESS C: Resolution Process for Discrimination & Harassment**

### **A. Overview**

A claim under these procedures may be brought by GVSU or by a faculty, staff or student member of the GVSU community. Complaints based on conduct of students who are not acting as employees of GVSU are addressed through the Student Code. Persons who file complaints alleging discrimination or harassment or participate in the resolution of such a complaint are protected from retaliation as defined in the Policy.

Discrimination and harassment are very serious matters that can have far-reaching, current and future impact on the lives, educational experience, and careers of individuals. Intentionally false accusations can have a similar impact. A person who knowingly and intentionally files a false complaint under the Policy is subject to discipline. Both a person who impermissibly discriminates against another, and a person who knowingly and intentionally files a false complaint under the Policy, are subject to discipline.

### **B. Examples**

Some examples of conduct that may constitute prohibited discrimination may include, but are not limited to:

- i. Denying a person access to an educational program based on that person's race, color, national origin, age, marital status, sex, sexual orientation, gender identity, gender expression, disability, religion, height, weight or veteran's status;
- ii. Denying raises, benefits, or promotions on the basis of a person's race, color, national origin, age, marital status, sex, sexual orientation, gender identity, gender expression, disability, religion, height, weight or veteran's status;
- iii. Preventing any person from using GVSU facilities or services because of that person's race, color, national origin, age, marital status, sex, sexual orientation, gender identity, gender expression, disability, religion, height, weight or veteran's status;
- iv. Instigating or allowing an environment that is unwelcoming or hostile based on a person's race, color, national origin, age, marital status, sex, sexual orientation, gender identity, gender expression, disability, religion, height, weight or veteran's status.

## **C. Written Complaint and Investigation**

### **1. Assistance with Discrimination and Harassment Concerns**

The Office for Title IX and Institutional Equity is responsible for ensuring and monitoring GVSU's compliance with federal and state nondiscrimination laws. However, an environment free of discrimination and harassment is the responsibility of every member of the community. The Office for Title IX and Institutional Equity can take corrective action only when there is a written complaint. Therefore, GVSU encourages persons who believe that they have experienced or witnessed discrimination or harassment as prohibited by the Policy to come forward promptly with their inquiries, reports, or complaints and to seek assistance within GVSU. Individuals also have the right to pursue a legal remedy for discrimination or harassment that is prohibited by law in addition to or instead of proceeding under these procedures.

### **2. Filing a Written Complaint**

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An individual who wishes to file a written complaint alleging discriminatory or harassing behavior or retaliation should contact the Director of the Office for Title IX and Institutional Equity in person, by mail, or by electronic mail, by using the contact information in these procedures, or as described in these procedures.

If an employee is represented by a union and the terms of the collective bargaining agreement provide a procedure for pursuing a discrimination or harassment complaint, the terms of the collective bargaining agreement shall prevail. In addition, any member of the GVSU community may utilize appropriate GVSU resources for guidance and support during the investigation process (e.g., the Employee Assistance Program, University Counseling Center for Students, etc.).

### **3. Investigation**

GVSU will address discrimination and harassment complaints under this set of procedures to ensure prompt and equitable resolution of such complaints. The matter will then proceed to investigation. The investigation will be conducted by the Office for Title IX and Institutional Equity, or jointly with another office, as determined by the Office for Title IX and Institutional Equity.

The purpose of an investigation, which will include interviewing the parties and witnesses, is to gather and assess evidence. During the course of an investigation, the Office for Title IX and Institutional Equity will work collaboratively with other appropriate GVSU offices. For example, if a faculty member is involved in a complaint, the Office for Title IX and Institutional Equity would generally work collaboratively with the Office of the Provost; the appropriate Dean, Director or Department Head. If a staff member is involved in the complaint, the Office for Title IX and Institutional Equity would work collaboratively with Human Resources, the supervisor, the Appointing Office/Vice President and other appropriate departmental and GVSU officials.

The Office for Title IX and Institutional Equity will determine the most effective method of investigating the concerns raised by the Complainant. In most cases, this will involve conducting a thorough fact-finding investigation, which includes meeting with the Complainant, Respondent, pertinent witnesses, and reviewing and analyzing relevant documents as they relate to each allegation of the complaint. The investigation will be completed promptly. Occasionally, a different or less formal response to the complaint may be warranted. Although the Office for Title IX and Institutional Equity may deviate from these procedures, it will still respond to the complaint in a prompt, thorough and effective manner that is procedurally fair.

### **4. Investigation Report**

When an investigation is conducted, the Investigator will prepare a written report at the conclusion of the investigation. The Complainant and Respondent will be given an opportunity to review a summary of the evidence gathered during the investigation, and given five (5) business days to submit comments on that draft summary to the Investigator. The Investigator will address factual inaccuracies and misunderstandings, supported by evidence, identified by either party.

Following the receipt of any comments submitted, or after the five (5) business day comment period has lapsed without comment, the Investigator will complete a written final report which will contain will contain (1) a summary of the Complainant's relevant allegations, (2) a summary of the Respondent's relevant statements in response to the allegations, (3) a description of the relevant information provided by witnesses or obtained from documents including comments submitted in response to the draft report, and (4) the Investigator's analysis and findings. The Investigation Report will be provided to

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the Complainant, the Respondent and other pertinent GVSU officials as necessary to ensure proper resolution and follow-up regarding the matter. The Investigator's involvement in the matter concludes when the investigation report is issued.

## **5. Evidentiary Standard**

The Investigator's findings of fact will be made using the "preponderance of the evidence" standard. Under this standard, individuals are presumed not to have engaged in the alleged conduct unless a "preponderance of the evidence" supports a finding that the conduct occurred. This "preponderance of the evidence" standard requires that the evidence supporting each finding be more convincing than the evidence offered in opposition to it.

## **6. Corrective Action**

Corrective action could include a requirement not to repeat or continue the discriminatory, harassing, or retaliatory conduct, a reprimand, denial of a merit pay increase, reassignment, suspension and termination. The severity of the punishment will depend on frequency and severity of the offense and any history of past discriminatory, harassing or retaliatory conduct. GVSU may also take corrective action if no discrimination or harassment is found, but Respondent is found to have engaged in inappropriate workplace behavior. If corrective action is to be taken against a Respondent that is represented by a collective bargaining agreement, the appropriate official in Human Resources will be contacted immediately to assist in the facilitating the corrective action.

## **7. University Action**

GVSU may assume the role of a complainant and pursue a report or complaint, either informally or formally. GVSU may respond to complaints or reports by persons external to GVSU community about alleged discriminatory and harassing conduct by GVSU employees.

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