UNIVERSITY OF DETROIT MERCY NONDISCRIMINATION, HARASSMENT, AND SEXUAL MISCONDUCT POLICY

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Purpose

University of Detroit Mercy is committed to providing an educational and employment environment that is free from discrimination based on protected characteristics, harassment, and retaliation for engaging in protected activity.

University of Detroit Mercy values and upholds the equal dignity of all members of its community and strives to balance the rights of the Parties in the resolution process.

To ensure compliance with federal, state, and local civil rights laws and regulations, and to affirm its commitment to promoting the goals of fairness and equity in all aspects of the education program or activity, the University has developed policies and procedures that provide for prompt, fair, and impartial resolution of allegations of protected characteristic discrimination, harassment or allegations of retaliation.

Notice of Nondiscrimination

University of Detroit Mercy seeks to comply with all federal, state, and local laws, regulations, and ordinances prohibiting discrimination in private post-secondary education institutions.

University of Detroit Mercy does not discriminate against any employee, applicant for employment, student, or applicant for admission on the basis of actual or perceived:

- Age
- Citizenship status
- Color
- Creed

- Disability and genetic information (including family medical history)
- Ethnicity
- Familial or marital status
- National origin (including ancestry)
- Political belief or affiliation
- Pregnancy or related conditions
- Race
- Religion
- Sex
- Veteran or military status (including disabled veteran, recently separated veteran, active-duty, wartime, or campaign badge veteran, and Armed Forces Service Medal veteran)
- or any other protected characteristic under applicable local, state, or federal law, including protections for those opposing discrimination or participating in any grievance process within the institution, with the Equal Employment Opportunity Commission, and/or other human/civil rights agency.

This Policy covers nondiscrimination in both employment and access to educational opportunities. Therefore, any member of the University of Detroit Mercy community whose acts deny, deprive, unreasonably interfere with or limit the education or employment, and/or social access, benefits, and/or opportunities of any member of the University of Detroit Mercy community, guest, or visitor on the basis of that person's actual or perceived protected characteristic(s), is in violation of this Policy.

University of Detroit Mercy will promptly and effectively address any such discrimination of which it has Notice using the resolution processes in the Nondiscrimination Procedures.

Nondiscrimination Team

The University has appointed the following individual to coordinate the University's compliance with federal, state, and local civil rights laws and ordinances:

Megan Novell
Executive Director and Title IX Coordinator
Office of Equal Opportunity
285 Student Union
4001 W. McNichols Rd.
Detroit, MI 48221
(313) 993-1802
novellme@udmercy.edu

The Executive Director of the Office of Equal Opportunity and Title IX Coordinator (hereafter, "the Director") may be contacted by any student, employee, or member of the University

community for information about the University's Nondiscrimination Policy and Procedures and related matters.

The University has also appointed a Nondiscrimination Team, which includes Human Resources professionals as well as Deputy Title IX Coordinators, to assist in coordinating the University's compliance with federal, state, and local civil rights laws and ordinances. Appendix B lists the Nondiscrimination Team.

Collectively, these individuals are responsible for providing comprehensive nondiscrimination education and training; coordinating the University's timely, thorough, and fair response, investigation, and resolution of all alleged prohibited conduct under this Policy; and monitoring the effectiveness of this Policy and related procedures to ensure an education and employment environment free from discrimination, harassment, and retaliation.

University of Detroit Mercy recognizes that allegations under this Policy may include multiple forms of discrimination and harassment as well as violations of other University policies; may involve various combinations of students, employees, and other members of the University community; and may require the simultaneous attention of multiple University departments. Accordingly, all University departments will share information, combine efforts, and otherwise collaborate, to the maximum extent permitted by law and consistent with other applicable University policies, to provide uniform, consistent, efficient, and effective responses to alleged discrimination, harassment, or retaliation.

External Contact Information

Concerns about the University's application of this Policy and compliance with certain federal civil rights laws may also be addressed to:

Office for Civil Rights (OCR)
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202-1100
Customer Service Hotline #: (800) 421-3481
Facsimile: (202) 453-6012
TDD: (877) 521-2172
Email: OCR@ed.gov
Web: http://www.ed.gov/ocr

Office for Civil Rights (OCR)
U.S. Department of Health and Human Services
Centralized Case Management Operations
200 Independence Avenue, S.W.
Room 509F HHH Bldg.
Washington, D.C. 20201

Phone: (800) 368-1019
TDD: (800) 537-7697
Email: OCRMail@hhs.gov
Web: https://www.hhs.gov/ocr

For Complaints involving employee-on-employee conduct:
Equal Employment Opportunity Commission (EEOC)
Detroit Field Office
Patrick V. McNamara Building
477 Michigan Avenue
Room 865
Detroit, MI 48226
Phone: (313) 774-0020
Facsimile: (313) 226-4610
TTY: (800) 669-6820
ASL Video Phone: (844) 234-5122

Scope

This Policy is only applicable to alleged incidents that occur after August 1, 2024. For alleged incidents occurring prior to August 1, 2024, the policy and procedures in place at the time of the alleged incident apply. Applicable versions of those policies and procedures are available from the Director.

This Policy applies to all faculty, employees, students, and other individuals participating in or attempting to participate in the University's program or activities, including education and employment.

This Policy prohibits all forms of discrimination on the basis of the protected characteristic(s) listed in the Notice of Nondiscrimination. The Nondiscrimination Procedures may be applied to incidents, to patterns, and/or to the institutional culture/climate, all of which may be addressed in accordance with this Policy.

Jurisdiction

This Policy applies to the University of Detroit Mercy's education programs and activities (defined as including locations, events, or circumstances in which the Recipient exercises substantial control over both the Respondent and the context in which the conduct occurred), circumstances where the University has disciplinary authority, and to misconduct occurring within any building owned or controlled by a University-recognized student organization. This Policy may also apply to the effects of off-campus misconduct that limit or deny a person's access to University of Detroit Mercy's education program or activities.

For disciplinary action to be issued under this Policy, the Respondent must be a University of Detroit Mercy faculty member, student, or employee at the time of the alleged incident. If the Respondent is unknown or is not a member of the University community, the Director will offer to assist the Complainant in identifying appropriate institutional and local resources and support options, and will implement appropriate supportive measures and/or remedial actions (e.g., trespassing a person from campus).

The Director may be able to assist and support a student or employee Complainant who experiences discrimination in an externship, study abroad program, or other environment external to the University of Detroit Mercy where sexual harassment or nondiscrimination policies and procedures of the facilitating or host organization may give the Complainant recourse. If there are effects of that external conduct that impact a student's or employee's work or educational environment, those effects can often be addressed remedially by the Director if brought to their attention.

Supportive Measures

University of Detroit Mercy will offer and implement appropriate and reasonable supportive measures to the Parties upon Notice of alleged discrimination, harassment, and/or retaliation. Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate and reasonably available. They are offered, without fee or charge to the Parties, to restore or preserve access to the University's education program or activity, including measures designed to protect the safety of all Parties and/or the University's educational environment and/or to deter discrimination, harassment, and/or retaliation.

The Director promptly makes supportive measures available to the Parties upon receiving Notice/Knowledge or a Complaint. At the time that supportive measures are offered, if a Complaint has not been filed, the University will inform the Complainant that they may file a Complaint with University of Detroit Mercy either at that time or in the future. The Director will work with a party to ensure that their wishes are considered with respect to any planned and implemented supportive measures.

The University will maintain the confidentiality of the supportive measures, provided that confidentiality does not impair the University's ability to provide those supportive measures. University of Detroit Mercy will act to ensure as minimal an academic/occupational impact on the Parties as possible. The University will implement measures in a way that does not unreasonably burden any party.

These actions may include, but are not limited to:

- Referral to counseling, medical, and/or other healthcare services
- Referral to the Employee Assistance Program
- Referral to community-based service providers
- Student financial aid counseling

- Education to the institutional community or community subgroup(s)
- Altering campus housing assignment(s)
- Altering work arrangements for employees or student-employees
- Safety planning
- Providing campus safety escorts
- Implementing contact limitations (no contact orders) between the Parties
- Academic support, extensions of deadlines, or other course/program-related adjustments
- Trespass or Persona Non Grata (PNG) orders
- Timely warnings
- Class schedule modifications, withdrawals, or leaves of absence
- Increased security and monitoring of certain areas of the campus
- Any other actions deemed appropriate by the Title IX Coordinator

Violations of no contact orders or other restrictions may be referred to appropriate student or employee conduct processes for enforcement or added as collateral misconduct allegations to an ongoing Complaint under this Policy.

The Parties are provided with a timely opportunity to seek modification or reversal of the University's decision to provide, deny, modify, or terminate supportive measures applicable to them. A request to do so should be made in writing to the Director. An impartial employee other than the employee who implemented the supportive measures, who has authority to modify or reverse the decision, will determine whether to provide, deny, modify, or terminate the supportive measures if they are inconsistent with the definition of supportive measures in § 106.2 of the federal Title IX Regulations.

Online Harassment and Misconduct

University of Detroit Mercy policies are written and interpreted broadly to include online manifestations of any of the behaviors prohibited below, when those behaviors occur in or have an effect on the University's education program and activities, or when they involve the use of University networks, technology, or equipment.

Although University of Detroit Mercy may not control websites, social media, and other venues through which harassing communications are made, when such communications are reported to University of Detroit Mercy, it will engage in a variety of means to address and mitigate the effects.

Prohibited Conduct

Students and employees are entitled to an employment and educational environment that is free of discrimination, harassment, and retaliation. This Policy is not meant to inhibit or prohibit educational content or discussions inside or outside of the classroom that include germane but

controversial or sensitive subject matters protected by academic freedom. The sections below describe the specific forms of legally prohibited discrimination, harassment, and retaliation that are also prohibited under University Policy.

All offense definitions below encompass actual and/or attempted offenses.

Any of the following offenses can be charged as or combined as pattern offenses, in which case the Notice of Investigation and Allegation (NOIA) will clearly indicate that both individual incidents and a pattern of conduct are being investigated. A pattern may exist and be charged when there is a potential substantial similarity to incidents where the proof of one could make it more likely that the other(s) occurred, and vice-versa. Patterns may exist based on target selection, similarity of offense, or other factors. Where a pattern is found, it can be the basis to enhance sanctions accordingly.

Violation of any other University of Detroit Mercy policies may constitute discrimination or harassment when motivated by actual or perceived protected characteristic(s), and the result is a limitation or denial of employment or educational access, benefits, or opportunities.

Discrimination

Discrimination is different treatment with respect to an individual's employment or participation in an education program or activity based, in whole or in part, upon the individual's actual or perceived protected characteristic. Discrimination also includes allegations of a failure to provide reasonable accommodations as required by law or policy, such as for disability, religion, or creed.

Discrimination can take two primary forms:

1) **Disparate Treatment Discrimination:**
    - Any intentional differential treatment of a person or persons that is based on an individual's actual or perceived protected characteristic and that:
        - Excludes an individual from participation in;
        - Denies the individual benefits of; or
        - Otherwise adversely affects a term or condition of an individual's participation in a University program or activity.

2) **Disparate Impact Discrimination:**
    - Disparate impact occurs when policies or practices that appear to be neutral unintentionally result in a disproportionate impact on a protected group or person that:
        - Excludes an individual from participation in;
        - Denies the individual benefits of; or
        - Otherwise adversely affects a term or condition of an individual's participation in a University program or activity.

Discriminatory Harassment

- unwelcome conduct on the basis of actual or perceived protected characteristic(s), that
- based on the totality of the circumstances,
- is subjectively and objectively offensive, and
- is so severe or pervasive,
- that it limits or denies a person's ability to participate in or benefit from the University's education program or activity

Sex-based Harassment (Applicable under Title IX, Title VII, and the Fair Housing Act)

Sex-based Harassment is a form of sex discrimination and means sexual harassment and other harassment on the basis of sex, including sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity; sexual assault, dating violence, domestic violence, and stalking.

1) **Quid pro quo:**
   - an employee agent, or other person authorized by the University,
   - to provide an aid, benefit, or service under the University's education program or activity,
   - explicitly or impliedly conditioning the provision of such aid, benefit, or service,
   - on a person's participation in unwelcome sexual conduct.

2) **Hostile Environment Harassment:**
   - unwelcome sex-based conduct, that
   - based on the totality of the circumstances,
   - is subjectively and objectively offensive, and
   - is so severe or pervasive,
   - that it limits or denies a person's ability to participate in or benefit from the University's education program or activity

University of Detroit Mercy reserves the right to address offensive conduct and/or harassment that (1) does not rise to the level of creating a hostile environment, or (2) that is of a generic nature and not based on a protected characteristic. Addressing such conduct will not result in the imposition of discipline under University Policy, but may be addressed through respectful conversation, remedial actions, education, Alternative Resolution, or other mechanisms.

3) **Sexual Assault:**

Any sexual act, including Rape, Sodomy, Sexual Assault with an Object, or Fondling directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent; also unlawful sexual intercourse.[1]

a. **Rape:**
   - Penetration,
   - without the consent of the Complainant,
   - including instances where the Complainant is incapable of giving consent
     - because of their age or
     - because of their temporary or permanent mental or physical incapacity

b. Sodomy
   - Oral or anal penetration
   - Of the Complainant by the Respondent
   - without the consent of the Complainant,
   - including instances where the Complainant is incapable of giving consent
     - because of their age or
     - because of their temporary or permanent mental or physical incapacity

c. Sexual Assault with an Object
   - Respondent's use of an object or instrument
   - to unlawfully penetrate, however slightly, the genital or anal opening
   - of the body of the Complainant,
   - without the consent of the Complainant,
   - including instances where the Complainant is incapable of giving consent
     - because of their age or
     - because of their temporary or permanent mental or physical incapacity

d. **Fondling:**
   - The touching of the private body parts (breasts, buttocks, groin) of the Complainant by the Respondent
   - or causing the Complainant to touch the Respondent's private body parts

[1] This definition of sexual assault does not constitute a chargeable offense under the Policy. It is a description encompassing the six chargeable offenses listed below it.

- intentionally for a sexual purpose
- without the consent of the Complainant, including instances where the Complainant is incapable of giving consent
  - because of their age or
  - because of their temporary or permanent mental incapacity or physical incapacity.

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

f. **Statutory Rape**:
- Nonforcible sexual intercourse with a person
- who is under the statutory age of consent in Michigan.

4) **Dating Violence:**
- Violence committed by a Respondent,
- who is in or has been in a social relationship of a romantic or intimate nature with the Complainant; **and**
- where the existence of such a relationship shall be determined based on a consideration of the following factors:
  - length of the relationship
  - type of relationship
    - frequency of the interaction between the Parties involved in the relationship.

5) Domestic Violence:
- Felony or misdemeanor crimes committed by a person who:
  - is a current or former spouse or intimate partner of the Complainant under the family or domestic violence laws of Michigan or a person similarly situated to a spouse of the Complainant;
  - is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner;
  - shares a child in common with the Complainant; **or**
  - commits acts against a youth or adult Complainant who is protected from those acts under the family or domestic violence laws of Michigan.

6) Stalking:
- engaging in a course of conduct on the basis of sex, that is,
- directed at a specific person that would cause a reasonable person to:
  - fear for the person's safety, or

- the safety of others; or
- suffer substantial emotional distress.

Sanction Ranges

The range of sanctions for the offenses detailed in this policy is warning through dismissal or termination. Sanctions can be assigned outside this range based on aggravating or mitigating circumstances, or the cumulative conduct record of the Respondent.

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Sexual Misconduct

7) **Sexual Exploitation:**[2]
   - an individual taking non-consensual or abusive sexual advantage of another, that does not constitute Sex-based Harassment as defined above.
   - for their own benefit or for the benefit of anyone other than the person being exploited.

   Examples of Sexual Exploitation include, but are not limited to:
   - Sexual voyeurism (such as observing or allowing others to observe a person undressing or using the bathroom or engaging in sexual acts, without the consent of the person being observed)
   - Invasion of sexual privacy (e.g., doxxing)
   - Knowingly making an unwelcome disclosure of (or threatening to disclose) an individual's sexual orientation, gender identity, or gender expression
   - Taking pictures, video, or audio recording of another in a sexual act, or in any other sexually related activity when there is a reasonable expectation of privacy during the activity, without the consent of all involved in the activity; including the making or posting of non-consensual pornography
   - Prostituting another person
   - Engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or a sexually transmitted disease (STD) or infection (STI), without informing the other person of the virus, disease, or infection
   - Causing or attempting to cause the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give consent to sexual activity, or for the purpose of making that person vulnerable to non-consensual sexual activity
   - Misappropriation of another person's identity on apps, websites, or other venues designed for dating or sexual connections (e.g., spoofing)

[2] This offense is not classified under Title IX as "Sex-based harassment," but it is included here in this Policy as a tool to address a wider range of behaviors.

- Forcing a person to take an action against that person's will by threatening to show, post, or share information, video, audio, or an image that depicts the person's nudity or sexual activity
- Knowingly soliciting a minor for sexual activity
- Engaging in sex trafficking
- Knowingly creating, possessing, or disseminating child sexual abuse images or recordings
- Creating or disseminating synthetic media, including images, videos, or audio representations of individuals doing or saying sexually-related things that never happened, or placing identifiable real people in fictitious pornographic or nude situations without their consent (i.e., Deepfakes)
- Creating or disseminating images or videos of child sexual abuse material

Other Prohibited Conduct

1) **Retaliation:**
   - Adverse action, including intimidation, threats, coercion, or discrimination,
   - against any person,
   - by the University, a student, employee, or a person authorized by the University to provide aid, benefit, or service under the University's education program or activity,
   - for the purpose of interfering with any right or privilege secured by law or Policy, or
   - because the person has engaged in protected activity, including reporting information, making a Complaint, testifying, assisting, or participating or refusing to participate in any manner in an investigation or Resolution Process under the Nondiscrimination Procedures, including an Alternative Resolution process, or in any other appropriate steps taken by University of Detroit Mercy to promptly and effectively end any discrimination in its education program or activity, prevent its recurrence, and remedy its effects.

     The exercise of rights protected under the First Amendment does not constitute retaliation. It is also not retaliation for the University to pursue Policy violations against those who make materially false statements in bad faith in the course of a resolution under the Nondiscrimination Policy.

2) **Unauthorized Disclosure:**
   - Distributing or otherwise publicizing materials created or produced during an investigation or Resolution Process except as required by law or as expressly permitted by University of Detroit Mercy; or
   - publicly disclosing a party's personally identifiable information without authorization or consent.

3) **Failure to Comply/Process Interference**
   - Intentional failure to comply with the reasonable directives of the Director in the performance of their official duties, including with the terms of a no contact order
   - Intentional failure to comply with emergency removal or interim suspension terms
   - Intentional failure to comply with sanctions
   - Intentional failure to adhere to the terms of an agreement achieved through informal resolution
   - Intentional failure to comply with mandated reporting duties as defined in this Policy
   - Intentional interference with the resolution process, including but not limited to:
     - Destruction of or concealing of evidence
     - Actual or attempted solicitation of knowingly false testimony or providing false testimony or evidence
     - Intimidating or bribing a witness or party

Sanctions for the above-listed Offenses range from warning through dismissal or termination.

Consent, Force, and Incapacitation

As used in this Policy, the following definitions and understandings apply:

1) Consent

Consent is defined as:
- knowing, and
- voluntary, and
- clear permission
- by word or action
- to engage in sexual activity.

2) Force

Force is the use of physical violence and/or physical imposition to gain sexual access. Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Force is conduct that, if sufficiently severe, can negate consent.

Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent. Coercion is unreasonable pressure for sexual activity.

3) Incapacitation

Incapacitation is a state where a person is incapable of giving consent. An incapacitated person cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the "who, what, when, where, why, and how" of their sexual interaction). A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious for any reason, including because of alcohol or other drug consumption.

This Policy also covers a person whose incapacity results from a temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the consumption of incapacitating substances.

Consensual Relationships

A. **In General:** There are special risks in any sexual or romantic relationship between individuals in inherently unequal positions of power. In the University context, such positions include but are not limited to teacher and student, supervisor and employee, tenured faculty and pre-tenure faculty, mentor and trainee, teaching assistant and student, coach and athlete, preceptor and student, staff and student, and the individuals who supervise the day-to-day student living environment and student residents. These relationships may, moreover, be less consensual than the individual whose position confers power believes. The relationship is likely to be perceived in different ways by each of the parties to it, especially in retrospect. The asymmetry of the relationship can lead to a potentially exploitative relationship. Where such a relationship exists, the University will in general be unsympathetic to a defense based upon consent when the facts establish that a power differential based on role existed within the relationship.

B. **With Students.** Romantic and/or sexual relationships between faculty and student, even mutually consenting ones, are a basic violation of professional ethics and responsibility when the faculty member has any responsibility for the student's academic performance or professional development. For the foregoing reasons, all romantic and/or sexual relationships between faculty and students in the instructional context are prohibited. No faculty member shall have a romantic and/or sexual relationship with a student who is enrolled in a course being taught by the faculty member or whose academic work is being supervised, directly or indirectly, by the faculty member. Romantic and/or sexual relationships between faculty and students that occur outside of the instructional or supervisory context may also lead to difficulties. The University reserves the right to impose any level of sanction ranging from a warning up to and including suspension or expulsion/termination, for any offense under this portion of the Nondiscrimination Policy.

Standard of Proof

University of Detroit Mercy uses the preponderance of the evidence standard of proof when determining whether a Policy violation occurred. This means that the University will decide

whether it is more likely than not, based upon the available information at the time of the decision, that the Respondent is responsible for the alleged Policy violation(s).

Notice of Discrimination, Harassment, or Retaliation

A Report provides notice to University of Detroit Mercy of an allegation or concern about discrimination, harassment, or retaliation and provides an opportunity for the Director to provide information, resources, and supportive measures. A Complaint provides notice to the University that the Complainant would like to initiate an investigation or other appropriate resolution procedures. A Complainant or individual may initially make a Report and may decide at a later time to make a Complaint. Reports or Complaints of discrimination, harassment, and/or retaliation may be made using any of the following options:

1) File a Complaint with, or give Notice directly to, the Director or to any member of the Nondiscrimination Team. Such Notice may be made at any time by using the telephone number, email address, or by mail to the office of the Director or any other Nondiscrimination Team member listed in this Policy.

2) Submit online Notice using this reporting form. Anonymous Notice is accepted, but the Notice may give rise to a need to try to determine the Parties' identities. Anonymous Notice typically limits the Recipient's ability to investigate, respond, and provide remedies.

Reporting carries no obligation to initiate a Complaint, and in most situations, University of Detroit Mercy is able to respect a Complainant's request to not initiate a resolution process. However, there may be circumstances, such as pattern behavior, allegations of severe misconduct, or a compelling threat to health and/or safety, where the University may need to initiate a resolution process. If a Complainant does not wish to file a Complaint, the University will maintain the privacy of information to the extent possible.

Mandated Reporting and Confidential Employees

All University of Detroit Mercy faculty and employees, other than those deemed Confidential Employees, are Mandated Reporters and are expected to promptly report all known details of actual or suspected sex discrimination, sex-based harassment, and/or retaliation to appropriate officials immediately, although there are some limited exceptions. Supportive measures may be offered as the result of such disclosures without formal University action.

The following sections describe the University of Detroit Mercy reporting options for a Complainant or third party (including parents/guardians when appropriate):

Confidential Employees

To enable Complainants to access support and resources without filing a Complaint, the University has designated specific employees as Confidential Resources. Those

designated by the University as Confidential Resources are not required to report actual or suspected discrimination, harassment, or retaliation in a way that identifies the Parties. They will, however, provide the Complainant with the Title IX Coordinator's contact information and offer options and resources without any obligation to inform an outside agency or University official unless a Complainant has requested the information be shared.

There are three categories of Confidential Employees: 1) Those with confidentiality bestowed by law or professional ethics, such as lawyers, medical professionals, clergy, and counselors; 2) Those whom University of Detroit Mercy has specifically designated as confidential for purposes of providing support and resources to the Complainant; and 3) Those conducting human subjects research as part of a study approved by the University's Institutional Review Board (IRB). For those in category 1), above, to be able to respect confidentiality, they must be in a confidential relationship with the person reporting, such that they are within the scope of their licensure, professional ethics, or confidential role at the time of receiving the Notice. These individuals will maintain confidentiality except in extreme cases of immediacy of threat or danger or when required to disclose by law or court order.

If a Complainant would like the details of an incident to be kept confidential, the Complainant may speak with the following Confidential Employees:

- Wellness Center Staff
- Director of Student Health and Wellness Services, School of Dentistry
- Members of the Society of Jesus and Religious Sisters of Mercy working in their clerical capacity

Failure of a Mandated Reporter, as described above in this section, to report an incident of discrimination, harassment, or retaliation of which they become aware is a violation of University of Detroit Mercy Policy and can be subject to disciplinary action for failure to comply/failure to report. This also includes situations when a harasser is a Mandated Reporter. Such individuals are obligated to report their own misconduct, and failure to do so is a chargeable offense under this Policy.

A Mandated Reporter who is themselves a target of harassment or other misconduct under this Policy is not required to report their own experience, though they are, of course, encouraged to do so.

In addition, Complainants may speak with individuals unaffiliated with University of Detroit Mercy without concern that Policy will require them to disclose information to the institution without permission:

- Licensed professional counselors and other medical providers
- Local rape crisis counselors
- Domestic violence resources

- Local or state assistance agencies
- Clergy/Chaplains
- Attorneys

Disability-based Grievances and Complaints

Grievances related to provision of disability accommodations are addressed using the procedures listed on the Student Accessibility Services website. However, allegations of discrimination on the basis of an actual or perceived disability will be resolved under the Resolution Process defined in this policy.

Time Limits on Reporting

There is no time limitation on providing Reports or Complaints to the Director. However, if the Respondent is no longer subject to the University's jurisdiction and/or significant time has passed, the ability to investigate, respond, and/or provide remedies may be more limited or impossible.

Acting on Reports or Complaints significantly impacted by the passage of time (including, but not limited to, the rescission or revision of Policy) is at the Director's discretion; they may document allegations for future reference, offer supportive measures and/or remedies, and/or engage in informal or formal action, as appropriate.

False Allegations and Evidence

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

Additionally, witnesses and Parties who knowingly provide false evidence, tamper with or destroy evidence, or deliberately mislead an official conducting an investigation or resolution process can be subject to discipline under appropriate University policies.

Confidentiality/Privacy

University of Detroit Mercy makes every effort to preserve the Parties' privacy. The University will not share the identity of any individual who has made a Complaint of harassment, discrimination, or retaliation; any Complainant; any individual who has been reported to be the perpetrator of discrimination, harassment, or retaliation; any Respondent; or any witness, except as permitted by, or to fulfill the purposes, of applicable laws and regulations (e.g., Title IX), Family Educational Rights and Privacy Act (FERPA) and its implementing regulations, or as required by

law; including any investigation, or resolution proceeding arising under these policies and procedures.[3,4]

Unauthorized Disclosure of Information

Parties and Advisors are prohibited from unauthorized disclosure of information obtained by the University through the Resolution Process, to the extent that information is the work product of the University of Detroit Mercy (meaning it has been produced, compiled, or written by the University for purposes of its investigation and resolution of a Complaint). It is also a violation of University Policy to publicly disclose work product or a party's personally identifiable information without authorization or consent. Violation of this Policy is subject to significant sanctions.

Emergency Removal/Interim Actions/Leaves

The University can act to remove a student Respondent accused of Sex Discrimination or Sex-based Harassment from its education program or activities, partially or entirely, on an emergency basis when an individualized safety and risk analysis has determined that an imminent threat to the physical health or safety of any student or other individual justifies removal. This risk analysis is performed by the Title IX Coordinator and may be done in conjunction with other campus authorities using standard objective violence risk assessment procedures. Employees are subject to existing procedures for interim actions and leaves.

Federal Timely Warning Obligations

University of Detroit Mercy must issue timely warnings for reported incidents that pose a serious or continuing threat of bodily harm or danger to members of the University community.

The University will ensure that a Complainant's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger.

Amnesty

The University community encourages the reporting of misconduct and crimes by Complainants and witnesses. Sometimes, Complainants or witnesses are hesitant to give Notice to University officials or participate in resolution processes because they fear that they themselves may be in violation of certain policies, such as underage drinking or use of illicit drugs at the time of the incident. Respondents may hesitate to be forthcoming during the process for the same reasons.

[3] 20 U.S.C. 1232g
[4] 34 C.F.R. § 99

It is in the best interests of the University community that Complainants choose to give Notice of misconduct to University of Detroit Mercy officials, that witnesses come forward to share what they know, and that all Parties be forthcoming during the process.

To encourage reporting and participation in the process, University of Detroit Mercy maintains a Policy of offering Parties and witnesses amnesty from minor policy violations, such as underage alcohol consumption or the use of illicit drugs, related to the incident. Granting amnesty is a discretionary decision made by the University and does not apply to more serious allegations.

Preservation of Evidence

The preservation of evidence is critical to potential criminal prosecution and to obtaining restraining/protective orders, and it is particularly time sensitive. University of Detroit Mercy will inform the Complainant, if relevant, of the importance of preserving evidence by taking actions such as the following:

Sexual Assault

- Seek forensic medical assistance at the nearest hospital, ideally within 120 hours of the incident (sooner is better).
- Avoid urinating, showering, bathing, washing hands or face, or douching, if possible, but evidence may still be collected even if you do.
- If oral sexual contact took place, refrain from smoking, eating, drinking, or brushing teeth.
- If clothes are changed, place soiled clothes in a paper bag or a secure evidence container
- Seeking medical treatment can be essential, even if it is not for the purposes of collecting forensic evidence.

Stalking/Dating Violence/Domestic Violence/Sex-Based Harassment

- Evidence in the form of text and voice messages will be lost in most cases if the Complainant changes their phone number.
    - Make a secondary recording of any voice messages and/or save the audio files to a cloud server.
    - Take screenshots and/or a video recording of any text messages or other electronic messages.
- Save copies of email and social media correspondence, including notifications related to account access alerts.
- Take timestamped photographs of any physical evidence, including notes, gifts, etc., in place when possible.
- Save copies of any messages, including those showing any request for no further contact.
- Obtain copies of call logs showing the specific phone number being used rather than a saved contact name if possible.

Federal Statistical Reporting Obligations

Certain institutional officials (those deemed Campus Security Authorities) have a duty to report the following for federal statistical reporting purposes (Clery Act):

1) All "primary crimes," which include criminal homicide, sexual assault, robbery, aggravated assault, burglary, motor vehicle theft, and arson
2) Hate crimes, which include any bias-motivated primary crime as well as any bias-motivated larceny or theft, simple assault, intimidation, or destruction/damage/vandalism of property
3) Violence Against Women Act (VAWA-based crimes), which include sexual assault, domestic violence, dating violence, and stalking
4) Arrests and referrals for disciplinary action for weapons law violations, liquor law violations, and drug law violations

All personally identifiable information is kept private, but statistical information regarding the type of incident and its general location (on- or off-campus or in the surrounding area, but no addresses are given) must be shared with the Department of Public Safety for publication in the Annual Security Report and daily campus crime log.

Independence and Conflicts of Interest

The Director acts with independence and authority, free from bias and conflicts of interest. The Director oversees all resolutions under this Policy and these procedures. Individuals involved in the resolution process are vetted and trained to ensure they are not biased for or against any party in a specific Complaint, or for or against Complainants and/or Respondents, generally.

To raise any concern involving bias, conflict of interest, misconduct, or discrimination by the Director, contact the University of Detroit Mercy President or Provost and Vice President for Academic Affairs. Concerns of bias, misconduct, discrimination, or a potential conflict of interest by any other member of the resolution process should be raised with the Director.

Revision of this Policy

This Policy succeeds previous policies addressing discrimination, harassment, sexual misconduct, and/or retaliation, though previous policies and procedures remain in force for incidents occurring before August 1, 2024. The Director reviews and updates these policies and procedures regularly. University of Detroit Mercy reserves the right to make changes to this document as necessary, and once those changes are posted online, they are in effect.

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 laws, regulations, or court holdings.

This document does not create legally enforceable protections beyond the protections of the background state and federal laws that frame such policies and codes, generally.

This Policy is effective August 1, 2024.

RESOLUTION PROCESS AND PROCEDURES FOR ALLEGED VIOLATIONS OF NONDISCRIMINATION POLICY

Overview

University of Detroit Mercy will act on any Notice, Complaint, or Knowledge of a potential violation of the Nondiscrimination Policy ("the Policy") that is received by the Director or any other member of the Nondiscrimination Team by applying the Resolution Process below.

The procedures below apply to all allegations of discrimination on the basis of an actual or perceived protected characteristic, harassment, retaliation, or Other Prohibited Conduct as involving students, employees, or third parties.

Notice/Complaint

Upon receipt of Notice, a Complaint, or Knowledge of an alleged Policy violation, the Director or a designee will initiate a prompt initial evaluation to determine the University's next steps. The Director or designee will contact the Complainant to offer supportive measures, provide information regarding resolution options, and determine how they wish to proceed.

Collateral Misconduct

Collateral misconduct is defined to include potential violations of other University of Detroit Mercy policies not incorporated into the Nondiscrimination Policy that occur in conjunction with alleged violations of the Policy, or that arise through the course of the investigation, for which it makes sense to provide one resolution for all charges. Thus, the collateral allegations may be charged along with potential violations of the Policy, to be resolved jointly under these Procedures. In such circumstances, the Director may consult with University officials who typically oversee such conduct to solicit their input as needed on what charges should be filed, but the exercise of collateral charges under these procedures is within the discretion of Director. All other allegations of misconduct unrelated to incidents covered by the Policy will typically be addressed separately through procedures described in the student and employee handbooks.

Initial Evaluation

The Director conducts an initial evaluation typically within ten (10) business days of receiving Notice, Complaint, or Knowledge of alleged misconduct. The initial evaluation typically includes an assessment of whether the reported conduct may reasonably constitute a violation of the policy, an assessment of jurisdiction, and offering and coordinating supportive measures for the Complainant and the Respondent, as applicable.

Dismissal

University of Detroit Mercy may dismiss a Complaint if, at any time during the investigation or Resolution Process, one or more of the following grounds are met:

1) The University is unable to identify the Respondent after taking reasonable steps to do so
2) The University no longer enrolls or employs the Respondent
3) A Complainant voluntarily withdraws any or all of the allegations in the Complaint, and the Director declines to initiate a Complaint
4) The University determines the conduct alleged in the Complaint would not constitute a Policy violation, if proven

Upon any dismissal, University of Detroit Mercy will promptly send the Complainant written notification of the dismissal and the rationale for doing so. If the dismissal occurs after the Respondent has been made aware of the allegations, the University will also notify the Respondent of the dismissal.

Appeal of Dismissal

The Complainant may appeal a dismissal of their Complaint. The Respondent may also appeal the dismissal of the Complaint if dismissal occurs after the Respondent has been made aware of the allegations. All dismissal appeal requests must be filed within three (3) business days of the notification of the dismissal.

The grounds for dismissal appeals are limited to:

1) Procedural irregularity that would change the outcome;
2) New evidence that would change the outcome and that was not reasonably available when the dismissal was decided;
3) The Director, Investigator, or Decision-maker had a conflict of interest or bias for or against complainants or respondents generally or the individual Complainant or Respondent that would change the outcome.
4) The dismissal was erroneously granted or denied

Emergency Removal or Interim Suspension of a Student

University of Detroit Mercy may emergency remove a student accused of Sex Discrimination or Sex-based Harassment upon receipt of Notice, Knowledge, a Complaint, or at any time during the resolution process. Prior to an emergency removal, University will conduct an individualized risk assessment and may remove the student if that assessment determines that an imminent and serious threat to the health or safety of a Complainant or any students, employees, or other persons arising from the allegations of sex discrimination justifies such action. Students accused

of other forms of discrimination not on the basis of sex are subject to interim suspension, which can be imposed for safety reasons.

When an emergency removal or interim suspension is imposed, wholly or partially, the affected student will be notified of the action, which will include a written rationale, and the option to challenge the emergency removal or interim suspension within two (2) business days of the notification. Upon receipt of a challenge, the Director or a designee will meet with the student as soon as reasonably possible thereafter to allow them to show cause why the removal/action should not be implemented or should be modified.

Placing an Employee on Leave

When the Respondent is an employee, existing Human Resources processes for interim action are typically applicable instead of the above emergency removal process.

Counter-Complaints

University of Detroit Mercy is obligated to ensure that the resolution process is not abused for retaliatory purposes. Although the University permits the filing of Counter-Complaints, the Director will use an initial evaluation, described above, to assess whether the allegations in the Counter-Complaint are made in good faith. When Counter-Complaints are not made in good faith, they will not be permitted. They will be considered potentially retaliatory and may constitute a violation of the Policy.

Counter-Complaints determined to have been reported in good faith will be processed using the Resolution Process below. At the Director's discretion, investigation of such claims may take place concurrently or after resolution of the underlying initial Complaint.

Advisors in the Resolution Process

The Parties may each have an Advisor present with them for all meetings and interviews within the Resolution Process, including intake. The Parties may select whomever they wish to serve as their Advisor as long as the Advisor is eligible and available. Employees who are part of a collective bargaining agreement with University of Detroit Mercy may have a union representative as an Advisor[5]. The Director will offer to assign a trained Advisor to any party if the party chooses.

Advisors are expected to maintain the confidentiality of the records the University shares with them. Advisors may not disclose any University work product or evidence the University obtained solely through the Resolution Process for any purpose not explicitly authorized by University of Detroit Mercy.

[5] The Advisor role of a UDMPU representative is primarily limited to ensuring that a UDMPU member's rights as detailed in the UDM & UDMPU Collective Bargaining Agreement are maintained.

Resolution Option Overview

This Resolution Process, consisting of Alternative Resolution or Administrative Resolution, is the University's chosen approach to addressing all forms of discrimination on the basis of protected characteristics, harassment, and retaliation. Parties may also choose only to receive reasonable supportive measures that are designed to restore or preserve the Complainant's access to the University's education program and activity. The process considers the Parties' preferences but is ultimately determined at the Director's discretion.

Resolution proceedings are confidential. All individuals present at any time during the Resolution Process are expected to maintain the confidentiality of the proceedings in accordance with University of Detroit Mercy Policy.

Alternative Resolution

To initiate Alternative Resolution, a Complainant or Respondent may make such a request to the Director at any time prior to a final determination, or the Director may offer the option to the Parties. University of Detroit Mercy will obtain voluntary, written confirmation that all Parties wish to resolve the matter through Alternative Resolution before proceeding. Any party participating in Alternative Resolution can withdraw from the Alternative Process at any time and may initiate or resume the Administrative Resolution Process.

Alternative Resolution may involve agreement to pursue individual or community remedies, including educational programming or training; direct conversation or interaction with the Respondent(s); indirect action by the Director or other appropriate University officials; and other forms of resolution that can be tailored to the needs of the Parties.

The Director has the authority to determine whether Alternative Resolution is available or successful, to facilitate a resolution that is acceptable to all Parties, and/or to accept the Parties' proposed resolution. The Director maintains records of any resolution that is reached and will provide notification to the Parties of what information is maintained. Failure to abide by the resolution agreement may result in appropriate responsive/disciplinary actions. The results of Complaints resolved by Alternative Resolution are not appealable.

Administrative Resolution (see below)

Notice of Investigation and Allegations

Prior to an investigation, the Director will provide the Parties with a detailed written Notice of Investigation and Allegations (NOIA). Amendments and updates to the NOIA may be made as the

investigation progresses and more information becomes available regarding the addition or dismissal of various allegations.

The NOIA typically includes:

- A meaningful summary of all allegations
- The identity of the involved Parties (if known)
- The precise misconduct being alleged
- The date and location of the alleged incident(s) (if known)
- The specific policies/offenses implicated
- A description of, link to, or copy of the applicable procedures
- A statement that the Parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence
- A statement that the University of Detroit Mercy presumes the Respondent is not responsible for the reported misconduct unless and until the evidence supports a different determination
- A statement that retaliation is prohibited
- A statement that the Parties may have an Advisor of their choice who may accompany them through all steps of the Resolution Process
- Detail on how a party may request disability accommodations during the Resolution Process

Notification will be emailed to the Parties' University-issued email or designated accounts. Once sent, the notification will be presumptively delivered.

Resolution Timeline

University of Detroit Mercy will make a good faith effort to complete the Resolution Process within ninety to one hundred twenty (90-120) business days, including any appeals, which can be extended as necessary for appropriate cause by the Director. The Parties will receive regular updates on the progress of the Resolution Process, as well as notification and a rationale for any extensions or delays, and an estimate of how much additional time will be needed to complete the process.

If a party or witness chooses not to participate in the Resolution Process or becomes unresponsive, the University reserves the right to continue it without their participation to ensure a prompt resolution. Non-participatory or unresponsive Parties retain the rights outlined in this Policy and the opportunity to participate in the Resolution Process.

The University may undertake a short delay in its investigation (several days to a few weeks) if circumstances require. The University will promptly resume its Resolution Process as soon as feasible. The University will make a good faith effort to complete the Resolution Process as promptly as circumstances permit and will communicate regularly with the Parties to update

them on the progress and timing of the process. Interim and/or supportive measures will remain in place for the duration of the Resolution Process, including any extensions or delays.

Ensuring Impartiality

Any individual materially involved in the administration of the Resolution Process, including the Director, Investigator(s), and Decision-maker(s), may neither have nor demonstrate a conflict of interest or bias for a party generally, or for a specific Complainant or Respondent.

The Director will vet the assigned Investigator(s), Decision-maker(s), and Appeals officers for impartiality by ensuring there are no actual or apparent conflicts of interest or disqualifying biases. At any time during the Resolution Process, the Parties may raise a concern regarding bias or conflict of interest, and the Director will determine whether the concern is reasonable and supportable. If so, another individual will be assigned, and the impact of the bias or conflict, if any, will be remedied. If the source of the conflict of interest or bias is the Director, concerns should be raised with the Provost and Vice President for Academic Affairs.

Interview Recording

For allegations of sex-based harassment involving a student Complainant or Respondent using the Administrative Resolution Process, the Investigator(s) will record all interviews. The Parties may review copies of their own interviews, upon request. No unauthorized audio or video recording of any kind is permitted during investigation meetings. The recording and/or transcript of those meetings will be provided to the Parties for their review, after which the Parties may pose additional questions to each other. Those subsequent meetings or interviews are also recorded and/or transcribed and shared with the Parties.

Evidentiary Considerations

The Investigator(s) and the Decision-maker(s) will only consider evidence that is deemed relevant and not otherwise impermissible. Relevant evidence is that which may aid in determining whether the allegation occurred, or whether the behavior constitutes a violation of Policy. The following types of evidence, and questions seeking that evidence, are impermissible regardless of whether they are relevant:

- Evidence that is protected under a privilege recognized by federal or state law or evidence provided to a confidential employee, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality;

- A Party's or witness's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the party or witness, unless University of Detroit Mercy obtains that party's or witness's voluntary, written consent for use in its grievance procedures; and

• Evidence that relates to the complainant's sexual interests or prior sexual conduct, unless evidence about the complainant's prior sexual conduct is offered to prove that someone other than the respondent committed the alleged conduct or is evidence about specific incidents of the complainant's prior sexual conduct with the respondent that is offered to prove consent to the alleged sex-based harassment. The fact of prior consensual sexual conduct between the complainant and respondent does not by itself demonstrate or imply the complainant's consent to the alleged sex-based harassment or preclude determination that sex-based harassment occurred.

Respondent Admits Responsibility

At any point in the proceedings, if a Respondent elects to admit to the charged violations and waive further process, the Decision-maker is authorized to accept that admission, adopt it as their finding/final determination, and administer sanctions. This would also waive all rights to appeal for the Respondent. If the Respondent rejects the finding/final determination/sanctions, or does not admit to all conduct charged, the Resolution Process continues to its conclusion.

Investigation

All investigations are adequate, thorough, reliable, impartial, prompt, and fair. They involve interviews with all relevant Parties and witnesses, obtaining relevant evidence, and identifying sources of expert information, as necessary.

The University may consolidate Complaints against more than one Respondent, or by more than one Complainant against one or more Respondents, when the allegations arise from the same facts or circumstances or implicate a pattern, collusion, and/or other shared or similar actions.

Administrative Resolution Process

The Administrative Resolution Process is used for Complaints of discrimination on the basis of protected characteristics, harassment, retaliation, and Other Prohibited Behaviors (as defined in Policy) or when Alternative Resolution is either not elected or is unsuccessful.

The Administrative Resolution Process relies on an investigation and all relevant evidence to make a finding and determine sanctions, if applicable. The University makes a good faith effort to complete the Administrative Resolution Process within a reasonably prompt timeframe, typically thirty to sixty (30-60) business days from the conclusion of the investigation. The Parties will be updated regularly and notified of any significant delays or deviations from the stated timeline.

Administrative Resolution Process for Allegations of Sex-Based Harassment With Student Complainant or Respondent

When the Administrative Resolution Process is used to resolve Complaints of sex-based harassment involving a student Complainant or student Respondent, the investigation report and all relevant evidence will be provided to a Decision-maker who is not the Investigator who will review the report, question parties and witnesses in individual meetings, and make a finding and determine sanctions, if applicable.

After reviewing the investigation report, the Decision-maker will question Parties and witnesses to adequately assess a Party's or witness's credibility to the extent credibility is both in dispute and relevant to evaluating one or more allegations of sex-based harassment. The process for proposing and asking relevant and not otherwise impermissible questions and follow-up questions of Parties and witnesses, including questions challenging credibility, will:

- Allow the Decision-maker to ask such questions during individual meetings with a Party or witness, directly or through the Investigator;

- Allow each Party to propose such questions that the Party wants asked of any Party or witness and have those questions asked by the Decision-maker during one or more individual meetings, including follow-up meetings, with a Party or witness, subject to the procedures for evaluating and limiting questions discussed below; and

- Provide each Party with an audio or audiovisual recording or transcript with enough time for the Party to have a reasonable opportunity to propose follow-up questions.

The Decision-maker will determine whether a proposed question is relevant and not otherwise impermissible before the question is posed and will explain any decision to exclude a question as not relevant or otherwise impermissible. Questions that are unclear or harassing of the Party or witness being questioned will not be permitted.

The Decision-maker may choose to place less or no weight upon statements by a Party or witness who refuses to respond to questions deemed relevant and not impermissible. The Decision-maker will not draw an inference about whether sex-based harassment occurred based solely on a Party's or witness's refusal to respond to such questions.

At their discretion, the Decision-maker may also meet with any Party or witness to ask additional relevant questions that will aid the Decision-maker in making their determination.
The Decision-maker's determination process typically takes approximately ten (10) business days, but this timeframe can vary based on a number of factors.

Sanctions

Factors considered when determining sanctions and responsive actions may include, but are not limited to:

- The nature, severity of, and circumstances surrounding the violation(s)

- The Respondent's disciplinary history
- The need for sanctions/responsive actions to bring an end to the discrimination, harassment, and/or retaliation
- The need for sanctions/responsive actions to prevent the future recurrence of discrimination, harassment, and/or retaliation
- The need to remedy the effects of the discrimination, harassment, and/or retaliation on the Complainant and the community
- The impact on the Parties
- Any other information deemed relevant by the Decision-maker(s)

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

Notice of Outcome

Within thirty (30) business days of the conclusion of the Resolution Process, the Director provides the Parties with a written outcome notification. The outcome notification will specify the finding for each alleged Policy violation, any applicable sanctions that the University is permitted to share pursuant to state or federal law, and a rationale supporting the findings.

The notification will also detail the Parties' equal rights to appeal, the grounds for appeal, the steps to take to request an appeal, and when the determination is considered final if neither party appeals.

The Director will provide the Parties with the outcome notification simultaneously, or without significant time delay between notifications. The written outcome notification will be emailed to the Parties' University-issued email account. Once sent, the outcome notification is presumptively delivered.

Withdrawal or Resignation Before Complaint Resolution

Students

Should a student Respondent decide not to participate in the Resolution Process, the process proceeds absent their participation to a reasonable resolution. If a student Respondent withdraws from the University, the Resolution Process may continue, or the Director may exercise their discretion to dismiss the Complaint. If the Complaint is dismissed, University of Detroit Mercy will still provide reasonable supportive or remedial measures as deemed necessary to address safety and/or remedy any ongoing effects of the alleged harassment, discrimination, and/or retaliation.

Regardless of whether the Complaint is dismissed or pursued to completion of the Resolution Process, University of Detroit Mercy 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 discrimination, harassment, and/or retaliation.

When a student withdraws or leaves while the process is pending, the student may not return to the University in any capacity until the Complaint is resolved and any sanctions imposed are satisfied. If the student indicates they will not return, the Director has discretion to dismiss the Complaint. The Registrar and Office of Admissions will be notified, accordingly.

If the student Respondent takes a leave for a specified period of time (e.g., one semester or term), the Resolution Process may continue remotely. If found in violation, that student is not permitted to return to the University unless and until all sanctions, if any, have been satisfied.

Employees

Should an employee Respondent decide not to participate in the Resolution Process, the process proceeds absent their participation to a reasonable resolution. If an employee Respondent withdraws from the University with unresolved allegations pending, the Resolution Process may continue, or Director may exercise their discretion to dismiss the Complaint. If the Complaint is dismissed, the University may still provide reasonable supportive or remedial measures as deemed necessary to address safety and/or remedy any ongoing effects of the alleged discrimination, harassment, and/or retaliation.

When an employee resigns and the Complaint is dismissed, the employee may not return to the University in any capacity and a note will be placed in the employee's file that they resigned with allegations pending and are not eligible for academic admission or rehire with the University. The records retained by the Director will reflect that status.

Appeal of the Determination

The Director will designate a trained Appeal Decision-maker to hear the appeal. No Appeal Decision-maker(s) will have been previously involved in the Resolution Process for the Complaint, including in any supportive measure or dismissal appeal that may have been heard earlier in the process.

Appeal Grounds

Appeals are limited to the following grounds:

1) A procedural irregularity that would change the outcome

2) New evidence that would change the outcome and that was not reasonably available at the time the determination regarding responsibility or dismissal was made
3) The Director, 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 would change the outcome
4) The final determination is substantially contrary to the weight of the evidence in the record

Request for Appeal

Any party may submit a written request for appeal ("Request for Appeal") to the Director within five (5) business days of the delivery of the Notice of Outcome.

The Request for Appeal will be forwarded to the Appeal Decision-maker for consideration to determine if the request meets the grounds for appeal. This is not a review of the merits of the appeal, but solely a determination as to whether the request could reasonably be construed to meet the grounds and is timely filed.

Appeal Determination Process

In most cases, appeals are confined to a review of the written documentation or record of the original determination and pertinent documentation regarding the specific appeal grounds. The Appeals Decision-maker will deliberate as soon as is practicable and discuss the merits of the appeal.

Appeal decisions are to be deferential to the original determination, making changes to the finding only when there is clear error and to the sanction(s)/responsive action(s) only if there is a compelling justification to do so. All decisions are made using the preponderance of the evidence standard.

Appeal Outcome

An appeal may be granted or denied. A Notice of Appeal Outcome letter will be sent to all Parties simultaneously, or without significant time delay between notifications. Written notification will be emailed to the Parties' University-issued email or otherwise approved account. Once sent, the Appeal Outcome will be presumptively delivered. Once an appeal is decided, the outcome is final and constitutes the Final Determination; further appeals are not permitted.

Sanction Status During the Appeal

Any sanctions imposed as a result of the determination are stayed during the appeal process, and supportive measures may be maintained or reinstated until the appeal determination is made.

Long-Term Remedies/Other Actions

Following the conclusion of the Resolution Process, and in addition to any sanctions implemented or Informal Resolution terms, the Director may implement additional long-term remedies or actions with respect to the Parties and/or the University community that are intended to stop the discrimination, harassment, and/or retaliation, remedy the effects, and prevent recurrence.

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

- Referral to counseling and health services
- Referral to the Employee Assistance Program
- Course and registration adjustments, such as retroactive withdrawals
- Education to the individual and/or the community
- Permanent alteration of housing assignments
- Provision of campus safety escorts
- Climate surveys
- Policy modification and/or training
- Implementation of long-term contact limitations between the Parties
- Implementation of adjustments to academic deadlines, course schedules, etc.

At the discretion of the Director, certain long-term supportive measures may also be provided to the Parties even if no Policy violation is found.

When no Policy violation is found, the Director will address any remedies the University owes the Respondent to ensure no effective denial of educational access.

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

Failure to Comply with Sanctions, Responsive Actions, and/or Informal Resolution Terms

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

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

Recordkeeping

For a period of at least seven (7) years following the conclusion of the Resolution Process, University of Detroit Mercy will maintain records of:

1) Each discrimination, harassment, and retaliation resolution process, including determination regarding responsibility or appeal, and any audio or audiovisual recording or transcript required under federal regulation
2) Any disciplinary sanctions imposed on the Respondent
3) Any supportive measures provided to the Parties and any remedies provided to the Complainant or the community designed to restore or preserve equal access to the University's education program or activity
4) Any appeal and the result therefrom
5) Any Alternative Resolution and the result therefrom
6) All materials used to train all employees consistent with the requirements in the Title IX Regulations.

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

Accommodations and Support During the Resolution Process

Disability Accommodations

University of Detroit Mercy is committed to providing reasonable accommodations and support to qualified students, employees, or others with disabilities to ensure equal access to the University's Resolution Process.

Anyone needing such accommodations or support should contact the Director, who will work with disability support colleagues as appropriate to review the request and, in consultation with the person requesting the accommodation, determine which accommodations are appropriate and necessary for full process participation.

Revision of these Procedures

These procedures succeed any previous procedures addressing discrimination, harassment, and retaliation for incidents occurring on or after August 1, 2024. The Director will regularly review and update these procedures. The University reserves the right to make changes to this document as necessary, and once those changes are posted online, they are in effect.

If governing 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 governing laws or regulations or court holdings.

This document does not create legally enforceable protections beyond the protections of the background state and federal laws that frame such policies and codes, generally.

These procedures are effective August 1, 2024.

APPENDIX A: DEFINITIONS

The following definitions apply to the Nondiscrimination Policy and Procedures:

- ***Advisor.*** Any person chosen by a party, or appointed by the institution, who may accompany the party to all meetings related to the Resolution Process and advise the party on that process.

- ***Director.*** The person with primary responsibility for overseeing and enforcing the Nondiscrimination Policy and Procedures. As used in these policies and procedures, the "Director" also includes their designee(s).

- ***Alternative Resolution.*** A resolution agreed to by the Parties and approved by the Director that occurs prior to a Final Determination in the Resolution Process.

- ***Appeal Decision-maker.*** The person or panel who accepts or rejects a submitted appeal request, determines whether any of the grounds for appeal are met, and directs responsive action(s), accordingly.

- ***Complainant.*** A student or employee who is alleged to have been subjected to conduct that could constitute discrimination, harassment, or retaliation under the Policy; or a person other than a student or employee who is alleged to have been subjected to conduct that could constitute discrimination or harassment or under the Policy and who was participating or attempting to participate in the University's education program or activity at the time of the alleged discrimination, harassment or retaliation.

- ***Complaint.*** An oral or written request to University of Detroit Mercy that can objectively be understood as a request for the University to investigate and make a determination about the alleged Policy violation(s).

- ***Confidential Employee.***

    - An employee whose communications are privileged or confidential under federal or state law. The employee's confidential status, for purposes of this definition, is only with respect to information received while the employee is functioning within the scope of their duties to which privilege or confidentiality applies; or
    - An employee whom the University has designated as confidential under this Policy for the purpose of providing services to persons related to discrimination, harassment, or retaliation. If the employee also has a duty not associated with providing those services, the employee's confidential status only applies with respect to information received about discrimination, harassment, or retaliation in connection with providing those services; or
    - An employee who is conducting an Institutional Review Board-approved human-subjects research study designed to gather information about discrimination,

harassment, or retaliation. The employee's confidential status only applies with respect to information received while conducting the study.

- ***Day.*** A business day when the Recipient is in normal operation. All references in the Policy to days refer to business days unless specifically noted as calendar days.
- ***Decision-maker.*** The person or panel who hears evidence, determines relevance, and makes the Final Determination of whether Policy has been violated and/or assigns sanctions.
- ***Education Program or Activity.*** Locations, events, or circumstances where the University exercises substantial control over the context in which the discrimination, harassment, and/or retaliation occurs and also includes any building owned or controlled by a student organization that the University officially recognizes.
- ***Employee.*** A person employed by University of Detroit Mercy either full- or part-time, including student employees when acting within the scope of their employment.
- ***Final Determination*****.** A conclusion by the standard of proof that the alleged conduct did or did not violate Policy.
- ***Finding.*** A conclusion by the standard of proof that the conduct did or did not occur as alleged (as in a "finding of fact").
- ***Investigation Report.*** The Investigator's summary of all relevant evidence gathered during the investigation.
- ***Investigator.*** The person(s) authorized by University of Detroit Mercy to gather facts about an alleged violation of this Policy, assess relevance and credibility, synthesize the evidence, and compile this information into an Investigation Report.
- ***Knowledge.*** When University of Detroit Mercy receives Notice of conduct that reasonably may constitute harassment, discrimination, or retaliation in its Education Program or Activity.
- ***Mandated Reporter.*** A University of Detroit Mercy employee who is obligated by Policy to share Knowledge, Notice, and/or reports of sex discrimination, sex-based harassment, and/or retaliation with the Director.
- ***Nondiscrimination Team*****.** The Executive Director of Equal Opportunity, any deputy coordinators, and any member of the Resolution Process.
- ***Notice.*** When an employee, student, or third party informs the Director of the alleged occurrence of discriminatory, harassing, and/or retaliatory conduct.
- ***Parties.*** The Complainant(s) and Respondent(s), collectively.
- ***Pregnancy or Related Conditions.*** Pregnancy, childbirth, termination of pregnancy, or lactation, medical conditions related thereto, or recovery therefrom.

- ***Protected Characteristic*.** Any characteristic for which a person is afforded protection against discrimination and harassment by law or University Policy.
- ***Relevant Evidence.*** Evidence that may aid a Decision-maker in determining whether the alleged discrimination, harassment, or retaliation occurred, or in determining the credibility of the Parties or witnesses.
- ***Remedies.*** Typically, post-resolution actions directed to the Complainant and/or the community as mechanisms to address safety, prevent recurrence, and restore or preserve equal access to the University's Education Program and Activity.
- ***Resolution Process.*** The investigation and resolution of allegations of prohibited conduct under this Policy, including Alternative Resolution and Administrative Resolution.
- ***Respondent.*** A person who is alleged to have engaged in conduct that could constitute discrimination based on a protected characteristic, harassment, or retaliation for engaging in a protected activity under this Policy.
- ***Sanction.*** A consequence imposed on a Respondent who is found to have violated this Policy.
- ***Sex.*** Sex assigned at birth, sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.
- ***Student.*** Any person who has gained admission.
- ***Title IX Coordinator***. The official designated by University of Detroit Mercy to ensure ultimate oversight of compliance with Title IX and the University's Title IX program. References to the Coordinator throughout the Policy may also encompass a designee of the Coordinator for specific tasks.

APPENDIX B: NONDISCRIMINATION TEAM

The following individuals comprise University of Detroit Mercy's Nondiscrimination Team:

Human Resources

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