

Harding University Title IX Misconduct Policy

I. Introduction

Harding University does not unlawfully discriminate on the basis of any status or condition protected by applicable federal or state law. We respect the inherent worth of each member of the community and do not engage in any form of harassment.

II. Statement of Non-Discrimination

Harding University does not unlawfully discriminate on the basis of sex in its educational programs and activities, including employment and admission. Complaints of discrimination based on sex will be handled under this Title IX Misconduct Policy ("this Policy") or, if this Policy does not apply, under other University grievance procedures as described below under Title IX and Scope of the Policy.

III. Title IX and Scope of this Policy

The U.S. Department of Education's Office for Civil Rights enforces Title IX of the Education Amendments of 1972 (Title IX). Title IX states, among other things, "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance."

Because Harding receives federal funds, the University must abide by Title IX and applicable regulations, except to the extent it would be inconsistent with religious tenets of the University. (This policy uses the phrase "Title IX" to refer to the statute and regulations collectively.) Title IX defines sexual harassment and requires Harding to follow specific procedures when addressing allegations of sexual harassment. Sexual harassment for purposes of Title IX is defined in Appendix A.

Title IX requires the University to dismiss a formal complaint or parts of a formal complaint for Title IX purposes if:

- the alleged conduct does not meet Title IX's definition of sexual harassment;
- the alleged conduct did not occur in the University's education programs or activities;

- the complainant was not in the United States when the alleged conduct occurred; or
- the complainant, at the time of the complaint, is not participating in or attempting to participate in a Harding education program or activity.

A party may appeal the dismissal of a formal complaint or any allegations in a formal complaint following the same procedure used to appeal the hearing officer's letter of determination. That procedure is in Section XI.

Even if a formal complaint is dismissed for Title IX purposes, Harding may still take action under other University procedures.

Where a Harding employee is accused of other forms of serious misconduct in addition to sexual harassment, the University may take immediate action under other policies governing misconduct, thereby making this policy inapplicable (e.g., in cases where a faculty/staff member is immediately terminated). If the respondent is a student and an employee, the University Title IX Coordinator will determine which University policy should apply based upon the facts and circumstances (including, but not limited to, the context of the prohibited conduct, the roles of the parties at the time of the conduct, and the location of the incident).

If the other requirements for Title IX to apply are met, this Policy applies to the education programs and activities of Harding, to conduct that takes place on the campus or on property owned or controlled by Harding, or at University-sponsored events. Regardless of whether Title IX is applicable or which procedures are followed, Harding is committed to a fair, accurate, consistent, and prompt response to allegations of sexual misconduct.

IV. Title IX Coordinators

Title IX requires the University to authorize at least one employee to coordinate its efforts to comply with Title IX. Harding has designated two Title IX coordinators:

- The University Title IX Coordinator is responsible for the University's overall compliance with Title IX and coordinates the University's response to formal complaints by students, is the University's contact for student complainants, and is the contact for reports from third parties.

- The Title IX Coordinator for Employees coordinates the University's response to formal complaints by employees against other employees and assists with employee respondent cases.

Title IX Coordinators:

Kevin Davis

University Title IX Coordinator
Assistant Director of Public Safety
Harding University
915 E. Market Ave.
Kendall Hall, Office 113
Searcy, AR 72149
501-279-5000
kdavis@harding.edu

Amie Carter

Title IX Coordinator for Employees
Assistant Director of Human Resources
Harding University
915 E. Market Ave.
Ezell Building, Office 131
Searcy, AR 72149
501-279-4027
ascarter@harding.edu

V. Reporting Sexual Misconduct

The University encourages all individuals to report incidents of Title IX sexual misconduct or suspected Title IX sexual misconduct, whether they are complainants or witnesses. Claims made by a student should be filed with the Office of Student Life in Student Center 218 or with Public Safety in Kendall Hall. Claims made by a faculty or staff member should be filed with the Office of Human Resources in the Ezell Building, room 130. Reports may also be made by contacting the applicable Title IX Coordinator in person, by mail, by telephone, or by email, using the contact information listed for the Title IX Coordinators. Students or third parties making reports should contact

the University Title IX Coordinator; employees making reports should contact the Title IX Coordinator for Employees.

Note: If there is any immediate danger and you are on the main campus, call Public Safety at 501-279-5000 and/or 911 if safe to do so. If you are off-campus, call 911. If you are located at the Northwest Arkansas Professional Center, the Harding School of Theology, or one of Harding's international campuses, contact your program director or local law enforcement to obtain information regarding local counseling, medical and legal resources available to you.

Anonymous Reports

Any individual may make an anonymous report concerning sexual misconduct. An individual may report the incident without disclosing names, identifying the respondent, or requesting any action. Depending on the extent of information available about the incident or the individuals involved, the University's ability to respond to an anonymous report may be limited. The University may conduct an initial investigation to determine appropriate next steps.

Anonymous reports may be made on the anonymous tip hotline by calling voicemail at 501-305-8237 or by using the Public Safety Tips form:

<https://www.harding.edu/public-safety/tips>. Public Safety will receive these reports and share them with the Title IX Coordinator, who will determine appropriate steps.

Responsible Employees

With the exception of University employees designated as confidential resources (i.e. counselors in their professional role) all University employees, including faculty and staff, are required to report immediately any information they know about suspected sexual harassment to the appropriate Title IX coordinator. An employee may choose not to make a complaint or report in their own case.

Reporting Options Outside the University

Local Law Enforcement

Searcy Police Department

101 N. Gum Street

Searcy, AR 72143

501-268-3531 or 911 for emergency

For help in reporting the Sexual Misconduct to local law enforcement, call the Department of Public Safety 501-279-5000. It is important to understand that reporting Sexual Misconduct does not obligate the reporting party to press criminal charges.

White County Sheriff's Department

1600 E. Booth Rd.

Searcy, AR 72143

501-279-6279 Or 911 for emergency

Resources for Students and Employees Located Out of State or Abroad

Students or employees participating in a program located out of state or abroad should consult with the program director for confidential reporting options and available community resources.

VI. Initial Meeting with the Title IX Coordinator

When sexual harassment is reported, the University Title IX Coordinator meets with student complainants, and the Title IX Coordinator for Employees meets with employee complainants. The appropriate Title IX coordinator will discuss with the complainant the availability of supportive measures, consider the complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the process for filing a formal complaint, the procedures for a formal grievance process (including an investigation and hearing), and the complainant's and respondent's right to an advisor of their choice.

VII. Supportive Measures

Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent. Harding will maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the University's ability to provide the supportive measures. Supportive measures include but are not limited to options for, and available assistance in, changing academic, living, transportation, and working situations.

VIII. Formal Complaint of Sexual Harassment

A "formal complaint" is a document filed by a complainant or signed by one of the Title IX Coordinators alleging sexual harassment against a respondent and asking the University to investigate the allegation. The formal complaint must be submitted to one of the Title IX Coordinators in person, by mail, or email with a physical or digital signature or which otherwise indicates that the complainant is the person filing the formal complaint. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in a Harding education program or activity. The University Title IX Coordinator coordinates formal complaints by students, and the Title IX Coordinator for Employees coordinates formal complaints by employees.

Formal Grievance Process

When a formal complaint is filed, Harding notifies the parties (complainant and respondent) of the formal complaint and the procedures that will follow. Details of the allegation are listed by the Title IX Coordinator in a Title IX Formal Complaint Form sent to the parties along with the notification. A Title IX investigator will contact the parties to arrange initial interviews with each party (normally within two calendar days). This timeframe allows the parties sufficient time to prepare for the interview.

Harding will send to each party and the party's advisor, if any, evidence that is directly related to the allegations raised in the formal complaint and an initial investigation report so that each party can meaningfully respond to the evidence. Each party will then have until the end of the tenth calendar day after the evidence and initial investigation report are sent to submit a written response to the investigator. The investigator will not complete the final investigation report until more than ten days have passed from the date the evidence is sent to the parties and their advisors, if any.

The formal investigation process is normally concluded within 90 days from the receipt of the initial complaint of sexual harassment.

Once the investigation has concluded, the Title IX investigator will send to each party the final investigation report. The parties may then respond to the final investigation report in writing before the hearing. Each party will be notified of the time and date of the formal hearing, which will take place no sooner than 10 calendar days from the date the final investigation report is sent to the parties.

The hearing will be conducted in person or via video conference. The parties will be allowed to provide an opening statement, present evidence, call witnesses who have relevant information regarding the allegation, and conduct cross-examination of the parties and witnesses. Cross-examination will be conducted by each party's advisor and not by the parties personally¹.

After the hearing has concluded, the hearing officer will prepare a written letter of determination that:

- lists the allegations potentially constituting sexual harassment under Title IX;
- describes the procedural steps from the receipt of the formal complaint through the decision, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- makes findings of fact that support the decision;
- makes conclusions about the application of Harding's code of conduct to the facts;
- states the result as to each allegation and the rationale for the decision as to that allegation, including a determination:
 - about responsibility;
 - any disciplinary sanctions Harding imposes on the respondent; and
 - whether Harding will provide to the complainant remedies designed to restore or preserve equal access to Harding's educational program or activity; and
- explains the procedures and bases for a party to appeal.

Harding will send the letter of determination to all parties simultaneously.

Parties will be given a reasonable, equal opportunity to submit a written statement in support of, or challenging (appeal), the outcome of the hearing. Statements in support of or challenging the letter of determination will be reviewed by an appeal panel. Notice of appeal must be received by the applicable Title IX Coordinator within seven calendar days after the written letter of determination is sent to the parties. Upon receiving a timely notice of appeal, the applicable Title IX Coordinator will notify the other party(ies)

¹ Parties may choose not to submit to cross-examination at the live hearing. The Hearing Officer may still rely on any statement of that party or witness in reaching a determination regarding responsibility.

of the appeal. The other party(ies) then has seven calendar days from date the applicable Title IX Coordinator notifies that party to submit a written response to the notice of appeal.

Generally, the appellate process does not require the appeal panel to make personal contact with the involved parties or the hearing officer. The appeal panel may affirm, reverse, or modify the findings of fact, the ultimate determination, and/or the sanction. The appeal panel may also return the case to the hearing officer for further consideration. The appeal panel's decision will be final and effective immediately. A letter describing the result of the appeal and the rationale for the decision will be emailed simultaneously to each party's harding.edu account.

Presumption of Innocence

The respondent is presumed not responsible for the alleged conduct. A determination regarding responsibility is not made until the conclusion of the grievance process.

Choice of Advisor

The parties may have an advisor of their choice, who may be, but is not required to be, an attorney, and may inspect and review evidence as described in the Formal Investigation section of this Policy.

False and/or Malicious Allegations

Deliberately false and/or malicious allegations, as opposed to allegations which, even if erroneous, are made in good faith, are a serious offense and will be subject to appropriate disciplinary action. Additionally, persons who knowingly provide false evidence, make a materially false statement in bad faith in the course of a proceeding under this Policy, tamper with or destroy evidence, or deliberately mislead an official conducting an investigation can be subject to disciplinary action.

Retaliation

Retaliation is prohibited, whether committed by the respondent, the complainant, or any other individual or group of individuals. Retaliation should be reported immediately to a Title IX Coordinator and will be promptly investigated. A person deemed to have engaged in retaliation will be subject to disciplinary action.

Disability Accommodations

Complainants and respondents are encouraged to contact the Office of Disability Services (students) or Human Resources (employees) to arrange any disability accommodations or interpretation services that may be needed during the investigation and/or hearing process.

IX. Investigation Procedures

When investigating a formal complaint, Harding will:

1. Ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on the University and not on the parties. The University cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the University obtains that party's voluntary, written consent to do so for the grievance process under this Policy.
2. Provide an equal opportunity for the parties to present witnesses and other inculpatory and exculpatory evidence. (Inculpatory evidence tends to incriminate or place responsibility on someone, and exculpatory evidence tends to show a person's innocence.)
3. Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.
4. Provide the parties with the same opportunities to have others present during any investigation meeting with the party, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice. However, the advisor cannot speak for a party. The role of the advisor is to accompany the parties and advise them privately.
5. Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of investigative interviews with sufficient time (normally two calendar days) for the party to prepare to participate.
6. Provide the parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which the University does not intend to rely on in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation. Harding will send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format. In order to protect confidential information, the investigator will redact or remove information that is not directly related to the allegations (or that is otherwise barred from use under Title IX, such as information protected by a legally recognized privilege, or a party's treatment records if the party has not given written consent) before sending the evidence to the parties for inspection and review.

The evidence and an initial investigation report will be emailed to the parties' Harding email account and the advisors' (if any) email account provided to the University by the parties. The parties will have ten calendar days to submit a written response, which the investigator will consider before preparing the final investigation report. The parties may provide additional evidence in their response. Each party's written response will be shared with the other party(ies). The investigator(s) will incorporate relevant elements of the parties' written responses into the final investigation report, include any additional relevant evidence, make any necessary revisions, and finalize the report.

7. Create a final investigation report that fairly summarizes relevant evidence. The report will be sent to each party and the party's advisor, if any, in an electronic format for their review. The hearing will not be scheduled sooner than ten days after the investigation report is sent to the parties and their advisors. The parties may then submit a written response to the investigation report no later than 5 p.m. Central Time the day before the hearing. The evidence will be emailed to the parties' Harding email account and the advisors' (if any) email account provided to the University by the parties. The parties may provide additional evidence in their response. Each party's written response should be sent to the Title IX investigator, and will be shared with the other party. Parties will have the opportunity to respond to any new evidence at the hearing.

Evidentiary Considerations in the Investigation

The investigation does not consider evidence about the complainant's sexual predisposition or prior sexual behavior, unless such evidence about the complainant's prior sexual behavior is offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the evidence concerns specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

X. Hearing Procedures

After the final investigation report is shared with the parties, the applicable Title IX Coordinator will refer the matter for a live hearing. The hearing will be presided over by a hearing officer who is the sole decision maker. All hearings will be conducted in person or via video conferencing with all parties able to simultaneously view and participate in the hearing.

The hearing officer has the authority to hear and make determinations on all allegations of sexual harassment and/or retaliation and may also hear and make determinations on

any additional alleged policy violations by the respondent that have occurred in connection with the sexual-harassment allegations (e.g., violations by the respondent of the Alcohol and Other Drug Use Policy).

Notice of Hearing

No less than ten calendar days prior to the hearing, the hearing officer will simultaneously send notice of the hearing to the parties' Harding email account and to their advisors' e-mail account. The notice will contain:

1. A description of the alleged sexual harassment and/or retaliation
2. The time, date, and location of the hearing and a reminder that attendance is mandatory, superseding all other University activities.
3. A list of all known hearing attendees, along with an invitation to object to the hearing officer on the basis of demonstrated bias. A party must notify the applicable Title IX Coordinator of any objections to the hearing officer in writing at least five calendar days prior to the hearing.
4. A copy of all the materials provided to the hearing officer about the matter, unless they have been provided to the parties and their advisors already. This includes, for example, the final investigation report, and the parties' written responses to the report (if submitted).
5. An invitation to each party to identify any relevant witnesses in the final investigation report whose testimony is sufficient in the report and does not need to present live testimony or possibly submit to cross-examination at the hearing. If there is agreement by all parties and the credibility or live testimony of the witness is not critical to the adjudication of the allegations, the hearing officer may determine that it is not necessary to require the witness to attend the hearing, and the hearing officer will rely upon the witness's testimony, as described in the final investigation report, in making the determination of responsibility.
6. An invitation to each party to submit cross-examination questions they intend their advisor to ask the other party or witnesses at the hearing so that the hearing officer can rule on their relevance ahead of time to avoid delays in the hearing or to provide recommendations for more appropriate phrasing. Parties will also be given the opportunity to submit cross-examination questions during the live hearing².

² Again, parties may choose not to submit to cross-examination at the live hearing. The Hearing Officer may still rely on any statement of that party or witness in reaching a determination regarding responsibility.

7. An invitation to each party to submit to the hearing officer an impact statement (a statement of how the alleged sexual misconduct has affected the party) pre-hearing that the hearing officer will review during any sanction determination.
8. An invitation to contact the Office of Disability Services (students) or Human Resources (employees) to arrange any disability accommodations or interpretation services that may be needed at the hearing, at least seven calendar days prior to the hearing.

Witnesses

The hearing officer will schedule relevant witnesses to appear at a portion of the live hearing in order to testify and to respond to questions from the hearing officer and the parties, if they choose to submit to cross-examination, after which they will be excused.

Evidentiary Considerations in the Hearing

Any evidence the hearing officer determines relevant and credible may be considered.

Upon determining that a respondent is responsible, the hearing officer may consider previous disciplinary action of any kind involving the respondent in deciding an appropriate sanction. This information is only considered at the sanction stage of the process during deliberation by the hearing officer following the live hearing.

Procedures During Hearing

1. The hearing officer will answer all questions of procedure raised before or during a hearing.
2. For purposes of the hearing, the University may, but is not required to, consolidate formal complaints against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances. With a joint hearing, the hearing officer will make a separate determination of responsibility as to each respondent as to each allegation of sexual harassment.
3. If a party or witness does not submit to cross-examination at the hearing, the hearing officer may still rely on any statement of that party or witness in reaching a determination regarding responsibility.
4. Harding will make all evidence that is subject to the parties' inspection and review, including any written responses, available at the hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination if the party or witness wishes to submit to cross-examination.
5. Parties may confer with their advisor during the hearing, but if a party repeatedly confers with the advisor, the hearing officer may inform the party that such conduct will

be considered when weighing the party's credibility. Also, the hearing officer reserves the right to limit the timing and length of breaks requested by parties to confer with advisors, and any conferring must be in private so that it does not disturb the hearing and is not overheard by other participants.

6. The University will provide an audio recording, audiovisual recording, or transcript of the hearing to the parties upon request for purposes of review. The parties may not record the hearing, and no other unauthorized recordings are permitted.

Cross-Examination

Title IX does not require that any party or witness submit to cross-examination at the live hearing. Title IX permits cross-examination equally to complainants and respondents, if the party or witness chooses to submit to cross-examination, so that either party may direct the hearing officer's attention to alleged implausibility, inconsistency, unreliability, ulterior motives, and lack of credibility in the other party's or the witness's statements.

If a party or witness chooses to submit to cross-examination, the hearing officer must permit each party's advisor to ask the submitting party or witness relevant questions and follow-up questions, including those challenging credibility. Such cross-examination at the hearing must be conducted directly, orally, and in real time by the party's advisor and never by a party personally. Only relevant cross-examination and other questions may be asked of a party or witness if they choose to submit to cross-examination.

If a party does not have an advisor for a hearing, Harding will appoint an advisor for the limited purpose of conducting cross-examination as appropriate. A party may reject this appointment and choose their own advisor, but a party may not proceed with the hearing without an advisor.

Cross-examination by advisors must follow the hearing procedures and Harding's rules of decorum, which prohibit questioning in an abusive, badgering, intimidating, or disrespectful manner.

If a party or witness chooses not to submit to cross-examination at the hearing, either because they do not attend the hearing or they attend but refuse to participate in questioning, then the hearing officer may still rely on any prior statement made by that party or witness at the hearing (including those contained in the investigation report) in the ultimate determination of responsibility.

Order of the Hearing

1. The hearing officer confirms that all participants, including the complainant, respondent, advisors, and witnesses are at the hearing, and invites the participants to introduce themselves. If any participant is not at the hearing, the hearing officer will decide, based on the circumstances, whether to proceed with, delay, or reschedule the hearing.
2. The hearing officer (a) tells all witnesses who are neither a party nor an investigator that they will be brought back to the room when it is time for them to make their statement, (b) forbids them from speaking with each other about their statement while the hearing is ongoing, and (c) directs them to a location where they cannot overhear what is occurring at the hearing.
3. The hearing officer provides an overview of the hearing agenda and a list of the witnesses (if any) in the order they are scheduled to participate.
4. The hearing officer offers parties the opportunity to make an opening statement of no more than ten minutes, beginning with the complainant. Advisors are not allowed to make opening statements.
5. The hearing officer asks the parties and witnesses to provide any relevant information beginning with the complainant and then in the order determined by the hearing officer. The hearing officer may ask questions directly to the parties and witnesses about their testimony or about other evidence. The parties and witnesses may submit, if they so choose, to questioning by the hearing officer and then to questioning by the parties' advisors ("cross-examination") after the hearing officer reviews each question for relevance before it is asked by the advisor. Witnesses who are neither a party nor the investigator are excused from the hearing following their testimony.
6. The hearing officer offers the parties the opportunity to make a closing statement of no more than five minutes. Advisors are not allowed to make closing statements.

Determination of Responsibility

The hearing officer will determine whether the respondent is responsible for the alleged sexual harassment. The preponderance of the evidence standard of proof is used (whether it is more likely than not that the respondent committed sexual harassment as defined by Title IX).

Student Respondents

The hearing officer will make the final determination on sanctions. The hearing officer may consult with the Title IX Coordinator on appropriate remedies for the complainant.

Employee Respondents

If the hearing officer decides that an employee committed sexual harassment, the hearing officer will recommend sanctions against the faculty or staff member. The decision and any sanction recommendations against a staff member will be forwarded to the Assistant Vice President of Human Resources for a decision on the recommended sanction(s). The decision and any sanction recommendations against a faculty member will be forwarded to the dean of the faculty member's school for a decision on the recommended sanction(s), and any other applicable procedures will be followed prior to the sanction becoming final. Depending on the nature of the sanction proposed against a faculty member, it may be necessary for the Provost and/or the President to approve the sanction. In deciding whether approval of the Provost and the President is necessary, see the Employee Handbook. After receiving the decision on the recommended sanction(s), the hearing officer will include the final sanctions in the written letter of determination. The hearing officer may consult with the applicable Title IX Coordinator on any appropriate remedies for the complainant.

XI. Appeal Process

Both parties may appeal a determination of responsibility by the decision maker to an appeal panel. The appeal must be submitted in writing via email within seven calendar days of the issuance date of the written letter of determination, and must state the rationale for the appeal. Any sanctions imposed as a result of the hearing are stayed during the appeal process.

The written appeal will be shared with the other party, who may submit a written response within seven calendar days from the time the appeal is emailed to the student's or employee's Harding.edu account. This written response will be shared with the other party.

The appeal panel will make a good faith effort to complete the appeal process as promptly as circumstances permit and will update the parties on the timing of any delay and the reasons for the delay.

The appeal panel may affirm, reverse, or modify the sanction. The appeal panel may also return the case to the decision maker for further consideration. The appeal panel's decision will be final and effective immediately. A letter describing the result of the

appeal and the rationale for the decision will be emailed simultaneously to both parties' Harding.edu account.

XII. Acknowledgement of Sources

We gratefully acknowledge the use and adaptation of model policies by peer institutions and professional organizations, including Pepperdine University, the Novus Law Firm (Natasha Baker), and the ATIXA (Association of Title IX Administrators) One Policy, Two Procedures Model, portions of which have been adapted with permission in this Policy.

Appendix A: Definition of Sexual Harassment under Title IX

Sexual Harassment

For purposes of Title IX, sexual harassment is conduct on the basis of sex that is one of the following:

- when a Harding employee conditions the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct (*quid pro quo* sexual harassment);
- unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's education program or activity; or
- sexual assault, which, under Title IX, is any of the following:
 - Rape - the actual or attempted penetration, however slight, of a person, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving consent because of their temporary or permanent mental or physical incapacity;
 - Sodomy - oral or anal sexual intercourse with another person, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving consent because of their youth or because of their temporary or permanent mental or physical incapacity;
 - Sexual assault with an object – the use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving consent because of their youth or because of their temporary or permanent mental or physical incapacity;
 - Fondling - the touching of the private body parts of another person for the purpose of sexual gratification, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving consent because of their youth or because of their temporary or permanent mental or physical incapacity;
 - Incest - nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law;

- Statutory rape - nonforcible sexual intercourse with a person who is under the statutory age of consent;
- Dating violence - violence committed by a person: (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) where the existence of such a relationship shall be determined based on a consideration of the following factors: (1) The length of the relationship, (2) the type of relationship, and (3) the frequency of interaction between the persons involved in the relationship;
- Domestic violence - a felony or misdemeanor crime of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Arkansas, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Arkansas; or
- Stalking - engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others or suffer substantial emotional distress. For this definition, "course of conduct" means two or more acts, including, but not limited to, acts in which the respondent directly, indirectly, or through someone else, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property. "Reasonable person" means a reasonable person under similar circumstances and with similar identities to the complainant. "Substantial emotional distress" means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling

Appendix B: Other Policy Definitions

Advisor

Advisor refers to a person chosen by a party or appointed by the University to accompany the party to meetings related to the resolution process, to advise the party on that process, and to conduct cross-examination when required for the party at the hearing, if any.

Appeal Panel

Appeal panel refers to the persons designated by the University to review appeals of a dismissal of the formal complaint (or any allegations therein) or a hearing officer's determination of responsibility.

Complainant

Complainant is an individual who is alleged to have experienced sexual harassment, regardless of whether that individual is the one who makes the formal complaint.

Employee

Employee is a University faculty or staff member, including full-time, nine to twelve month, part-time, regular, tenured, restricted, probationary, and temporary positions.

Hearing Officer

Hearing officer is the person designated by the University to conduct a hearing before determining responsibility on the allegations of sexual harassment.

Respondent

Respondent is an individual who is alleged in a formal complaint to have engaged in sexual harassment.

Retaliation

"Retaliation" is to intimidate, threaten, coerce, harass, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX, or

because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this Policy. Retaliation may be committed by the respondent, the complainant, or any other individual or group of individuals.

Student

Student is a University student, including an applicant for admission; any matriculated undergraduate or graduate student who is enrolled in course work, has completed the immediately preceding term, is not presently enrolled, and is eligible for re-enrollment; is on an approved educational leave or other approved leave status; is currently serving a suspension, expulsion, or interim restriction; or is awaiting a degree. This includes the period before classes begin, while the student is attending classes, between academic sessions, and on leave. This Policy applies even if the student withdraws from school while a disciplinary matter is pending.

Third Party

Third Party is an individual who is not a University student or employee (e.g., independent contractors, vendors, volunteers, alumni/ae, or visitors).

Witness

Witness is an individual who may have information relevant to a report of sexual harassment. A witness may be a student, an employee, or a third party.

Appendix C: Sanctions

If a hearing officer determines that a respondent has committed sexual harassment, it may result in the imposition of one or more of the sanctions listed below. Sanctions that may be imposed are not limited to those listed. Failure to comply with the sanction(s) imposed in the hearing officer's letter of determination may result in further disciplinary action, including but not limited to, a registration hold, placement on, or extension of, University probation, suspension, or permanent dismissal.

Sanctions are based on general principles of fair treatment. While attempting to be consistent in its disciplinary decisions, the University also seeks to be fair and sensitive to the facts and circumstances of each individual case.

- **Warning:** A written or verbal reprimand
- **Disciplinary Probation:** probation for a specific period of time. It may carry with it other conditions to be met (e.g., restriction of participation in extracurricular activities, restriction from holding student office, restriction from joining student organizations, etc.)
- **Special Action:** designed to enhance the educational intent of the disciplinary process. Examples include change in University housing and restriction of residential privileges, extracurricular-activity restrictions, community service, educational sanctions, and counseling referrals.
- **Suspension:** a bar from attending the University for a specific period of time. Suspension may carry with it the following conditions:
 - Remain off campus during the period of the suspension; or
 - No living or boarding in University facilities.
- **Expulsion:** a permanent bar from attending the University

If a violation occurs just prior to a student's scheduled graduation, sanctions may be imposed even if all academic requirements are completed. Sanctions may include, but are not limited to, community service, research or reflective paper, loss of privilege to participate in the graduation ceremony, deferment of degree, and a transcript hold. The University may withhold issuing a degree until all sanctions are fulfilled. In the case of a sufficiently serious violation, the University may permanently withhold or revoke a degree.