

## **NON-DISCRIMINATION, ANTI-HARASSMENT, AND SEXUAL MISCONDUCT POLICY**

**November 2021.** Please refer to <https://www.une.edu/title-ix-civil-rights-compliance> for most current policy.

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The University of New England (“the University”) is committed to maintaining a fair and respectful environment for living, work, and study. To that end, and in accordance with federal and state law, and University policy, the University prohibits any member of the faculty, staff, administration, trustees, student body, vendors, volunteers, or visitors to campus, whether they are guests, patrons, independent contractors, or clients, from harassing and/or discriminating against any other member of the University community because of that person’s race, sex, sexual orientation, gender identity and/or expression, ethnicity or national origin, religion, age, creed, color, genetic information, physical or mental disability, HIV status, or status as a veteran.

The University is required by Title IX of the Education Amendments of 1972, and the final Title IX regulations issued by the U.S. Department of Education’s Office for Civil Rights in May 2020, not to discriminate on the basis of sex and the following policy is designed to address such discrimination.

### **NON-DISCRIMINATION AND EQUAL OPPORTUNITY**

Consistent with federal and state law and University policy, the University of New England is committed to the fundamental concept of equal opportunity for all of the members of the University community. The University prohibits and will not tolerate discrimination in employment, admission policies, scholarship and loan programs, the provision of academic services, or in any other area of University life based on race, color, sex, physical or mental disability, religion, age, ancestry, national origin, sexual orientation, gender identity and/or expression, ethnicity, genetic information, HIV status, or status as a veteran.

This policy is enforced by Federal Law under Title IX of the Education Amendments of 1972 and its implementing regulations, the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, as amended by the Violence Against Women Reauthorization Act of 2013, Title VII of the Civil Rights Act of 1964, and Section 504 of the Rehabilitation Act of 1973. It is also enforced under Maine law through the Maine Human Rights Act at 5 M.R.S.A. section 4551 et. seq, as well as other applicable federal and Maine state laws. Inquiries regarding compliance with these statutes may be directed to the Title IX Coordinator, Angela Shambarger ([ashambarger@une.edu](mailto:ashambarger@une.edu), (207)-221-4554, 11 Hills Beach Road, Biddeford, ME 04005), the Associate Vice President of Human Resources & Chief Human Resources Officer, Annmarie Allen ([aallen17@une.edu](mailto:aallen17@une.edu), (207) 602-2339, 11 Hills Beach Road, Biddeford, ME 04005), or to the Director, Office of Civil Rights, Department of Education, 8th Floor, 5 Post Office Square, Boston, MA 02109-3921, 617-289-0111 or the Maine Human Rights Commission, 51 State House Station, Augusta, ME 04333-0051, 207-624-6290, and/or the U.S. Equal Employment Opportunity Commission, 131 M Street, NE, Washington, D.C. 20507, (202) 663-4900.

Every member of this University community is expected to uphold this policy as a matter of mutual respect and fundamental fairness in human relations. Every student of this institution has a responsibility to behave in accordance with this policy as a condition of enrollment. Further, every University employee has an obligation to observe UNE policies, as well as federal and state law, as a term of employment.

Merit and productivity, free from prohibited bias, will continue to guide decisions relating to employment and enrollment. No person will be penalized for good faith utilization of or participation in channels available for resolving concerns dealing with prohibited discrimination, harassment, or sexual misconduct.

Discrimination, harassment, and sexual misconduct, including sexual assault, dating violence, domestic violence, and stalking, undermine the character and mission of the University and will not be tolerated. Students and employees who engage in conduct prohibited under this Policy may be subject to disciplinary action, including dismissal from the University or termination of employment. In addition, the University will provide remedies to a Complainant designed to restore or preserve equal access to the University's education programs or activities where a determination of responsibility has been made against a Respondent.

In addition, this policy specifically prohibits any and all forms of sexual or gender-based harassment, and all forms of sexual misconduct, including sexual assault, dating violence, domestic violence, stalking, and sexual exploitation. This policy also addresses consensual sexual or romantic interactions where a supervisory relationship and/or power imbalance exists. This policy covers conduct that falls within the jurisdiction set forth in the May 2020 Title IX regulations, as well as conduct that falls outside of Title IX such as gender-based and sexual harassment that does not meet the Title IX regulations' definition and conduct that occurs outside of the United States but still within the University's education programs or activities. The University condemns all forms of sexual misconduct, even conduct that does not meet the definition of sexual harassment under Title IX. Accordingly, this Policy provides procedures for reporting and investigating sexual harassment that falls outside of Title IX's definition of sexual harassment or outside of Title IX's geographic scope but is nonetheless detrimental to the safety and wellbeing of the University community.

## **TITLE IX COORDINATOR/ DEPUTY TITLE IX COORDINATORS**

The Title IX Coordinator is the individual designated by the President with responsibility for providing education and training about discrimination, harassment and sexual misconduct, including sexual assault, dating violence, domestic violence or stalking to the University community and for receiving and investigating reports and complaints of discrimination, harassment, and sexual misconduct in accordance with this policy. The **Title IX Coordinator** is Angela Shambarger, 207-221-4554 or [ashambarger@une.edu](mailto:ashambarger@une.edu). You may also contact one of the **Deputy Title IX Coordinators**: Jennifer DeBurro, Vice President for Student Affairs at 207-602-2372 or [jdeburro@une.edu](mailto:jdeburro@une.edu); Ray Handy, Associate Dean of Student Affairs at 207-221-4213 or [rhandy@une.edu](mailto:rhandy@une.edu); Heather Davis, Director of Athletics at 207-602-2629 or [hdavis@une.edu](mailto:hdavis@une.edu); Janna Merritt, Assistant Director of Human Resources, 207-602-2281 or [jmerritt2@une.edu](mailto:jmerritt2@une.edu); or Ed Doyle, Senior Associate Director of Human Resources, 207-221-4307 or [edoyle1@une.edu](mailto:edoyle1@une.edu). In addition, **Student Counseling Services** may be

reached at 207-602-2549 on the Biddeford campus and 207-221-4550 on the Portland campus. **In case of an emergency** dial 366 from any campus phone for both the Portland and the Biddeford campus. Dial 207-283-0176 from any non-campus phone. Local Law enforcement can be reached by dialing 911.

The Title IX Coordinator/ Deputy Title IX Coordinators will: (1) provide oversight of any investigation of claims of discrimination, harassment, or sexual misconduct in violation of this policy; (2) be available to assist any individual to access the resources of the University or the community in the event of any complaint under this policy; (3) assist anyone who wishes to report a crime to local law enforcement; (4) be responsible for all training and education programs and monitoring the campus climate with regard to discrimination, harassment, and sexual misconduct; and (5) complete required annual reports to government agencies.

## **APPLICABLE PROCESSES**

The nature of the conduct alleged, the geographic location in which it occurs, and the status of the parties will dictate the applicable process to be used for investigating and resolving reports.

- When the reported conduct falls within the Title IX regulations, the University's Title IX grievance process will be used for both employees and students, linked here: <https://www.une.edu/title-ix-civil-rights-compliance>.
  - When the reported conduct involves both Title IX and non-Title IX allegations arising out of the same facts and circumstances, the University's Title IX grievance process will be used: <https://www.une.edu/title-ix-civil-rights-compliance>.
- When the reported conduct against a student involves either (a) gender-based harassment or sexual misconduct covered under this Policy that does not fall within the Title IX regulations or (b) discriminatory harassment based on other protected categories covered under this Policy, the investigation and grievance process set forth in this Policy will be used.
- To the extent that alleged misconduct by a student implicates the University's Professional Codes of Conduct, the matter may be referred for adjudication under the applicable College's conduct board proceedings following an investigation and hearing under this Policy or the Title IX Policy. This referral to a professional code of conduct board may occur even if no determination of responsibility is found under the Title IX or Discriminatory Harassment policies.
- When the reported conduct against an employee involves discrimination or harassment, including gender-based or sexual harassment, that is not covered by Title IX, the investigation and grievance procedures below and in the University's Personnel Handbook will apply. These grievance procedures are set forth in Appendix A and Appendix J of the Personnel Handbook. The complete Personnel Handbook can be found here: <https://www.une.edu/studentlife/handbook>

The Title IX Coordinator or Deputy Title IX Coordinator will assess the complaint and submit it to the appropriate University investigation and grievance process, which are all designed to be fair, impartial, prompt, and equitable.

## **DEFINITIONS**

### **DISCRIMINATORY HARASSMENT**

At the University of New England, discriminatory harassment is defined as:

Unwelcome verbal or physical conduct based on race, sex, sexual orientation, gender identity and/or expression, ethnicity or national origin, religion, age, creed, color, genetic information, physical or mental disability, HIV status, or status as a veteran, when:

- Such conduct has the purpose or effect of unreasonably interfering with the individual's work or educational performance;
- Such conduct creates or has the intention of creating an intimidating, hostile, or offensive working and/or learning environment; and/or
- Such conduct unreasonably interferes with or limits one's ability to participate in or benefit from an educational program or activity.

### **SEXUAL HARASSMENT**

Sexual harassment includes two distinct, but overlapping definitions. Depending on the nature of the sexual harassment alleged and the status of the parties, the grievance procedures may differ as described above and in the accompanying policies and processes.

The Title IX regulations define Sexual Harassment as conduct on the basis of sex that must satisfy one or more of the following:

- a. A University employee conditions the provision of an aid, benefit, or service of University on an individual's participating in unwelcome sexual conduct (quid pro quo); or
- b. Unwelcome conduct that is 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;
- c. Sexual Assault, Dating Violence, Domestic Violence, Stalking and Retaliation as defined below.

In addition, pursuant to the Maine Human Rights Act and Title VII of the Civil Rights Act of 1964, the University defines Sexual Harassment here and in the University Personnel Handbook to include any:

Unwelcome sexual advances, requests for sexual favors, and other verbal, non-verbal, or physical conduct of a sexual nature, when:

- a. Submission to such conduct is made either implicitly or explicitly a term or condition of an individual's employment or status in a course, program or activity;

- b. Submission or rejection of such conduct by an individual is used as the basis for employment or educational decisions affecting such individual; and/or
- c. Such conduct has the purpose or effect:
  - of interfering with the individual's work or educational performance;
  - of creating an intimidating, hostile, or offensive working and/or learning environment; and/or
  - of interfering with or limiting one's ability to participate in or benefit from an educational program or activity.

Examples of sexual harassment may include, but are not limited to the following:

- a. Physical assault, and/or physical sexual acts perpetrated against a person's will or where the actor knew or should have known the person is incapable of giving consent due to the use of drugs or alcohol, or due to an intellectual or other disability and where the respondent should have known the person to be incapacitated. This includes sexual assault (including, rape), sexual battery, and any form of sexual coercion.
- b. Direct or implied threats that submission to sexual advances will be a condition of employment, work status, compensation, promotion, grades, or letters of recommendation.
- c. Sexual advances, physical or implied, or direct propositions of a sexual nature. This activity may include inappropriate/unnecessary touching or rubbing against another, sexually suggestive or degrading jokes or comments, remarks of a sexual nature about one's clothing and/or body, preferential treatment in exchange for sexual activity, and the inappropriate display of sexually explicit pictures, text, printed materials, or objects that do not serve an academic purpose.
- d. A pattern of conduct, which can be subtle in nature that has sexual overtones and is intended to create or has the effect of creating discomfort and/or humiliating another.
- e. Remarks speculating about a person's sexual activities or sexual history, or remarks about one's own sexual activities or sexual history that do not serve a medical or academic purpose.

Sexual harassment can occur regardless of the relationship, position, and/or respective gender of the parties. Same sex harassment violates this policy, as does harassment by a student of a faculty member or a subordinate employee of his/her/their supervisor.

## **SEXUAL MISCONDUCT**

### A. Sexual Assault

Sexual Assault is having or attempting to have sexual intercourse with another individual, including: (1) by use of force or threat; (2) without effective consent; or (3) where the actor knew or should have known the individual is incapacitated by drugs and/or alcohol or was physically or mentally unable to make informed or reasonable judgments or provide consent. For purposes of this definition, sexual intercourse includes vaginal, anal or oral penetration, no matter how slight, with any body part or object, or oral penetration involving any form of mouth to genital contact. For purposes of these regulations, Sexual Assault includes rape, fondling, incest, or statutory rape as those crimes are defined by the Federal Bureau of Investigation (FBI) Uniform Crime Reporting Program. This definition conforms to the FBI's Uniform Crime Report and Clery Act definition and also conforms to the definition of rape under Maine law.

### B. Non-Consensual Sexual Contact (includes "Fondling")

Non-Consensual Sexual Contact is contact with the intimate parts of another individual (including but not limited to contact with breasts, buttocks, groin, genitals, or other intimate body parts) for the purposes of sexual gratification through the (1) use of threat or force, (2) without effective consent, or (3) where the actor knew or should have known the individual was incapacitated or physically or mentally unable to make informed, reasonable judgments or provide consent.

#### C. Sexual Exploitation

Sexual Exploitation is taking non-consensual or abusive sexual advantage of another for one's own benefit or the benefit of anyone other than the individual being exploited. Sexual exploitation may include but is not limited to: (1) secretly observing the sexual actions of another or allowing others to secretly observe the sexual activity without the knowledge or consent of the other party; (2) sharing visual images, audio recordings, videos of another individual in a state of undress or of a sexual nature without consent; (3) causing an individual to prostitute themselves through force, intimidation, or coercion; (4) knowingly exposing another individual to a sexually transmitted disease without their knowledge; (5) exposing one's genitalia or causing another person's genitalia to be exposed without effective consent.

#### D. Dating Violence

Dating Violence is violence by a person who has been in a romantic or intimate relationship with the Complainant. The determination of whether there was a "social relationship of a romantic or intimate nature" is based on the Complainant's characterization of the relationship, the length and type of the relationship, and the frequency of interaction between the parties. The use of terms such as "hooking up" or "hanging out" instead of dating is not determinative. Emotional and psychological abuse are not encompassed in this definition. Dating violence also does not include incidents of Domestic Violence.

#### E. Domestic Violence

Domestic Violence includes asserted violent misdemeanor and felony offenses committed by the Complainant's current or former spouse, current or former cohabitant, person similarly situated under domestic or family violence law, or anyone else protected under domestic or family violence law.

#### F. Stalking

Stalking is a course of conduct directed at a specific person that would cause a reasonable person to fear for her, his, theirs, or another's safety, or to suffer substantial emotional distress. "Course of conduct" means two or more acts, including but not limited to acts in which the stalker directly or indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person or interferes with a person's property. "Reasonable person" means a person under similar circumstances and identities with the Complainant. "Substantial emotional distress" means a significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling. Stalking includes the concept of cyberstalking, a particular form of stalking in which electronic media is used.

## G. Consent

Consent is the affirmative, unambiguous, and voluntary agreement to engage in a specific sexual activity during a sexual encounter. Consent requires an outward demonstration, through mutually understandable words or actions, indicating that an individual has freely chosen to engage in sexual contact.

Maine law on consent: Minors who are 14 or 15 cannot legally consent to sexual activity if the other party is at least 5 years older. Minors under 14 can never legally consent to sexual activity. Such sexual acts are felonies under Maine law.

- a. Consent given at the start of sexual activity may not be understood to apply to each individual sexual act during the encounter.
- b. Each party must clearly consent to each act during the sexual encounter.
- c. Consent may not be inferred from silence.
- d. Consent is not voluntary if it is induced by force, threat, coercion or deception.
- e. Consent cannot be obtained by taking advantage of the incapacitation of another, such as someone who is incapacitated by drugs or alcohol, who is asleep, unconscious, or otherwise physically or mentally incapacitated.
- f. Consent may be withdrawn at any time and if it is, sexual activity of any kind must stop.
- g. Consent to one form of sexual activity does not constitute consent to all forms of sexual activity, and consent to sexual activity with one person does not equal consent to engage in sexual activity with anyone else.
- h. The failure to obtain consent is never excused by the consumption of alcohol or drugs.

## H. Coercion or Force:

Coercion is verbal or physical conduct that would reasonably place an individual in fear of immediate or future harm and that is employed to compel someone to engage in sexual contact. Force is the use or threat of physical violence or intimidation to overcome an individual's free will to choose to participate in sexual contact.

## I. Incapacitation:

Incapacitation is defined as the inability to make rational, reasonable decisions because the individual lacks capacity to give knowing consent (e.g. to understand the "who", "what", "when", "where", "why", or "how" of their sexual interaction). A person may be incapacitated because of their consumption of drugs/alcohol and/or because they are mentally/physically helpless or disabled, asleep, unconscious, or otherwise unaware that the sexual activity is occurring. Where drugs or

alcohol are involved, incapacitation is a state beyond impairment or intoxication, and involves an assessment of the person's decision-making ability, awareness of consequences, ability to make informed, rational judgments, capacity to appreciate the nature and quality of the act, and/or level of consciousness. The assessment is based on objectively and reasonably apparent signs of incapacitation when viewed from the perspective of a sober, reasonable person.

#### J. Consensual Relations in Regard to Sexual Misconduct/Sexual Harassment

When one party has a professional relationship toward the other, or stands in a position of authority over the other, even an apparently consensual sexual relationship may lead to sexual harassment or other breaches of professional obligations. For the personal protection of all members of the UNE community, the University strongly discourages all relationships where such a power differential exists. Consensual romantic or sexual relationships in which one party maintains a direct supervisory and/or evaluative role over the other party constitute a conflict of interest both intrinsic to the relationship and may be perceived by others as preferential. Therefore, the University requires that persons with direct supervisory and/or evaluative responsibilities who are involved in such romantic or sexual relationships act immediately to remove themselves from any decision making regarding the individual in the lesser power position including, but not limited to, grading, evaluating, supervising, or in any way influencing any of the terms or conditions of that individual's education and/or position of employment, and bring the existence of the relationship to the attention of their senior administrator in a timely fashion. The notification will likely result in the necessity to remove the employee from the supervisory or evaluative responsibilities or to shift the individual out of being supervised or evaluated by the person with whom the individual is in the consenting relationship. Failure to self-report such relationships can result in disciplinary action. For more information, please see "13.2 Consensual Relationships" in the Personnel Handbook here: [https://www.une.edu/sites/default/files/personnel\\_handbook\\_effective\\_20191220\\_0.pdf](https://www.une.edu/sites/default/files/personnel_handbook_effective_20191220_0.pdf).

### **SCOPE**

#### A. Applicability

The University's Non-Discrimination, Anti-Harassment, and Sexual Misconduct Policy applies broadly to the entire University community, including all trustees, employees, the student body (graduate and undergraduate), vendors, volunteers, alumni, prospective students, prospective employees, and visitors to campus. This includes guests, patrons, independent contractors, or clients of the University of New England. This Policy prohibits discrimination, harassment, or sexual misconduct discrimination in any University education program or activity, which means all academic, educational, extracurricular, athletic, and other programs. The term "education program or activity" includes all University operations, including locations, events or circumstances over which the University exercised substantial control over both the Respondent and the context in which the conduct occurs; and any building owned or controlled by a student organization that is officially recognized by the University.

#### B. Off-Campus/ Non U.S. Based Programs

Off-campus programs and activities are covered by this Policy even though it may fall outside the jurisdiction set forth in the May 2020 Title IX regulations. Such off-campus programs and activities covered under this Policy include, but are not limited to, the Morocco campus, study abroad

programs, internships, participation in affiliated programs, clinical programs, student teaching, and applied learning, such as but not limited to, online course experiences. Depending on the particular facts and circumstances, the University may investigate and respond to complaints of discriminatory harassment or sexual misconduct by students or University employees that occur outside of the University's "education program or activity" if such conduct directly and adversely disrupts the educational process on campus at any location or in any program sponsored by or affiliated with the University.

#### C. Employment Decisions

This policy is not meant to address differences in opinion regarding the validity of employment determinations such as salary recommendations, promotion and tenure decisions, performance evaluations, hiring decisions, job classification decisions, transfers or reassignments, termination or layoff because of lack of work or elimination of a position, and normal supervisory counseling. Furthermore, this policy does not intend to address behaviors that do not constitute discrimination, harassment, or sexual misconduct. Offensive workplace behavior that does not violate this policy should be addressed to the appropriate supervisor and the Associate Vice President of Human Resources & Chief Human Resources Officer.

#### D. Academic Freedom and Freedom of Expression

The University is committed to protecting, maintaining, and encouraging both freedom of expression and the academic freedom of inquiry, teaching, service, and research. However, these freedoms come with a responsibility that all members of the education community benefit from these freedoms without intimidation. In recognition and support of academic freedom for faculty in the pursuit of teaching, academic freedom and freedom of expression shall be strongly considered in investigating and reviewing complaints and reports of discrimination, harassment, or sexual misconduct. However, raising issues of academic freedom and freedom of expression will not excuse behavior that constitutes a violation of the law or the University's, Non-Discrimination, Anti-Harassment, and Sexual Misconduct Policy.

#### E. Responsibility of Supervisors and Others in Positions of Authority

No individual who is in a position of authority over another, either in the employment or educational context, has the authority to discriminate against, harass, or engage in acts of sexual misconduct by virtue of his, her, or their role. The University does not in any way, expressly or impliedly; condone discrimination, harassment, and/or sexual misconduct, including sexual assault, dating violence, domestic violence, or stalking, by any employee or person in a position of authority, including an administrator, or a supervisor. Furthermore, a supervisor, administrator, or person in a position of authority who does not appropriately handle reports or incidents of discrimination, harassment, and/or sexual misconduct or who does not report incidents about which they become aware to the Title IX Coordinator may be subject to disciplinary action. All members of the University community including students, contract vendors, trustees, employees, and others should report any discrimination, harassment, and/or sexual misconduct that they experience and/or observe to the Title IX Coordinator. No UNE community member should assume that an official of the University of New England knows about any particular situation of concern involving discrimination, harassment, or sexual misconduct. All incidents must be reported to the Title IX Coordinator.

#### F. Responsible Employees

Any employee of the University who is responsible in any way for student welfare, or who a student could reasonably believe is responsible for student welfare, and who is not by law, licensure or University regulation designated as a confidential resource, must forward any report of discrimination, harassment, or sexual misconduct to the Title IX Coordinator or a Deputy Title IX Coordinator as soon as possible after receiving it. This definition of “responsible employee” includes faculty, coaches, administrators, security officers, advisors, staff, RAs, and other student employees involved in promoting student welfare.

If a responsible employee receives or becomes aware of a report or incident covered by this Policy, if possible before hearing it fully, the responsible employee should be clear with the Complainant that (1) they are not a confidential resource, if they are not so designated, and (2) they are obligated to report any incident to the Title IX Coordinator.

#### G. Confidential Resources

Confidential campus professionals are those individuals with the statutorily granted ability to maintain information as privileged and who cannot reveal such information unless they receive the express permission of the individual, there is an imminent threat of harm to self or others, the conduct involves suspected abuse of a minor under the age of 18, or as otherwise required by law. Confidential resources on campus include:

**Student Counseling Services** for the University of New England.

For general Counseling Services support:

Biddeford Campus: 207-602-2549/toll-free 1-866-743-2230, or on the Portland Campus: 207-221-4550 or toll-free: 1-866-798-9201.

Confidential and free to students.

<http://www.une.edu/studentlife/counseling>

#### Student Health Care

**207-602-2358 (BC) or 207-221-4242 (PC)**

Confidentiality is distinguished from “privacy.” For the purposes of this policy, unless shared with a confidential resource, information disclosed related to a report of discriminatory harassment or sexual misconduct will be shared with a limited number of individuals who “need to know” in order to ensure the prompt, equitable, and impartial review, investigation and resolution of the report. The University will attempt to protect the privacy interests of the parties involved in a report under this Policy, but cannot assure confidentiality unless disclosure is limited to a confidential resource.

#### H. Clery Act Reporting:

Pursuant to the Clery Act, the University includes statistics about Clery Act crimes in its daily crime log and Annual Security Report and provides those statistics to the United States Department of Education; in all these instances, the information is reported in a manner that does not include personally identifying information about persons involved in an incident (including incidents disclosed to Confidential Resources). The University will also issue a timely warning to the community for reports of Clery-defined conduct that may constitute a serious and ongoing threat, as outlined in the Annual Security Report.

## **REPORTING OF COMPLAINTS OF, DISCRIMINATION, HARASSMENT, OR SEXUAL MISCONDUCT TO THE UNIVERSITY**

Anyone who reports an incident of discriminatory harassment, or sexual misconduct, including sexual assault, dating violence, domestic violence, stalking, will be assisted in understanding their reporting options and will not be forced to make any type of report with which they are uncomfortable. Any individual may make a report under this Policy regardless of whether or not the reporting person is the alleged victim of the conduct or a member of the University community. Reports can be made in person, by mail, by telephone, online, or by electronic mail, using the contact information listed for the Title IX Coordinator or by any means that results in the Title IX Coordinator receiving the person's verbal or written report. A report may be made at any time (including during non-business hours) by using the telephone number, email, online reporting link (<https://www.une.edu/title-ix/reporting>), or mailing address listed for the Title IX Coordinator or other persons familiar with this Policy including:

**The Title IX Coordinator** for the University of New England is Angela Shambarger, 207-221-4554, [ashambarger@une.edu](mailto:ashambarger@une.edu), Director, the Office of Title IX and Civil Rights Compliance, Human Resources Office, both campuses, 11 Hills Beach Road, Biddeford, ME 04005 and 716 Stevens Avenue, Portland, Maine, 04103.

**The Deputy Title IX Coordinators** are: (1) Jennifer DeBurro, Vice President for Student Affairs at 207-602-2372 or [jdeburro@une.edu](mailto:jdeburro@une.edu); (2) Ray Handy, Associate Dean of Student Affairs: 207-221-4213, [rhandy@une.edu](mailto:rhandy@une.edu); (3) Heather Davis, Director of Athletics, 207-602-2629, [hdavis@une.edu](mailto:hdavis@une.edu); (4) Janna Merritt, Assistant Director of Human Resources, 207-602-2281, [jmerritt2@une.edu](mailto:jmerritt2@une.edu); or (5) Ed Doyle, Senior Associate Director of Human Resources, 207-221-4307, [edoyle1@une.edu](mailto:edoyle1@une.edu).

**The Associate Vice President of Human Resources & Chief Human Resources Officer** for the University of New England is Annmarie Allen, 207-602-2339, [aallen17@une.edu](mailto:aallen17@une.edu), Human Resources Office, both campuses, 11 Hills Beach Road, Biddeford, Maine 04005 and 716 Stevens Avenue, Portland, Maine, 04103.

As noted above, individuals may disclose incidents and seek support in a confidential manner to a designated confidential resource. A disclosure to a confidential resource does not constitute a report to the University. Individuals may also file anonymous reports on the University's Title IX webpage using the anonymous reporting feature here: <https://www.une.edu/title-ix/reporting>.

### **Amnesty Involving Alcohol or the Use of Controlled Substances**

The University of New England encourages reporting of sexual misconduct and seeks to remove any barriers to reporting such an incident. The University recognizes that a student who has been drinking or using drugs at the time of an incident may be hesitant to make a report because of potential disciplinary consequences for their own conduct. Thus, a student who reports sexual misconduct, either as a Complainant or as a witness, will not be subject to disciplinary action by the University for their own personal consumption of alcohol or drugs at or near the time of the incident, provided that any such violations did not and do not place the health or safety of any other person at risk. The University may, however, initiate an educational discussion or pursue other educational remedies regarding alcohol or other drugs. Alcohol and/or drug use may affect the memory of involved parties

and may affect the outcome of the complaint. Further, immunity from disciplinary actions has no effect on actions by law enforcement agencies. For more information, please see “F. Responsible Action Clause” in the University Student Handbook found here:

<https://www.une.edu/studentlife/handbook> .

## **TIMELINE FOR REPORTING**

Complaints and reports of sexual misconduct, including sexual assault, dating violence, domestic violence or stalking, and/or sexual harassment should be reported as soon as possible after the incident(s) in order to be most effectively investigated though there is no time limit on reporting violations under this Policy. If a Respondent is no longer affiliated with the University (as a student or employee), the University may still provide reasonably available supportive measures to the complainant, assist the complainant in identifying external reporting options, and take other appropriate action to address the reported conduct.

## **INITIAL ASSESSMENT UPON RECEIPT OF A REPORT AND FILING OF COMPLAINT BY TITLE IX COORDINATOR**

When the Title IX Coordinator receives a report, the Title IX Coordinator will reach out to the Complainant to explain options for informal and formal resolution of a complaint, offer supportive measures, and conduct an initial assessment of the reported information. The initial assessment seeks to gather information only to determine whether this Policy applies and what form of resolution is reasonably available and appropriate. The initial assessment is not an investigation of responsibility. The initial assessment may also include a determination as to whether a timely warning pursuant to the Clery Act is necessary to protect the safety of the Complainant or any other individuals.

In receiving a report under this policy, the University will make all reasonable efforts to protect the privacy rights of the Complainant, the Respondent, and the witnesses in a manner consistent with the University’s legal obligations to investigate, to take appropriate action, and to comply with any discovery or disclosure obligations required by law.

The University will, whenever possible, honor the Complainant’s wishes with respect to supportive measures and seek to respect a Complainant’s autonomy in making a determination regarding how to proceed. Any request for confidentiality must be balanced against the University’s obligation to provide a safe and non-discriminatory environment for the entire University community. The University may also be severely limited in its ability to take action against a Respondent if strict confidentiality is maintained. The Title IX Coordinator, , the Director of Safety and Security, the Chair of the Behavior Risk Assessment Committee (BRAC), and/or their designee(s) shall be responsible for evaluating all requests for confidentiality and will consider the severity of the alleged conduct, the ages of the parties, any pattern of misconduct, and the rights of the Respondent in assessing whether such a request can be honored. In limited circumstances, typically where a risk of imminent harm to an individual or others or a threat to the physical health and safety of the campus is determined to exist, the University may need to take immediate action upon a receipt of a report under this Policy and/or a Title IX Coordinator may need to initiate a formal complaint against a Complainant’s wishes.

In such cases, the Title IX Coordinator will notify the Complainant and keep the Complainant informed of the status of the investigation and resolution of the complaint at reasonable intervals.

As part of the initial assessment phase, the University's Title IX Coordinator will determine whether the alleged conduct, if true, falls under Title IX (see the University's Title IX Grievance Policy for definitions). If the alleged conduct falls outside of the definition of sexual harassment and/or geographic scope of Title IX, the University will then assess whether the alleged conduct, if true, would amount to a violation of this Policy. If the complaint proceeds to a formal investigation under either policy and the investigation reveals that the conduct was incorrectly placed within either policy, the University will transfer the complaint to the appropriate process for resolution or dismiss the complaint, as appropriate.

**Supportive Measures:** The University will make available reasonable and appropriate supportive measures designed to restore or preserve access to educational and employment opportunities without unreasonably burdening either party; address safety concerns of the Complainant, the Reporting Party, the Respondent or broader University community; maintain the integrity of the investigative and/or resolution process; and deter retaliation. Supportive Measures are available whether or not a Formal Complaint is filed and regardless of whether the Complainant or Title IX Coordinator files a Formal Complaint. Supportive Measures are non-disciplinary, non-punitive individualized measures offered as appropriate, as reasonably available and without fee or charge to the Complainant or Respondent. More restrictive supportive measures are typically only available if there is an articulable factual foundation that would support taking such a measure and is interim in nature while the investigation is pending, unless voluntarily agreed to by the restricted party. The respondent will have an opportunity to challenge the decision immediately following the imposition of a more restrictive action and these more restrictive actions may be evaluated and reassessed by the University during the pendency of the investigation. Members of the University's Behavioral Risk Assessment Team or designee will review the student respondent's appeal to removal. Employee respondent's appeals would be reviewed by the AVP of HR.

Supportive Measures may include:

- Facilitating access to counseling and medical services;
- Guidance in obtaining a sexual assault forensic examination;
- Assistance in arranging rescheduling of exams and assignments and extensions of deadlines;
- Academic supports;
- Assistance in requesting accommodations through the appropriate office, if the Complainant or Respondent qualifies as an individual with a disability;
- Changes in the Complainant's or Respondent's class schedule (including the ability to transfer course sections or withdraw from a course), work schedule, or job assignment;
- Change in the Complainant's or Respondent's campus housing;
- Escort and other safety planning steps;
- Mutual imposition of a "no contact order," an administrative remedy designed to curtail contact and communications between two or more individuals;
- Voluntary leave of absence;

- Referral to resources to assist in obtaining a protective order;
- Referral to resources to assist with any financial aid, visa, or immigration concerns; or
- Any other remedial Supportive Measure that does not unreasonably interfere with either party's access to education or employment opportunities can be used to achieve the goals of this policy.
- Emergency removal of a Student Respondent
- Paid or unpaid administrative leave for the Employee Respondent;
- Withdrawal from sponsored research projects;
- Exclusion from all or part of campus housing;
- Exclusion from specified activities or areas of campus;
- Prohibition from participating in student activities or representing the University in any capacity such as playing on an official team; serving in student government; participating in a recognized student organization; or participating in academic honor ceremonies;
- Interim suspension; or
- Any other protective restrictive measure that can be used to achieve the goals of this policy.

The University will also work in good faith to implement the requirements of judicially issued protective orders and similar orders, to the extent that doing so is within its authority.

## **FALSE CLAIMS**

It is a violation of this Policy to make deliberate false statements or knowingly submit false information in the investigation or grievance proceedings of conduct covered under this Policy and the Title IX Grievance Process. In such instances, the parties may be subject to disciplinary action. The level of discipline will depend on the severity of the false claim and may include, but is not limited to: probation, suspension, expulsion, or termination.

Failure to prove a claim of discrimination, harassment, or sexual misconduct does not constitute proof of a false and/or malicious accusation.

## **RETALIATION**

No person may intimidate, threaten, coerce, or discriminate against any individual 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 Title IX Grievance Policy.

Any intimidation, threats, coercion, or discrimination, for the purpose of interfering with any right or privilege secured by Title IX or its implementing regulations constitutes retaliation. This includes any charges filed against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but that arise from the same facts or circumstances as a report or complaint of sex discrimination or a report or Formal Complaint of sexual harassment, as set forth in the University's Amnesty policy in the University's Anti-Discrimination, Anti-Harassment and Non-Discrimination Policy.

UNE adheres to a strict no retaliation policy. Retaliation will not be tolerated. All students, administrators, faculty, or staff who report a possible violation of this Policy are protected against retaliation. If you have reported a violation and think that you are a victim of retaliation for having done so, please contact the Title IX Coordinator or one of the Deputy Title IX Coordinators as soon as possible.

## **SANCTIONS FOR VIOLATION OF THIS POLICY**

Any party found responsible for violating the University's Non-Discrimination, Anti-Harassment, and Sexual Misconduct Policy may be subject to disciplinary sanctioning.

Any student found responsible for violating the policies on Non-Consensual Sexual Contact or Stalking will likely receive a sanction ranging from probation to expulsion, depending on the severity of the incident and taking into account any previous student conduct code violations.

Any student found responsible for violating the policies on Sexual Assault, Dating Violence, or Domestic Violence will likely face a recommended sanction of suspension or expulsion.

Any student found responsible for violating the policy on Sexual Exploitation, or Sexual Harassment will likely receive a recommended sanction ranging from warning to expulsion, depending on the severity of the incident, and taking into account any previous campus conduct code violations.

Any employee of the University found responsible for any element of this policy will be referred to and disciplined in accordance with the applicable Disciplinary Policy for the employee, as outlined in both the University Personnel Handbook and the Faculty Handbook. Disciplinary responses will likely range from an oral reminder to employment termination depending upon the severity of the incident and taking into account any previous disciplinary actions.

Disciplinary actions for conduct falling under the jurisdiction of Title IX will only be taken after the following the investigation and grievance procedures set forth in the University's accompanying Title IX Grievance Policy and consistent with the range of sanctions set forth in this Policy.

## **RESOURCES FOR REPORTING AND RESPONDING PARTIES**

In the event that a student experiences sexual misconduct in any form, they should treat it seriously and tell someone. There are long-term effects, even if the immediate effects may not appear obvious. Help is important. Which service one starts with is not important. Each service is designed to address the specific concerns of a situation. These resources are not isolated, but cooperate to provide a web of support for the student who has experienced discrimination, harassment, or sexual misconduct. After the first contact, there is help for deciding who else might be of assistance.

If students experience discrimination, harassment, and/or sexual misconduct, including sexual assault, dating violence, domestic violence, or stalking, on or off campus, and have questions or need help, contact any of these resources below:

## **ON-CAMPUS RESOURCES FOR STUDENTS**

**The Title IX Coordinator** for the University of New England is Angela Shambarger, 207-221-4554, [ashambarger@une.edu](mailto:ashambarger@une.edu), Human Resources Office, both campuses, 11 Hills Beach Road, Biddeford, ME 04005 and 716 Stevens Avenue, Portland, Maine, 04103.

**The Deputy Title IX Coordinators** are: (1) Jennifer DeBurro, Vice President for Student Affairs at 207-602-2372 or [jdeburro@une.edu](mailto:jdeburro@une.edu); (2) Ray Handy, Associate Dean of Student Affairs: 207-221-4213, [rhandy@une.edu](mailto:rhandy@une.edu); (3) Heather Davis, Director of Athletics, 207-602-2629, [hdavis@une.edu](mailto:hdavis@une.edu); (4) Janna Merritt, Assistant Director of Human Resources, 207-602-2281, [jmerritt2@une.edu](mailto:jmerritt2@une.edu); or (5) Ed Doyle, Senior Associate Director of Human Resources, 207-221-4307, [edoyle1@une.edu](mailto:edoyle1@une.edu).

**Student Counseling Services** for the University of New England.

For general Counseling Services support:

Biddeford Campus: 207-602-2549/toll-free 1-866-743-2230, or on the Portland Campus: 207-221-4550 or toll-free: 1-866-798-9201. UNE's on-call counselor may be reached by calling 207-602-2549 and then pressing "6".

Confidential and free to students.

<http://www.une.edu/studentlife/counseling>

**University Safety and Security:** In case of **emergency**, University Safety and Security for both the Portland and Biddeford campuses may be reached by **dialing 366** from any campus phone and by dialing (207) 283-0176 from any non-campus phone. In all emergencies, 911 can be dialed from any on-campus phone to reach local law enforcement or emergency medical services. University Safety and Security can also assist a student in reaching local emergency services.

In non-emergency situations, University Safety and Security may be reached at: 207-602-2298.

### **Student Health Care**

**207-602-2358 (BC) or 207-221-4242 (PC)**

During routine Health Center hours, staff can provide immediate emergency and ongoing medical care, STD (sexually transmitted disease) testing, and pregnancy testing and prevention. With the complainant's consent, they will make arrangements with local hospitals, municipal Police Departments, and Campus Safety and Security for transportation and medical protocol used to provide evidence for prosecution. They will also provide referral and advice regarding campus and community resources.

### **Housing and Residential/Commuter Life Staff, Biddeford Campus, (BC)**

(Resident Advisor or Professional Staff)

**Individual R.A. extension or 207-602-2272 (BC) for Housing**

This office can provide immediate support and response, make arrangements as necessary for emergency services, provide advice regarding university and community resources, and provide intervention to assure safety.

### **Intercultural Student Engagement**

**Biddeford Campus: Campus Center 100, 207-602- 2461 or Portland Campus: 02 Proctor Hall, 207- 221-4212.** Online: <http://www.une.edu/ise>. Can help connect students to resources and support

regarding spiritual or faith communities as well as provide information on gender expression and inclusivity.

**Student Access Center**

**Biddeford Campus:** 207-602-2815, [bcstudentaccess@une.edu](mailto:bcstudentaccess@une.edu)

**Portland Campus:** 207-221-4438, [pcstudentaccess@une.edu](mailto:pcstudentaccess@une.edu)

**OFF-CAMPUS RESOURCES**

**Police Department (911)**

Any individual who experiences sexual misconduct can contact the Police Department or Department of Safety and Security for assistance in obtaining medical attention and to initiate an investigation of the crime. The University will assist any individual who wishes to report to the police. Those departments can summon medical resources and criminal investigators, act as a liaison with local law enforcement, County Attorney, and Victim/Witness Advocate, and provide referral and advice regarding University and community resources. The University will make reasonable efforts to protect and secure the complainant's rights and the complainant will have input into the course of the investigation.

**Hospital Emergency Department**

**Maine Medical Center at 207-662-2381 or Southern Maine Medical Center at 207-294-5000**

These health care units can provide immediate medical care, STD (sexually transmitted disease) testing and pregnancy testing and prevention. The successful prosecution of sexual assault/rape cases often depends on physical evidence collected soon after the assault. Each hospital has health care providers trained to treat individuals who have experienced sexual assault/rape with attention to collecting physical evidence. In order to assure the collection of evidence, individuals who have experienced sexual assault/rape are advised not to wash or change clothes prior to seeking immediate medical treatment.

**Maine State Crisis Number**

1-888-568-1112

**National Crisis Text Line**

Text "TALK" to 74174

**National Suicide Prevention Lifeline**

1-800-273-TALK (8255)

**SEXUAL MISCONDUCT SPECIFIC OFF-CAMPUS RESOURCES**

**Sexual Assault Response Services of Southern Maine**

**24 Hours: 1-800-871-7741, 207-828-1035 (Cumberland Administrative Office), or 207-571-3451**

Provides confidential hotline counseling and referral for victims of sexual misconduct. They may accompany you to a medical facility and stay with you during an examination if you wish.

<https://www.sarssm.org/>

### **Caring Unlimited**

**1-800-239-7298**

York County's Dating/Domestic Violence Program. 24-hour confidential hotline counseling and referral, free court advocates for help obtaining orders for Protection from Abuse, confidential emergency shelter.

<https://www.caring-unlimited.org/>

### **Through These Doors**

**1-800-537-6066, or 207-874-1973**

Cumberland County Domestic Violence Services. 24-hour confidential hotline counseling and referral, free court advocates for help obtaining orders for Protection from Abuse, confidential emergency shelter.

<https://www.throughthesedoors.org/>

### **Planned Parenthood of Maine**

**Biddeford: 275 Main St, Suite 102, Biddeford, ME 04005 207-282-6620**

**Portland: 443 Congress Street, Portland, ME 04101, 1-800-230-7526, 207-221-4242** or online at

<https://www.plannedparenthood.org/planned-parenthood-northern-new-england>

Confidential services and can provide information about emergency contraception and information about sexually transmitted diseases.

### **Rape, Abuse, and Incest National Network (RAINN) (confidential resource)**

800-656-HOPE (4673)

<https://www.rainn.org/>

### **National Sexual Violence Resource Center (NSVRC)**

<https://www.nsvrc.org/>

## **APPLICABLE PROCEDURES UNDER THIS POLICY**

In response to a report of sexual misconduct under this Policy, including conduct covered by Title IX, the report may be resolved in any one of the following ways (1) by the Title IX Coordinator offering or providing supportive measures to the Complainant and/or the Respondent; (2) by the Complainant filing a formal complaint and initiating a formal investigation and grievance process; (3) by the Title IX Coordinator filing a formal complaint and initiating a formal investigation and grievance process; or (4) by both parties voluntarily and mutually entering into an informal resolution, as deemed appropriate by the Title IX Coordinator, after the filing of a formal complaint.

The nature of the reported conduct, the location of the reported conduct and the role of the Respondent determines the procedures that will be used to investigate and resolve formal complaints under this Policy. The goal of the University in utilizing these procedures is to provide the appropriate framework for the investigation and if necessary, the adjudication of these complaints and to provide Complainants and Respondents a fundamentally fair process for resolution of such complaints.

**For Title IX Covered Conduct (employees and students):** Please see the Title IX Grievance Policy linked here: <https://www.une.edu/title-ix-civil-rights-compliance>.

**For Discriminatory Conduct, Harassment and Sexual Misconduct Not Covered by Title IX (employees):** Please see the University's Personnel Handbook, linked here: <https://www.une.edu/pdfs/une-personnel-handbook> and the investigation process listed below.

**For Discriminatory Conduct, Harassment and Sexual Misconduct Not Covered by Title IX (undergraduate and graduate students):** Please see the process below.

Reported conduct may also implicate other University policies and/or professional codes of conduct and, where applicable, referred to the applicable grievance procedures for resolution.

**COMPLAINT REVIEW PROCEDURES FOR ALLEGED VIOLATIONS OF THE UNIVERSITY NON-DISCRIMINATION, ANTI-HARASSMENT, AND SEXUAL MISCONDUCT POLICY BY STUDENTS**

- A. Steps Taken By the Title IX Coordinator Once A Formal Complaint is Received: Once a complaint has been received by the Title IX Coordinator or one of the Deputy Title IX Coordinators as set forth above the following steps will be taken:
- a. The Title IX Coordinator or designee (hereafter referred to as the Title IX Coordinator) will meet with the Complainant and conduct an initial assessment. As part of the initial assessment, the Title IX Coordinator will determine whether the University has jurisdiction and which policy (or policies) and grievance process applies. The Complainant may be asked to provide a statement of the allegations in writing.
  - b. If the allegations in the complaint would constitute a violation of the discriminatory harassment or sexual misconduct provisions of this Policy and/or the Student Conduct Code if proved, then the Title IX Coordinator will meet with the Respondent.
    - i. The Title IX Coordinator will issue a letter to the Respondent outlining the specific sections of the Policy and/or Student Conduct Code, and/or applicable professional codes of conduct the Respondent is alleged to have violated. The Title IX Coordinator may also meet with the Respondent in person to inform the Respondent of the allegations and provide access to resource for support prior to issuing the written notice of allegations.
  - c. A Respondent may elect not to participate in the University process as that is their legal right. However, failure to provide information to the Title IX Coordinator or to otherwise not participate in the process as it moves forward will not stop the University's investigation and grievance process from proceeding according to the provisions of this policy.
- B. Investigation of Alleged Violations of Discriminatory Harassment and Sexual Misconduct
- a. All allegations of discriminatory harassment and sexual misconduct will be investigated either by the University's Title IX Coordinator, internal Title IX Investigator and Prevention Specialist, or designee, or at the University's sole discretion by an outside Investigator.
  - b. The Investigator will attempt to be expeditious in conducting interviews, gathering

evidence, and producing a final report but will not sacrifice thoroughness for a specific time frame for completion. Generally, however, investigations will range in length from 60-90 days.

- c. The Investigator will be provided with the information obtained from the Complainant and/or the Respondent. The Investigator will meet with and interview both parties and will provide both parties with the opportunity to identify witnesses and or documents such as texts or other electronic media that either party would like the investigator to interview or to consider as evidence.
  - i. The Investigator may meet with the Complainant, the Respondent, and any witnesses deemed to have relevant information in any order the Investigator deems appropriate. The Investigator may also meet with either party or any of the witnesses more than once.
  - ii. During the interviews, the Complainant and the Respondent may both choose to have an advisor and/or a support person with them. The advisor may be a member of the UNE community or if the violations asserted against the Respondent include allegations of sexual misconduct covered under the Clery Act/Title IX, they may be any individual of the party's choosing, including an attorney. The advisor is there for support and may not address the Investigator. If the advisor is in any way disruptive of the investigatory process, the investigator shall ask the advisor to leave the room and the process shall not continue until they have done so.
- d. The investigator will gather other relevant information or evidence, including documents, photographs, communications, card swipe records, video evidence, and electronic records. The investigator may visit relevant sites and locations. The investigator may also consider publicly available social media or online sources, though will generally not actively monitor online information. The investigator may, in certain cases, consult with witnesses who have subject matter expertise related to issues involved in the investigation (e.g. medical professional to opine on physical injury). Character witnesses are not permitted. The investigator has the discretion to determine which witnesses to interview and what evidence to collect, as well as to determine the relevance of such information. Both parties may submit questions to the investigator that they want asked of the other party and/or witnesses by the investigator. The investigator has the discretion to determine the relevance of any questions posed and therefore which questions to ask. There is a presumption that all investigatory interviews conducted by the investigators will be recorded electronically in accordance with the *University Investigative Interview Recording Policy*. Once all of the interviews have been completed and the investigation phase is complete, both the Complainant and the Respondent shall be provided an opportunity to review a copy of all interview summaries (or transcripts) and the evidence the investigator deems relevant and intends to rely upon in the investigator's findings ("the Record"). Redactions will be made as appropriate to comply with applicable privacy laws and as necessary to exclude information that is irrelevant, prejudicial, and/or protected by a privilege where appropriate consents for disclosure have not been obtained (e.g. information subject to rape shield protection or personal health information) to protect students' personally identifiable information involving matters outside the scope of the investigation.

- e. Once the Complainant and the Respondent have each had the opportunity to review the Record, they shall each have the opportunity to provide the Investigator with any additional written statement they wish to submit concerning what they have reviewed in the Record.
  - i. The Complainant and the Respondent should provide this additional statement, if they wish to submit one, to the Investigator within five (5) business days of the receipt of the Record.
  - ii. The Investigator will review and consider the parties' statements (to the extent timely submitted) in the investigation report.

C. Investigation Report

- a. The Investigator's report shall set forth findings of fact which shall include assessments of credibility where called for. Based on those findings of fact and the applicable provisions of University policy, the Investigator will make a recommended finding based on the preponderance of the evidence standard as to whether or not the investigator finds the Respondent responsible for each of the allegations of violation of University policy set forth in the letter of specific allegations sent to the Respondent prior to the start of the investigation. The Investigator shall not make any recommendation as to possible sanctions. If the alleged facts, even if substantiated, would not meet the specific policy elements of conduct that is prohibited by this Policy, the investigator may either (1) dismiss the complaint or (2) refer the complaint for resolution under a separate University policy and process, as applicable. If the investigator dismisses the complaint, the parties shall have the opportunity to appeal the dismissal decision by initiating the appeal process for any of the reasons set forth under Section E below.

D. Hearing Panel

- a. Following the completion of the investigation report, the VPSA will ask the Director of Student Conduct to convene a three-person Hearing Panel. The Hearing Panel will be chaired by the Director of Student Conduct and a two-person panel of decision makers.
  - i. The Hearing Panel shall be chaired by the Director of Student Conduct. Based on the findings of facts, the Hearing Panel shall meet to consider the recommended findings of the investigator to determine whether there is sufficient evidence, by a preponderance of the evidence, to establish that the Respondent engaged in conduct that is prohibited by this Policy, the Hearing Panel and/or other applicable professional code of conduct and to determine what sanctions, if any, are appropriate for the violations. The Hearing Panel may accept or reject the recommended findings of the investigator. The Hearing Panel may also direct the investigator to conduct any follow up inquiry or investigation the Hearing Panel deems necessary to reach a final determination.
- b. Both the Complainant and the Respondent shall each have the opportunity to appear before the Hearing Panel to address the investigator's recommended findings and the material issues before the Panel. They may also choose to submit a statement in writing to the Hearing Panel and to not appear in person.
  - i. An appearance by either the Complainant or the Respondent is voluntary and not required. If either or both choose to appear they may each have an advisor with them. The advisor may be a member of the UNE

community or if allegations involve conduct covered by the Title IX or Clery Act, they may have an advisor of their choice (who may be an attorney). The advisor is there for support and may not address the Hearing Panel. If the advisor is in any way disruptive of the Hearing process, the Director of Student Conduct shall ask the advisor to leave the room and the process shall not continue until they have done so. The proceedings of the Hearing shall not be recorded in any manner.

- c. At the conclusion of the Hearing, the parties and their advisors shall leave the room and the Panel shall begin deliberations in order to make a determination of responsibility and, if the Respondent is found responsible, what, if any, sanctions should be assigned for the violations of the provisions of this Policy. The determination of responsibility and sanctioning portions of the Hearing may be bifurcated.
  - i. If the Respondent is found responsible and is an undergraduate, graduate, or professional student in a program with a professional code of conduct, a faculty member from the student's College or Program shall be added to the Hearing Panel to address applicable professional code of conduct issues and serve as an additional decisionmaker on sanctioning only.
  - ii. In determining sanctions, the Panel shall consider the final investigation report, the statements made by the parties in the hearing, and any previously adjudicated violations of the Student Conduct Code and any related sanctions.
  - iii. Once the Panel has reached its decision, the Director of Student Conduct shall report the decision of the Panel to the Title IX Coordinator who shall inform the Complainant and the Respondent of the decision in writing.

E. Appealing a Decision of the Hearing Panel

- a. Within seven (7) business days of the receipt of the written decision letter from the Title IX Coordinator, both Complainant and the Respondent shall have the right to appeal the decision on sanctions to the Vice President of Student Affairs (VPSA) or designee. The appeal may raise any of the following grounds (1) alleged procedural errors that had a material impact on the fairness of the proceedings by the Hearing Panel; (2) new evidence that was not reasonably available at the time of the hearing that could have affected the outcome of the matter. Upon receipt of the appeal request, the VPSA will determine if it meets the requirements for an appeal review and convene a three-person appeal board chosen from a pool of trained appeal board members.
  - i. Within seven (7) business days of the receipt of the appeal/s the three-person appeal board shall issue a decision in writing to both the Complainant and the Respondent. The three-person appeal board may uphold the decision of the Hearing Panel or return the decision to the Hearing Panel through the Director of Student Conduct for reconsideration of a procedural error or based on new evidence.
  - ii. If necessary, the Hearing Panel will reconsider their decision based on the concerns of the three-person appeal board. The Hearing Panel shall issue a new written decision to the three-person appeal board within seven

business (7) days of the receipt by the Hearing Panel of the three-person appeal panel's request for reconsideration.

- iii. The three-person appeal board shall then have five business (5) days to issue a final decision on the appeal. This final decision shall be issued to both the Complainant and the Respondent concurrently.