

VITERBO UNIVERSITY

TITLE IX: PROHIBITION OF SEXUAL HARASSMENT

NOTICE OF NON-DISCRIMINATION

It is the mission of Viterbo University to prepare students for faithful service and ethical leadership. The University's core values of contemplation, hospitality, integrity, stewardship, and service are reflected in educational programs that transform students and prepare them to be successful in their careers and as stewards of their communities. To promote its mission and values, the University is committed to creating a safe and supportive environment for all and to ensuring that its programs, activities and operations are free from discrimination and harassment.

The University prohibits all forms of discrimination against students, employees, and other persons in all aspects of the University's programs, activities and operations, based on sex, race, religion, national origin (including persons whose primary language is not English), ancestry, creed, pregnancy, marital or parental status, sexual orientation, gender expression, gender identity, gender non-conformity, physical, mental, emotional or learning disability.

Statement Regarding Sex Discrimination under Title IX

As mandated by the federal Title IX statutes and under the regulations set forth in Part 106 of Title 34 of the Code of Federal Regulations, the University does not unlawfully discriminate on the basis of sex in any educational program or activity that the University operates. Title IX's mandate not to discriminate on the basis of sex extends to students, employees, and other persons in all aspects of the University's programs, activities, and operations. Inquiries regarding how Title IX applies to the University may be referred to the University Title IX Coordinator (contact information below), to the Assistant Secretary at the U.S. Department of Education Office for Civil Rights, or to both.

SCOPE OF POLICY¹

Sexual Harassment under Title IX

This policy prohibits sexual harassment (which includes sexual assault, dating violence, domestic violence and stalking) under Title IX in all programs, activities, and operations of the University. Individuals who engage in such acts are in violation of this policy and are subject to disciplinary action. This policy also prohibits retaliation against individuals who report sexual harassment, who assist others in reporting, or who participate in University proceedings related to such a report. Individuals who engage in retaliation are subject to disciplinary action.

When the University has actual knowledge of sexual harassment under Title IX in an education program, activity, or operation of the University against an individual, including a student or employee, in the United States, the University shall respond promptly in a manner that is not deliberately indifferent.

¹The regulations set forth in 34 C.F.R. Part 106 related to Title IX Sexual Harassment were released on May 6, 2020, and became effective on August 14, 2020. Due to the short timeframe for development and implementation, the University anticipates that changes to the federal regulations or additional guidance from the enforcing agency, may require revisions to this policy.

The University has jurisdiction over Title IX sexual harassment complaints regarding conduct that occurs at locations, events, or circumstances over which the University exercises substantial control over both the individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment under Title IX and the context in which the sexual harassment occurred. This may include conduct that occurs on and off campus but in no case includes conduct against an individual outside the United States. If the alleged conduct does not constitute sexual harassment under Title IX, the University may address the conduct under other policies or codes of conduct.

All Other Unlawful Discrimination

This policy and the grievance process herein apply only to complaints alleging sexual harassment under Title IX. All other complaints involving discrimination based on any other legally protected status including race, color, national origin, disability, religion, sex (other than sexual harassment under Title IX), pregnancy, and age, are addressed in other policies of the University.

TITLE IX COORDINATORS

Pursuant to Title IX of the Educational Amendments of 1972 and 34 C.F.R. Part 106, the Viterbo University Title IX Coordinators are the designated University representatives with primary responsibility for coordinating University Title IX compliance efforts, including the University's efforts to coordinate the effective implementation of supportive measures, investigate the occurrence, end sexual harassment, prevent its recurrence, and remedy its effects. The responsibilities of this position are critical to the advancement, implementation, and monitoring of university-wide efforts to comply with Title IX legislation, regulation, and case law. The Title IX Coordinators are the University representatives who are charged with the responsibility to oversee and monitor Title IX related policies and developments; the oversight of complaint processes and procedures; the provision of educational materials and training for the campus community; conducting and/or coordinating investigations of complaints received pursuant to Title IX; ensuring a fair and neutral process for all parties; and monitoring all other aspects of the University's Title IX compliance. The Title IX Coordinators may work with other University employees in carrying out their duties under Title IX.

The Title IX Coordinators designated below have been authorized to coordinate and oversee the University's compliance with Title IX:

Title IX Coordinator:

Marci Iverson, Assistant Dean of Student Wellbeing and Title IX Coordinator
MRC 232
900 Viterbo Drive
La Crosse, WI 54601
608-796-3120
titleix@viterbo.edu

Deputy Title IX Coordinator:

Emily Weaver
Chief Human Resources Officer
MRC 200
900 Viterbo Drive
La Crosse, WI 54601
608-796-3930
titleix@viterbo.edu

If the designated Title IX Coordinator is unavailable, disqualified by bias, or otherwise unable to perform this duty, the individual should contact one of the above Deputy Title IX Coordinators. The individual may also contact the U.S. Department of Education's Office for Civil Rights, which can be reached in person or by mail at Citigroup Center, 500 W. Madison Street, Suite 1475, Chicago, IL 60661-4544, by phone at 312-730-1560 or TDD 877-521-2172, or by email at OCR.Chicago@ed.gov or the Educational Opportunities Section of the Civil Rights Division of the U.S. Department of Justice (DOJ): <http://www.justice.gov/crt/complaint/#three>

DEFINITIONS

Definition of Sexual Harassment under Title IX

“**Sexual harassment**” under Title IX means conduct on the basis of sex that satisfies one or more of the following:

- (1) An employee of the University conditioning the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct;
- (2) Unwelcome conduct that is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's education program or activity; or
- (3) **Sexual assault**, as defined in 20 U.S.C. § 1092(f)(6)(A)(v), **dating violence**, as defined in 34 U.S.C. § 12291(a)(10), **domestic violence**, as defined in 34 U.S.C. § 12291(a)(8), or **stalking**, as defined in 34 U.S.C. § 12291(a)(30).

“**Sexual assault**” under 20 U.S.C. § 1092(f)(6)(A)(v), means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation, including but not limited to rape, sexual assault with an object, and groping.

Sexual assault includes, but is not limited to:

- a. Intentional touching of another person's intimate parts without that person's consent; or
- b. Other intentional sexual contact with another person without that person's consent; or
- c. Coercing, forcing, or attempting to coerce or force a person to touch another person's intimate parts without that person's consent; or
- d. Rape, which is penetration, no matter how slight, of (1) the vagina or anus of a person by any body part of another person or by an object, or (2) the mouth of a person by a sex organ of another person, without that person's consent.

“**Dating violence**” under 34 U.S.C. § 12291(a)(10) means violence committed by a person:

- (1) Who is or has been in a social relationship of a romantic or intimate nature with the Complainant; and
- (2) Where the existence of such a relationship shall be determined based on the reporting party's statement and a consideration of the following factors:
 - a. the length of the relationship;
 - b. the type of relationship; and
 - c. the frequency of interaction between the persons involved in the relationship.

Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.

“**Domestic violence**” under 34 U.S.C. § 12291(a)(8) includes but is not limited to felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the Complainant, by a

person with whom the Complainant shares a child in common, by a person who is cohabitating with or has cohabitated with the Complainant as a spouse or intimate partner, by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

While not exhaustive, the following are examples of conduct that can constitute domestic violence: (1) physical harm, bodily injury or assault; (2) the infliction of fear of imminent physical harm, bodily injury, or assault; or (3) terroristic threats, criminal sexual conduct, or interference with an emergency call.

“Stalking” under 34 U.S.C. § 12291(a)(30) means engaging in conduct directed at a specific person that would cause a safe reasonable person to fear for his or her or the safety of others or to suffer substantial emotional distress.

Examples include acts in which the stalker directly, 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. Stalking behavior includes, but is not limited to:

- a. Repeated, unwanted, intrusive, or frightening communications by phone, mail, text, email and/or social media;
- b. Repeatedly leaving or sending an individual unwanted items, presents, or flowers;
- c. Following or lying in wait for an individual at places such as home, school, work, or recreation place;
- d. Making direct or indirect threats to harm an individual, an individual's children, relatives, friends, or pets;
- e. Damaging or threatening to damage an individual's property;
- f. Posting information or spreading rumors about an individual on the internet, in a Campus place, or by word of mouth; or
- g. Unreasonably obtaining personal information about an individual by accessing Campus records, using internet search services, hiring private investigators, going through an individual's garbage, following an individual, contacting an individual's friends, family, work, or neighbors, etc.

Other Definitions Applicable To This Policy

“Actual knowledge” means notice of sexual harassment or allegations of sexual harassment under Title IX to (1) the University's Title IX Coordinator; or (2) any officials of the University who have authority to institute corrective measures on behalf of the University. Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge. This standard is not met when the only official of the University with actual knowledge is the alleged perpetrator. The mere ability or obligation to report sexual harassment or to inform a student about how to report sexual harassment, or having been trained to do so, does not qualify an individual as one who has authority to institute corrective measures on behalf of the University. “Notice” as used in this paragraph includes, but is not limited to, a report of sexual harassment to the Title IX Coordinator.

“Complainant” means the individual who is alleged to have been the victim of sexual harassment.

“Consent” means words or overt actions by a person who is competent to give informed consent indicating a freely given agreement to have sexual intercourse or sexual contact. The following persons are presumed incapable of consent: a person suffering from a mental illness or defect which impairs capacity to appraise personal conduct, and a person who is unconscious or for any other reason is physically unable to communicate unwillingness to an act.

There is no consent when there is force, expressed or implied, or when coercion, intimidation, threats, or duress are used. Whether a person has taken advantage of a position of influence over another person may be a factor in determining consent.

- a. Silence or absence of resistance does not imply consent.
- b. Past consent to sexual activity with another person does not imply ongoing future consent with that person or consent to that same sexual activity with another person.
- c. If a person is mentally or physically incapacitated or impaired so that such person cannot understand the fact, nature, or extent of the sexual situation, there is no consent; this includes impairment or incapacitation due to alcohol or drug consumption that meets this standard, or being asleep or unconscious.

“Day” when used in this policy means a business day and does not include Saturday, Sunday, legal holidays, or days the University is closed.

“Education program or activity” includes locations, events, or circumstances over which the University exercised substantial control over both the individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment under Title IX and the context in which the sexual harassment occurred. This definition does not include education programs or activities that occur outside the United States.

“Exculpatory Evidence” is evidence that tends to clear or excuse a Respondent from allegations of sexual harassment.

“Formal Complaint” means a document filed by a Complainant or signed by the Title IX Coordinator, alleging sexual harassment against a Respondent and requesting the University to investigate the allegation of sexual harassment. At the time a Formal Complaint is filed (either by the Complainant or guardian, or the Title IX Coordinator), the named Complainant must be participating in or attempting to participate in the education program or activity of the University.

“Inculpatory Evidence” is evidence that tends to establish a Respondent’s responsibility for alleged sexual harassment.

“Preponderance of the Evidence” is the standard applied by the decision-makers under the grievance process in this policy and means that there is sufficient relevant evidence for the decision-makers to find that the Respondent has more likely than not engaged in conduct that violates this policy.

“Report” means a written or verbal communication in person or via electronic communication, U.S. mail, facsimile, voicemail or telephone or notification through Viterbo Speaks Up made by any person for the purpose of providing information about alleged sexual harassment under Title IX. The grievance procedure is triggered only when a report is made or provided to the Title IX Coordinator or an individual who has authority to institute corrective measures on behalf of the University. A report of sexual harassment does not constitute a Formal Complaint under the grievance process in this policy.

“Respondent” means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

“Supportive measures” means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent before or after the filing of a Formal Complaint or where no Formal Complaint has been filed. Such measures are designed to restore or preserve equal access to the University’s education program or activity without unreasonably burdening the other party, while protecting the safety of all parties and the University’s educational environment; and deterring sexual harassment. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.

REQUIRED NOTICES

The University shall display the following notice on its website and in each handbook or catalog provided to applicants for admission and employment, students, parents or legal guardians, University employees, and all unions or professional organizations holding collective bargaining or professional agreements with the Board:

The University does not unlawfully discriminate on the basis of sex in any education program or activity that the University operates. Title IX's mandate not to discriminate on the basis of sex extends to students, employees, and other persons in all aspects of the University's programs, activities, and operations. Inquiries regarding how Title IX applies to the University may be referred to the University Title IX Coordinator (contact information below), to the Assistant Secretary at the U.S. Department of Education, or to both.

The Title IX Coordinator:

Marci Iverson, Assistant Dean of Student Wellbeing and Title IX Coordinator

MRC 232

900 Viterbo Drive

La Crosse, WI 54601

608-796-3120

titleix@viterbo.edu

The University has adopted a [grievance procedure and process](#) that provides for the prompt and equitable resolution of student and employee complaints alleging any action that is prohibited by Title IX and/or its implementing regulations. The Title IX grievance procedure and process addresses how to report or file a Formal Complaint of Sexual Harassment, and how the University will respond.

This notice will be provided to applicants for admission and employment; students, parents, or legal guardians of elementary and secondary school students; employees; and unions or professional organizations holding collective bargaining or professional agreements.

REPORT OF SEXUAL HARASSMENT UNDER TITLE IX

Any official of the University who has authority to institute corrective measures with actual knowledge of sexual harassment under Title IX **shall** immediately report sexual harassment to the Title IX Coordinator. In the event that the sexual harassment involves conduct by the Title IX Coordinator, the report should be made to one of the Deputy Title IX Coordinators listed above.

Any person (including a person not alleged to be the victim of sexual harassment) **may** report sexual harassment at any time, including during non-business hours, to the Title IX Coordinator by mail, by telephone, by electronic mail, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. Reports may be made orally or may be in writing. "[Viterbo Speaks Up](#)" **may** be used to report sexual harassment under Title IX. The report should identify the alleged victim, perpetrator, and witnesses, and describe the sexual harassment in detail including date, time, and location.

The designation of an individual as a Campus Security Authority (CSA) under the Clery Act does not denote an individual as an "official who has authority to institute corrective measures" under Title IX.

CONFIDENTIALITY

The University shall keep confidential the identity of any person who has made a report or complaint of sexual harassment under Title IX, any Complainant, any individual who has been reported to be the perpetrator of sexual harassment, any Respondent, and any witness, except as may be permitted by the Family Educational Rights and Privacy Act ("FERPA"), as required by law, or to carry out the purposes of this

Policy or Title IX, including the conduct of any investigation, hearing, or judicial proceeding arising under Title IX.

The University may not 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 and which are made and maintained in connection with the provision of treatment to the party, unless the University obtains the voluntary written consent of the party or the party's parent or guardian.

INITIAL RESPONSE TO REPORT OF SEXUAL HARASSMENT UNDER TITLE IX

In responding to a report of sexual harassment, the Title IX Coordinator may consider whether the allegations constitute discrimination or harassment under another state or federal law or a violation of the University's policies or code of conduct, and whether a concurrent investigation should continue under a different policy. Unless required by law, the process in this policy shall provide required due process under state or federal law if the process herein is utilized.

The University will treat Complainants and Respondents equitably by offering supportive measures to a Complainant, and by following a grievance process that complies with Title IX before the imposition of any disciplinary sanctions or other actions that are not supportive measures as against a Respondent.

When the University is required to provide notice to parties identified in the grievance process, notice shall be acceptable if it is in writing and delivered to the parties and advisors: (a) In person by the Title IX Coordinator or designee; (b) U.S. mail to the local or permanent address of the individual as indicated in official University records; or (c) Email to the individual's University-issued email account. Notice via email will be presumed received when sent. In all other circumstances, the parties must confirm receipt to the Title IX Coordinator within three (3) business days. A Respondent who fails to confirm receipt of a notice of outcome as required herein, may be subject to disciplinary sanctions.

Supportive Measures

When the Title IX Coordinator determines that the University has actual knowledge of sexual harassment under Title IX, the Title IX Coordinator will respond promptly (generally within five (5) days) in a manner that is not deliberately indifferent. Initially, the Title IX Coordinator will:

1. Contact the Complainant (individual alleged to be the victim of sexual harassment) to (a) discuss the availability of supportive measures; (b) consider the Complainant's wishes with respect to supportive measures and inform the Complainant of the availability of supportive measures with or without filing a Formal Complaint; and (c) explain to the Complainant the process for filing a Formal Complaint.
2. Determine appropriate supportive measures and coordinate with appropriate administration to provide supportive services to the Complainant.
3. Document the provision of supportive measures or if supportive measures are not provided, document the reasons why such response was not clearly unreasonable in light of the known circumstances.

The University must maintain as confidential any supportive measures provided to the Complainant to the extent that maintaining such confidentiality would not impair the ability of the University to provide the supportive measures.

Emergency Removal/Administrative Leave

Emergency Removal of a Student. Upon receipt of actual notice, the Title IX Coordinator (in consultation with University administration) may consider whether a Respondent should be removed from the education program, activity, or operation of the University on an emergency basis. Before any emergency removal is permitted, the University shall:

1. Undertake an individualized safety and risk analysis,
2. Determine that an immediate threat to the health or safety of students or other individual justifies removal; and
3. Provide Respondent notice of the removal and of the opportunity to challenge the decision by submitting a written statement challenging the decision and the reasons therefore, to the Title IX Coordinator within twenty-four (24) hours following the removal.

Administrative Leave of an Employee. The University may place a non-student employee Respondent on administrative leave, including during the pendency of a grievance process.

The University shall comply with any applicable requirements under Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act when removing a Respondent from the education program, activity, or operation or placing a Respondent on administrative leave.

FORMAL COMPLAINT

Complainant May File a Formal Complaint

1. A Complainant may file a Formal Complaint with the Title IX Coordinator in person, by mail, by electronic mail, by using the contact information for the Title IX Coordinator, or by any additional method designated by the University.
2. A document filed by a Complainant means a document or electronic submission that contains the Complainant's physical or digital signature or otherwise indicates that the Complainant, or a guardian acting on behalf of a Complainant, is the person filing the Formal Complaint. If the University receives a Formal Complaint, the University must follow the grievance process below.

Title IX Coordinator May Sign a Formal Complaint

1. If a Complainant chooses not to file a Formal Complaint, the Title IX Coordinator may engage in a determination of whether to sign a Formal Complaint. This determination may not be delegated to any other individual.
2. In making this determination, the Title IX Coordinator shall consult with other University administration as deemed necessary or appropriate, and consider whether the University's interest in the safety of others as well as potential disciplinary sanctions against the Respondent, warrants signing by the Title IX Coordinator.
3. The Title IX Coordinator may not sign a Formal Complaint against the wishes of the Complainant if involving the Complainant in the grievance process would be clearly unreasonable in light of the known circumstances.
4. Upon signing the Formal Complaint, the Title IX Coordinator does not become a Complainant or party to the Formal Complaint.

Dismissal of Formal Complaint

Upon receipt of a Formal Complaint or if appropriate, at other points in the grievance process, the University must determine whether a Formal Complaint should be dismissed pursuant to the following provisions. The dismissal of a complaint is appealable to the extent allowed by this policy.

1. **Mandatory Dismissal.** The University must dismiss a Formal Complaint if the conduct alleged:
 - a. Would not constitute sexual harassment as defined under Title IX even if proved;
 - b. Did not occur within the University's program or activity; or
 - c. Did not occur against a person in the United States.

If dismissal is required, the University must promptly send written notice of the dismissal and the reasons for the dismissal simultaneously to the parties. Dismissal of a Formal Complaint does not preclude action under the University's code of conduct.

2. **Permissive Dismissal.** The University **may** dismiss a Formal Complaint if, at any time during the investigation, any of the following occurs:

- a. The Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint;
- b. The Respondent is no longer enrolled in or employed by the University; or
- c. Specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the Formal Complaint.

If such dismissal occurs, the University must promptly send written notice of the dismissal and the reasons for the dismissal simultaneously to the parties. If dismissed, the University will review whether the complaint should be investigated under other applicable policies or codes of conduct.

Consolidation of Formal Complaints

The University may consolidate Formal Complaints as to allegations of sexual harassment against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one party against another party, where the allegations of sexual harassment arise out of the same facts or circumstances.

Informal Resolution

Following the filing of a Formal Complaint, and at any time prior to reaching a determination regarding responsibility, the University may facilitate an informal resolution process, including mediation, which does not involve a full investigation and adjudication. The facilitator of an informal resolution process may not be the same individual as the Title IX Coordinator, investigators, decision-makers or appeal decision-maker. The informal resolution process shall adhere to the following:

1. An informal resolution process is not available to resolve allegations that an employee sexually harassed a student.
2. The University shall not require, as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of Formal Complaints of sexual harassment under Title IX.
3. Before conducting any informal resolution process, the University will provide to the parties a written notice disclosing:
 - a. the allegations;

- b. the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a Formal Complaint arising from the same allegations, if any;
 - c. that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the Formal Complaint process; and,
 - d. any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared and whether the facilitator of the informal resolution process may be a witness in any subsequent Formal Complaint process.
4. The University will obtain the parties' voluntary written consent to the informal resolution process.
 5. An informal resolution process shall be resolved within thirty (30) days of the written notice described in this paragraph, unless additional time is needed as determined by the University.

BASIC REQUIREMENTS OF THE GRIEVANCE PROCESS

The University's grievance process shall include all the basic requirements under Title IX and all Title IX Coordinators, investigators, decision-makers, appeal decision-makers, and facilitators of informal resolution, and any other University employees engaged in the grievance process shall adhere to the following:

1. Engage in an objective evaluation of all relevant evidence – including both inculpatory and exculpatory evidence.
2. Refrain from making credibility determinations based on a person's status as a Complainant, Respondent, or witness.
3. Be free from a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent, and disclose facts which are relevant to this issue prior to serving in a designated role in the grievance process.
4. Apply a presumption that the Respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.
5. Adhere to the time frames herein for conclusion of the grievance process.
6. Apply the Preponderance of the Evidence Standard for Formal Complaints against students, employees, and all other individuals.
7. Not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

GRIEVANCE PROCESS

Notice of a Formal Complaint

Normally within ten (10) days of receiving a Formal Complaint, but no less than five (5) days before an initial interview, the Title IX Coordinator shall provide a written notice to the parties who are known. The written notice shall include:

1. Notice of the University's grievance process, including any informal resolution process;

2. Notice of the allegations potentially constituting sexual harassment, including sufficient details known at the time of the notice (identities of the parties involved in the incident, the conduct allegedly constituting sexual harassment, and the date and location of the alleged incident);
3. A statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process;
4. A statement that the parties may request to inspect and review evidence that is directly related to the allegations raised in the Formal Complaint;
5. Notice that the University will assign an advisor at no cost to each party when a Formal Complaint is filed. Advisors will assist students with the grievance process, including the investigation, hearing, and appeal. Advisors assigned by the University will not be attorneys and therefore, will not provide legal representation to a party.
6. A statement that in addition to the University-appointed advisor, the parties may have an advisor of their choice, not employed by the University, who may be, but is not required to be, an attorney; and
7. Notice to the parties of any provision in the University's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

If, during an investigation, the University decides to investigate allegations about the Complainant or Respondent that are not included in the notice, the University shall provide notice of the additional allegations to the parties whose identities are known.

Designated Roles in the Grievance Process

During the grievance process, the University will designate individuals to serve as advisors, if necessary, investigators, decision-makers, appeal decision-maker, and facilitator of an informal resolution. No individual shall serve in more than one role in any individual grievance process.

The Complainant and Respondent will be notified in writing of the individuals assigned to the process. The Complainant or Respondent may request the removal of an individual on the grounds of personal bias or other conflict of interest by submitting a written statement to the Title IX Coordinator setting forth the basis for the request no later than two (2) days after receiving the notice of the identity of the individual assigned. The Title IX Coordinator will determine whether to accept or deny the request. If the request is accepted, a replacement will be appointed and notice will be provided to the Complainant and Respondent. The decision of the Title IX Coordinator with regard to the request is final and is not appealable.

Investigation of the Formal Complaint

The University shall designate two investigators to investigate the allegations in a Formal Complaint and ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rests on the University and not on the parties. The investigators shall not restrict the ability of either party to gather and present relevant evidence, or to discuss the allegations under investigation.

During the investigation, the investigators shall:

1. Provide to the party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of investigative interviews, or other meetings, with sufficient time for the party to prepare to participate.
2. Provide equal opportunity for the parties to present witnesses and other inculpatory and exculpatory evidence.
3. Provide the parties with the same opportunities to have others present during any complaint proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney. If a party does not have an advisor, the University will assign an advisor at no cost to the party. The University may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties.
4. Prior to completion of the investigative report, send to each party and the party's advisor, if any, the evidence obtained as part of the investigation that is directly related to the allegations raised in a Formal Complaint so that each party can meaningfully respond to the evidence prior to conclusion of the investigation. The evidence shall be provided in an electronic format or a hard copy and shall include a) evidence upon which the University does not intend to rely in reaching a determination regarding responsibility, and b) inculpatory and exculpatory evidence, whether obtained from a party or other source. The parties shall have at least ten (10) days to submit a written response, which the investigators will consider prior to completion of the investigative report.
5. Create an investigative report that fairly summarizes relevant evidence and, at least ten (10) days prior to the time of determination regarding responsibility, send to each party and the party's advisor, if any, the investigative report in an electronic format or hard copy, for their review and written response.
6. Not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

Determinations of Responsibility

The University shall designate a panel of decision-makers to review the evidence and make a determination of responsibility based upon the Preponderance of the Evidence Standard.

Prior to a hearing (below), the decision-makers will review the investigation report, file, and if applicable, the Complainant's and Respondent's written response to the investigation report. The decision-makers will make all such evidence subject to the parties' inspection and review available at the hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross examination.

Hearing Procedures

The decision-makers will provide for a live hearing for any Formal Complaint.

1. Location and Accommodations

- a. Live hearings may be conducted with all parties physically present in the same geographic location, or at the decision-maker's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other.
- b. At the request of either party, the decision-makers must provide for the live hearing to occur with the parties located in separate rooms with technology enabling the decision-makers and parties to simultaneously see and hear the party or the witness answering questions.
- c. Parties who have visual, hearing, or speech disabilities will be provided accommodations necessary to effectively participate in the hearing. Parties must submit a request for accommodations to the Title IX Coordinator at least twenty-four (24) hours prior to the hearing.

2. Advisor

- a. Parties will have the same opportunity to have an advisor present during the live hearing.
- b. The decision-makers will not limit the choice or presence of an advisor, but the decision-makers may establish restrictions regarding the extent to which the advisor may participate in the hearing, as long as the restrictions apply equally to both parties.
- c. The University-appointed advisor, or an advisor engaged by a party, will be allowed to conduct cross-examination on behalf of a party. Parties may not conduct cross examination of another party or witness.
- d. Advisors may not unreasonably delay the grievance process in any manner including interrupting witnesses or answering questions on behalf of witnesses.

3. Hearing Procedures

- a. The decision-makers will conduct the hearing in a professional and orderly manner, including establishing reasonable time restrictions that will be apply equally to all parties.
- b. The decision-makers will allow each party to present witnesses to provide testimony related to the allegations within the Formal Complaint.
- c. The decision-makers will administer an oath for each witness before the witness is permitted to answer questions. During any witness testimony, relevant evidence may also be submitted.
- d. The decision-makers may also ask witnesses to provide testimony related to the allegations within the Formal Complaint.
- e. Each party's advisor(s) will be permitted to ask any witnesses (including the other party) all relevant questions and follow-up questions, including questions challenging credibility of the witness. The decision-makers may limit questioning that the decision-makers determine is cumulative.

- f. Questions, including cross examination questions, must be conducted directly, orally, and in real time by the party's advisor and never by a party personally.
- g. Each party's advisor will only be permitted to ask cross examination questions and other questions that are relevant to the allegations.
 - a. Before a witness (including the Complainant and the Respondent) answers a cross-examination or other question, the decision-makers must first determine whether the question is relevant.
 - b. If a question is not relevant, the decision-maker(s) will not allow the question and must explain any decision to exclude a question as not relevant.
- h. Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove:
 - a. That someone other than the Respondent committed the conduct alleged by the Complainant, or
 - b. If the questions and evidence concerns specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.
- i. If a party or witness does not submit to cross-examination at the live hearing, the decision-makers:
 - a. Must not rely on any statement of that party or witness in reaching a determination regarding responsibility; and
 - b. Cannot draw any inference about a determination regarding responsibility based solely on the party's or witness's absence from the live hearing or refusal to answer cross examination or other questions.
- j. After both parties have had an equal opportunity to ask relevant questions of witnesses, the decision-makers may determine that the opportunity to present witnesses has ended. The decision-makers may then close the hearing.

4. Transcript

The decision-makers must create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection and review.

Written Determination

The decision-makers must conduct an objective evaluation of all relevant evidence (including both inculpatory and exculpatory evidence) and must make credibility determinations that are not based on the person's status as Complainant, Respondent, or witness.

The decision-makers will render a decision based upon the investigation report, file, response submitted by the Complainant and/or Respondent, evidence at the hearing, and any other information the decision-makers may deem appropriate (and allowable under Title IX) and which is made available to both the Complainant and Respondent. While the Title IX Coordinator is available for consultation, the Title IX Coordinator will not participate in making a decision.

The decision-makers will use a Preponderance of the Evidence Standard in making a determination whether a violation of this policy has occurred.

The written determination must include:

- a. Identification of the allegations potentially constituting sexual harassment;
- b. A description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- c. Findings of fact supporting the determination;
- d. Conclusions regarding the application of the University's code of conduct to the facts;
- e. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the University imposes on the Respondent, and whether remedies designed to restore or preserve equal access to the University's education program or activity will be provided by the University to the Complainant; and
- f. The University's procedures and permissible bases for the Complainant and Respondent to appeal.

If the decision is made that there is not sufficient basis to believe that it is more likely than not that the Respondent violated this policy, the Complainant and Respondent will be notified of that determination and informed of other resources that may be available.

If the decision is made that it is more likely than not that the Respondent violated this policy, the decision-makers or the decision-makers' designee shall determine appropriate sanction(s), except as provided below with respect to employees. The determination will include steps to take to prevent recurrence of any such violations, and as appropriate, remedies for the Complainant.

Sanctions for Student Respondents

Sanctions imposed upon students who are determined to have violated this policy may include a variety of institutional responses or requirements, including, but not limited to, the following: warning, removal from campus housing, not being allowed to represent the University in volunteer or paid work, restitution, required attendance at educational programs, required assessment or counseling, restriction of privileges, probation, suspension and/or expulsion, and any other sanctions listed in the Code of Student Conduct or deemed appropriate under the circumstances.

Sanctions for Employee Respondents

Appropriate sanctions for Viterbo faculty, staff, or administrators deemed to have violated this policy include, but are not limited to a disciplinary warning, unpaid suspensions, and/or termination of employment, or any other available sanctions as specified by the Viterbo Personnel Policies Handbook.

If the decision-makers determines that it is more likely than not that a Viterbo employee has violated this Policy and that dismissal may be an appropriate sanction, the matter will be referred to the Director of Human Resource, for appropriate process and decision, which shall be determined and administered in a manner consistent with the Viterbo Personnel Policies Handbook.

In such cases, dismissal for cause may only be effectuated in accordance with Viterbo Personnel Policies Handbook, including use of the preponderance of the evidence standard. The decision-makers or the decision-makers' designee may impose appropriate sanctions short of dismissal, in a manner consistent with the Viterbo Personnel Policies Handbook.

Remedies to Benefit Complainants

If a determination was made that the Respondent was responsible for Title IX sexual harassment, the University may provide the Complainant with remedies designed to restore or preserve equal access to the University's education program or activity, including providing a safe educational or working environment. Such remedies may include the continuation or addition of supportive measures. Remedies need not be non-disciplinary or non-punitive and need not avoid burdening the Respondent.

APPEAL PROCEDURES

The determination of the decision-makers may be appealed as provided below. In the event that no appeal is filed within the time periods prescribed below, the decision will be final.

1. Following the communication of the decision by the decision-makers, the Complainant or Respondent may request an appeal of the decision.
2. The request for an appeal must be submitted in writing to the Title IX Coordinator within five (5) business days of receiving the written determination. If an appeal is filed, the determination regarding responsibility becomes final on the date that the University provides the parties with the written determination of the result of the appeal. Failure to file a timely appeal constitutes a waiver of any right to an appeal. If an appeal is not filed, the determination regarding responsibility becomes final on the sixth business day after receiving the written determination.
3. The basis for an appeal will be limited to the following:
 - a. Procedural irregularity that affected the outcome of the matter;
 - b. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made that could affect the outcome of the matter; and
 - c. The Title IX Coordinator, investigators, or decision-makers have a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter.
4. The appeal decision-maker must:

- a. Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties;
 - b. Give both parties five (5) days (which may be extended for good cause) to submit a written statement in support of, or challenging, the outcome;
 - c. Issue a written decision describing the result of the appeal and the rationale for the result; and
 - d. Provide the written decision simultaneously to both parties.
5. If the appeal decision-maker determines one of the above basis for an appeal is satisfied, the matter may be returned for further review of the investigation report by new decision-makers. If the basis for appeal relate to the investigation, or warrant additional investigation, the new decision-makers may refer the matter for further investigation before proceeding. The new decision-makers shall utilize the same process as required for all Formal Complaints under this Policy.
 6. If there is not adequate reason to believe that one or more grounds for appeal has been satisfied, the appeal decision-maker may dismiss the appeal. This decision is final and is not appealable.
 7. The appeal decision-maker will provide a written determination to the parties within ten (10) business days of the filing of the appeal.

TIMEFRAME FOR DETERMINATION

The conclusion of the grievance process, including any appeal, shall be done in a reasonably prompt timeframe, but no more than ninety (90) days from the date the Formal Complaint is received. The parties may agree to an extension of the 90-day timeframe to complete the grievance process or extend this timeline for good cause, as permissible by law.

RETALIATION PROHIBITED

Neither the University nor any person may intimidate, threaten, coerce or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or this Policy, or because the individual has made a report or complaint, testified, assisted or participated or refused to participate in any manner in an investigation, proceeding or hearing under this Policy.

Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or Formal Complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX or this part, constitutes retaliation.

Complaints alleging retaliation may be filed according to the grievance procedures for sex discrimination adopted by the University under the [Nondiscrimination Policy and Grievance Procedures](#).

The University will take appropriate action, up to and including termination for employees, or dismissal for students, against any individual who retaliates against another person in violation of this Policy.

RECORDKEEPING

The University shall maintain for a period of seven years, records of:

1. Each sexual harassment investigation, including any determination regarding responsibility, any audio or audiovisual recording or transcript, any disciplinary sanctions imposed on the Respondent, and any remedies provided to the Complainant designed to restore or preserve access to the University's education program or activity;
2. Any appeal and the result therefrom;
3. Informal resolution and the result therefrom; and
4. All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process with regard to sexual harassment.

The University shall create and maintain for a period of seven years, records of any actions, including any supportive measures, taken in response to a report or Formal Complaint of sexual harassment.

With respect to each response, the University shall document the basis for its conclusion that its response was not deliberately indifferent, and document that it took measures designed to restore or preserve access to the University's educational program or activity. The documentation of certain bases or measures does not limit the University in the future from providing additional explanations or detailing additional measures taken.

TRAINING

The University shall ensure that the following training is provided:

1. Title IX Coordinators, investigators, decision-makers, appeal decision-makers, and any person who facilitates an informal resolution process shall receive training on the definition of sexual harassment under Title IX, the scope of the University's education program or activity, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.
2. The University shall ensure investigators receive training on how to create an investigative report that fairly summarizes relevant evidence.
3. The University shall ensure decision-makers receive training on issues of relevance of questions and evidence, including questions and evidence about a Complainant's prior sexual behavior. Decision-makers shall also receive training on any technology to be used at a live hearing.

Any materials used to train Title IX Coordinators, investigators, decision-makers, appeal decision-makers, and facilitators of informal resolutions may not rely on sex stereotypes and must promote impartial investigations and adjudications of Formal Complaints of sexual harassment.

All materials used for mandatory training will be posted on the University's website.

ADDITIONAL INFORMATION

The Clery Act

The Clery Act requires that Viterbo compile statistics of crimes that occur on/near campus; requires that all Campus Security Authorities (CSA) promptly report crimes to Campus Safety.

A CSA is defined as any member of Campus Safety, any individual specifically identified by the school as an individual to which students and employees should report criminal offenses; and an official of the institution who has significant responsibility for student and campus activities including, but not limited to, student housing, student discipline, and student campus judicial proceedings. Other examples include faculty or staff advisor of student organizations, resident assistants, coaches, etc. An employee may be a CSA if a student reasonably believes the employee has authority or responsibility to act (even if the employee does not). This means that any employee could be considered a CSA.

Identifying an individual as a CSA for purposes of the Clery Act does not establish the individual as “an official with authority to issue corrective measures” under Title IX. Accordingly, notice to a CSA of sexual harassment may not constitute actual notice under Title IX.

The University’s policy on the Clery Act can be found here: <https://www.viterbo.edu/campus-safety-and-security/annual-security-report>.

Timely Warning Notifications

When serious crimes are reported on campus as defined by the Clery Act, Campus Safety will issue a timely warning (Safety Alert) to the campus community that an incident has been reported, general information surrounding the incident and how incidents of a similar nature might be prevented in the future.

1. The criteria for the issuance of timely warnings would include crimes that are considered to represent a serious and/or continuing threat to students and/or employees.
2. The names of those persons involved or information that could lead someone to identify the Complainant or Respondent will be held confidential and will not be released in the timely warning.
3. A crime log listing all crimes reported to Campus Safety is maintained with the Director of Campus Safety and is available for public review during weekday business hours.

Mandatory Reporting

Viterbo’s policy on Reporting of Child Abuse and Wisconsin Statute 48.981 (2) require the reporting of child abuse or neglect if a Viterbo employee has reasonable cause to believe that child abuse or neglect has occurred or will occur. This includes abuse or neglect that occurs off campus and/or at a child’s home, if a Viterbo University employee observes or learns about it in the course of their employment.

Additional Information

For information regarding resources and immediate and ongoing assistance, please see the list of support services available on our [Resources and Support](#) section of the University website.