Sexual Discrimination and Misconduct Policy

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Glossary

- *Advisor* means a person chosen by a party or appointed by the institution to accompany the party to meetings related to the resolution process, to advise the party on that process, and to conduct cross-examination[1] for the party at the hearing, if any.

- *Complainant* means an individual who is alleged to be the victim of conduct that could constitute harassment or discrimination based on a protected class; or retaliation for engaging in a protected activity.

- *Complaint (formal)* means a document filed/signed by a Complainant or signed by the Title IX Coordinator alleging harassment or discrimination based on a protected class or retaliation for engaging in a protected activity against a Respondent and requesting that the Midway University investigate the allegation.

- *Confidential Resource* means an employee who is not a Mandated Reporter of notice of harassment, discrimination, and/or retaliation (irrespective of Clery Act Campus Security Authority status).

- Day means a business day when Midway University is in normal operation.

- *Education program or activity* means locations, events, or circumstances where Midway University exercises substantial control over both the Respondent and the context in which the sexual harassment or discrimination occurs and also includes any building owned or controlled by a student organization that is officially recognized by Midway University.

- *Final Determination:* A conclusion by the preponderance of the evidence that the alleged conduct occurred and whether it did or did not violate policy.

- *Finding:* A conclusion by the preponderance of the evidence that the conduct did or did not occur as alleged.

- *Formal Grievance Process* means "Process A," a method of formal resolution designated by the Midway University to address conduct that falls within the policies included below, and which complies with the requirements of 34 CFR Part 106.45.

[1] The Title IX regulations do not permit a party to conduct cross-examination on their own behalf in any hearing under this policy, but instead require that examination be conducted by the party's advisor. Kentucky law further directs that the conduct of cross-examination in an administrative proceeding constitutes the practice of law, and therefore must be conducted by an attorney. To assure compliance with Kentucky law, a party may choose any individual to act as their advisor for purposes of accompanying them to meetings and interviews related to the investigation and resolution process, and to advise them as to this process. However, in the event a hearing is conducted it will be necessary for each party to choose an attorney to act as their advisor for purposes of conducting cross-examination on their behalf at the hearing. Parties may engage any attorney of their choosing for hearing purposes.

- *Grievance Process Pool* includes any investigators, hearing officers, appeal officers, and Advisors who may perform any or all these roles (though not at the same time or with respect to the same case).

- *Hearing Decision-maker or Panel* refers to those who have decision-making and sanctioning authority within Midway University's Formal Grievance process.

- *Investigator* means the person or persons charged by Midway University with gathering facts about an alleged violation of this Policy, assessing relevance and credibility, synthesizing the evidence, and compiling this information into an investigation report and file of directly related evidence.

- *Mandated Reporter* means an employee of Midway University who is obligated by policy to share knowledge, notice, and/or reports of harassment, discrimination, and/or retaliation with the Title IX Coordinator.[2]

- *Notice* means that an employee, student, or third-party informs the Title IX Coordinator or other Official with Authority of the alleged occurrence of harassing, discriminatory, and/or retaliatory conduct.

- *Official with Authority* (OWA) means an employee of Midway University explicitly vested with the responsibility to implement corrective measures for harassment, discrimination, and/or retaliation on behalf of the Midway University.

- *Parties* include the Complainant(s) and Respondent(s), collectively.

- *Process A* means the Formal Grievance Process detailed below and defined above.

- *Process B* means the process applicable when the Title IX Coordinator determines Process A is inapplicable, or offenses subject to Process A have been dismissed. This process is detailed in the Midway University Unlawful Discrimination and Harassment policy.

- *Recipient* means a postsecondary education program that is a recipient of federal funding.

- *Remedies* are post-finding actions directed to the Complainant and/or the community as mechanisms to address safety, prevent recurrence, and restore access to the Midway University's educational program.

- *Respondent* means an individual who has been reported to be the perpetrator of conduct that could constitute harassment or discrimination based on a protected class; or retaliation for engaging in a protected activity.

[2] Mandated Reporters under this policy do not necessarily include persons mandated by state law to report child abuse, elder abuse, and/or abuse of individuals with disabilities to appropriate officials, though these responsibilities may overlap with those who have mandated reporting responsibility under this Policy.

- *Resolution* means the result of an informal or Formal Grievance Process.

- *Sanction* means a consequence imposed by the Midway University on a Respondent who is found to have violated this policy.

- *Sexual Harassment* is the umbrella category including the offenses of sexual harassment, sexual assault, stalking, and dating violence and domestic violence. See Section 17b, for greater detail.

- *Title IX Coordinator* is the individual designated by Midway University to ensure compliance with Title IX and Midway University's Title IX program. References to the Coordinator throughout this policy may also encompass a designee of the Coordinator for specific tasks.

- *Title IX Team* refers to the Title IX Coordinator, any deputy coordinators, and any member of the Grievance Process Pool.

Rationale for Policy

Midway University is committed to providing a workplace and educational environment, as well as other benefits, programs, and activities, that are free from discrimination, harassment, and retaliation. To ensure compliance with federal and state civil rights laws and regulations, and to affirm its commitment to promoting the goals of fairness and equity in all aspects of the educational program or activity, Midway University has developed internal policies and procedures that provide a prompt, fair, and impartial process for those involved in an allegation of discrimination or harassment on the basis of protected class status, and for allegations of retaliation. Midway University values and upholds the equal dignity of all members of its community and strives to balance the rights of the parties in the grievance process during what is often a difficult time for all those involved.

Applicable Scope

The core purpose of this policy is the prohibition of all forms of discrimination. Sometimes, discrimination involves exclusion from activities, such as admission, athletics, or employment. Other times, discrimination takes the form of harassment or, in the case of sex-based discrimination, can encompass sexual harassment, sexual assault, stalking, sexual exploitation, dating violence or domestic violence. When an alleged violation of this anti-discrimination policy is reported, the allegations are subject to resolution using Midway University's "Process A" or "Process B," as determined by the Title IX Coordinator, and as detailed below.

When the Respondent is a member of the Midway University community, a grievance process may be available regardless of the status of the Complainant, who may or may not be a member of the Midway University community. This community includes, but is not limited to, students,[3] student organizations, faculty, administrators, staff, and third parties such as guests, visitors, volunteers, invitees, and campers. The procedures below may be applied to incidents, to patterns, and/or to the campus climate, all of which may be addressed and investigated in accordance with this policy.

[3] For the purpose of this policy, Midway University defines "student" as any individual who has accepted an offer of admission, or who is registered or enrolled for credit or non-credit bearing coursework, and who maintains an ongoing relationship with Midway University.

Title IX Coordinator

The Dean of Students, serves as the Title IX Coordinator and Midway University's policy on equal opportunity, harassment, and nondiscrimination. The Title IX Coordinator has the primary responsibility for coordinating Midway University's efforts related to the intake, investigation, resolution, and implementation of supportive measures to stop, remediate, and prevent discrimination, harassment, and retaliation prohibited under this policy.

Independence and Conflict-of-Interest

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

To raise any concern involving bias or conflict of interest by the Title IX Coordinator, contact Midway University's President (Dr. John Marsden, jmarsden@midway.edu, 859-846-5310). Concerns of bias or a potential conflict of interest by any other Title IX Team member should be raised with the Title IX Coordinator.

Reports of misconduct or discrimination committed by the Title IX Coordinator should be reported to Midway University's President (Dr. John Marsden, jmarsden@midway.edu, 859-846-5310) or designee. Reports of misconduct or discrimination committed by any other Title IX Team member should be reported to the Title IX Coordinator.

Administrative Contact Information

Complaints or notice of alleged policy violations, or inquiries about or concerns regarding this policy and procedures, may be made internally to:

Name: Dr. Heath Morgan, Vice President of Student Affairs and Dean of Students
Title IX Coordinator
Office of Student Affairs
512 E. Stephens Street
Midway, KY 40347
Office: 859-846-5391
Email: heath.morgan@midway.edu

Name: Trish Jones, SPHR
Executive Director, Human Resources
Deputy Title IX Coordinator
Office of Human Resources
512 E. Stephens Street
Midway, KY 40347
Office: 859-846-5784
Email: tkjones@midway.edu

Midway University has also classified employees as Mandated Reporters of any knowledge they have that a member of the community is experiencing harassment, discrimination, and/or retaliation. The section below on Mandated Reporting details which employees have this responsibility and their duties, accordingly.

Inquiries may be made externally to:

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

For complaints involving employees: Equal Employment Opportunity Commission (EEOC)

Louisville Area Office
600 Dr. Martin Luther King, Jr. Place
Suite 268
Louisville, KY 40202
United States
Phone 1-800-669-4000
Fax 502-582-5895
TTY 1-800-669-6820
ASL Video Phone 844-234-5122

Notice/Complaints of Discrimination, Harassment, and/or Retaliation

Notice or complaints of discrimination, harassment, and/or retaliation may be made using any of the following options:

File a complaint with, or give verbal notice to, the Title IX Coordinator or Deputy Coordinators. Such a report may be made at any time (including during non-business hours) by using the telephone number or email address, or by mail to the office address, listed for the Title IX Coordinator or any other official listed.

Electronic Title IX Complaint Form

A Formal Complaint means a document filed/signed by the Complainant or signed by the Title IX Coordinator alleging a policy violation by a Respondent and requesting that Midway University investigate the allegation(s). A complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information in the section immediately above, or as described in this section. As used in this paragraph, the phrase “document filed by a Complainant” means a document or electronic submission (such as by electronic mail or through an online portal provided for

this purpose by Midway University that contains the Complainant's physical or digital signature, or otherwise indicates that the Complainant is the person filing the complaint.

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

Supportive Measures

Midway University will offer and implement appropriate and reasonable supportive measures, as needed, to the parties upon notice of alleged harassment, discrimination, and/or retaliation.

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

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

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

These actions may include, but are not limited to:

- Referral to counseling, medical, and/or other healthcare services
- Referral to the Employee Assistance Program
- Referral to community-based service providers
- Visa and immigration assistance
- Student financial aid counseling
- Education to the community or community subgroup(s)
- Altering campus housing assignment(s)
- Altering work arrangements for employees or student-employees
- Safety planning
- Providing campus safety escorts
- Providing transportation accommodations
- Implementing contact limitations (no contact orders) between the parties
- Academic support, extensions of deadlines, or other course/program-related
- adjustments
- Timely warnings
- Class schedule modifications, withdrawals, or leaves of absence

- Increased security and monitoring of certain areas of the campus
- Any other actions deemed appropriate by the Title IX Coordinator

Violations of no contact orders will be referred to appropriate student or employee conduct processes for enforcement.

Emergency Removal

Midway University can act to remove a Respondent entirely or partially from its education program or activities on an emergency basis when an individualized safety and risk analysis has determined that an immediate threat to the physical health or safety of any student or other individual justifies removal. This risk analysis is performed by the Title IX Coordinator in conjunction with Care Team using its standard objective violence risk assessment procedures.

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

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

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

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

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

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

Promptness

All allegations are acted upon promptly by Midway University once it has received notice or a formal complaint. Complaints can take 60-90 business days to resolve, typically. There are always exceptions and extenuating circumstances that can cause a resolution to take longer, but Midway University will avoid all undue delays within its control.

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

Privacy

Every effort is made by Midway University to preserve the privacy of reports.[4] Midway University will not share the identity of any individual who has made a report or complaint of harassment, discrimination, or retaliation; any Complainant, any individual who has been reported to be the perpetrator of sex discrimination, any Respondent, or any witness, except as permitted by the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g; FERPA regulations, 34 CFR part 99; or as required by law; or to carry out the purposes of 34 CFR Part 106, including the conducting of any investigation, hearing, or grievance proceeding arising under these policies and procedures.

Midway University reserves the right to designate which Midway University officials have a legitimate educational interest in being informed about incidents that fall within this policy, pursuant to the Family Educational Rights and Privacy Act (FERPA).

Only a small group of officials who need to know will typically be told about the complaint, including but not limited to: Office of Human Resources, Student Affairs Office, Security, and the Threat Assessment Team. Information will be shared as necessary with Investigators, Hearing Panel members/Decision-makers, witnesses, and the parties. The circle of people with this knowledge will be kept as tight as possible to preserve the parties' rights and privacy.

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

Midway University may contact parents/guardians to inform them of situations in which there is a significant and articulable health and/or safety risk but will usually consult with the student first before doing so.

Confidentiality and mandated reporting are addressed more specifically below.

Jurisdiction of Midway University

This policy applies to the education program and activities of Midway University, to conduct that takes place on the campus or on property owned or controlled by Midway University, at Midway University-sponsored events, or in buildings owned or controlled by Midway University's recognized student organizations. The Respondent must be a member of Midway University's community in order for its policies to apply.

This policy can also be applicable to the effects of off-campus misconduct that effectively deprives someone of access to Midway University's educational program.

If the Respondent is unknown or is not a member of Midway University's community, the Title IX Coordinator will assist the Complainant in identifying appropriate campus and local resources and support options and/or, when criminal conduct is alleged, in contacting local law enforcement if the individual would like to file a police report.

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

In addition, Midway University may take other actions as appropriate to protect the Complainant against third parties, such as barring individuals from Midway University's property and/or events.

All vendors serving Midway University through third-party contracts are subject to the policies and procedures of their employers or to these policies and procedures to which their employer has agreed to be bound by their contracts.

When the Respondent is enrolled in or employed by another institution, the Title IX Coordinator can assist the Complainant in liaising with the appropriate individual at that institution, as it may be possible to allege violations through that institution's policies.

Similarly, the Title IX Coordinator may be able to advocate for a student or employee Complainant who experiences discrimination in an externship, study abroad program, or other environment external to Midway University where sexual harassment or nondiscrimination policies and procedures of the facilitating or host organization may give recourse to the Complainant.

Time Limits on Reporting

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

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

When notice/complaint is affected by significant time delay, Midway University will typically apply the policy in place at the time of the alleged misconduct and the procedures in place at the time of notice/complaint.

Online Harassment and Misconduct

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

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

Members of the community are encouraged to be good digital citizens and to refrain from online misconduct, such as feeding anonymous gossip sites, sharing inappropriate content via Snaps or other social media, unwelcome sexting, revenge porn, breaches of privacy, or otherwise using the ease of transmission and/or anonymity of the Internet or other technology to harm another member of the Midway University community.

Public Recipients: Any online postings or other electronic communication by students, including cyber-bullying, cyber-stalking, cyber-harassment, etc., occurring completely outside of Midway University's control (e.g., not on Midway University networks, websites, or between Midway University email accounts) will only be subject to this policy when such online conduct can be shown to cause a substantial in-program disruption.

Otherwise, such communications are considered speech protected by the First Amendment. Supportive measures for Complainants will be provided, but protected speech cannot legally be subjected to discipline.

Off-campus harassing speech by employees, whether online or in person, may be regulated by Midway University only when such speech is made in an employee's official or work-related capacity.

Policy on Nondiscrimination

Midway University adheres to all federal and state civil rights laws and regulations prohibiting discrimination in private institutions of higher education.

Midway University does not discriminate against any employee, applicant for employment, student, or applicant for admission on the basis of:

- Race,
- Religion,

- Color,
- Sex,
- Pregnancy,
- Religion,
- Ethnicity,
- National origin (including ancestry),
- Physical or mental disability (including perceived disability),
- Age,
- Sexual orientation,
- Veteran or military status (including disabled veteran, recently separated veteran, active-duty wartime or campaign badge veteran, and Armed Forces Service Medal veteran),
- Predisposing genetic characteristics,
- or any other protected category under applicable local, state, or federal law, including protections for those opposing discrimination or participating in any grievance process on campus, with the Equal Employment Opportunity Commission, or other human rights agencies.

This policy covers nondiscrimination in both employment and access to educational opportunities. Therefore, any member of Midway University community whose acts deny, deprive, or limit the educational or employment or residential and/or social access, benefits, and/or opportunities of any member of Midway University community, guest, or visitor on the basis of that person's actual or perceived membership in the protected classes listed above is in violation of Midway University policy on nondiscrimination.

When brought to the attention of Midway University, any such discrimination will be promptly and fairly addressed and remedied by Midway University according to the appropriate grievance process described below.

Policy on Disability Discrimination and Accommodation

Midway University is committed to full compliance with the Americans With Disabilities Act of 1990 (ADA), as amended, and Section 504 of the Rehabilitation Act of 1973, which prohibit discrimination against qualified persons with disabilities, as well as other federal and state laws and regulations pertaining to individuals with disabilities.

Under the ADA and its amendments, a person has a disability if they have a physical or mental impairment that substantially limits a major life activity.

The ADA also protects individuals who have a record of a substantially limiting impairment or who are regarded as disabled by the Midway University, regardless of whether they currently have a disability. A substantial impairment is one that significantly limits or restricts a major life activity such as hearing, seeing, speaking, breathing, performing manual tasks, walking, or caring for oneself.

The Director of Student Involvement has been designated as Midway University's ADA/504 Coordinator responsible for overseeing efforts to comply with these disability laws, including responding to grievances and conducting investigations of any allegation of noncompliance or discrimination based on disability for students.

Grievances related to disability status and/or accommodations will be addressed using the procedures either through the Student Grievance Process or through Human Resources.

a. Students with Disabilities

Midway University is committed to providing qualified students with disabilities with reasonable accommodations and support needed to ensure equal access to the academic programs, facilities, and activities of Midway University.

All accommodations are made on an individualized basis. A student requesting any accommodation should first contact the Director of Student Involvement, who coordinates services for students with disabilities.

The Director of Student Involvement reviews documentation provided by the student and, in consultation with the student, determines which accommodations are appropriate for the student's particular needs and academic program(s).

b. Employees with Disabilities

Pursuant to the ADA, Midway University will provide reasonable accommodation(s) to all qualified employees with known disabilities when their disability affects the performance of their essential job functions, except when doing so would be unduly disruptive or would result in undue hardship to Midway University.

An employee with a disability is responsible for submitting a request for an accommodation to the Director of Human Resources, and/or designee, and providing necessary documentation. The Director of Human Resources will work with the employee's supervisor to identify which essential functions of the position are affected by the employee's disability and what reasonable accommodations could enable the employee to perform those duties.

Policy on Discriminatory Harassment

Students, staff, administrators, and faculty are entitled to an employment and educational environment that is free of discriminatory harassment. Midway University's harassment policy is not meant to inhibit or prohibit educational content or discussions inside or outside of the classroom that include germane, but controversial or sensitive subject matters protected by academic freedom.

The sections below describe the specific forms of legally prohibited harassment that are also prohibited under Midway University policy. When speech or conduct is protected by academic freedom and/or the First Amendment, it will not be considered a violation of Midway University policy, though supportive measures will be offered to those impacted.

a. Discriminatory Harassment

Discriminatory harassment constitutes a form of discrimination that is prohibited by Midway University policy. Discriminatory harassment is defined as unwelcome conduct by any member or group of the community on the basis of actual or perceived membership in a class protected by policy or law.

Midway University does not tolerate discriminatory harassment of any employee, student, visitor, or guest. Midway University will act to remedy all forms of harassment when reported, whether or not the harassment rises to the level of creating a "hostile environment."

A hostile environment is one that unreasonably interferes with, limits, or effectively denies an individual's educational or employment access, benefits, or opportunities.[5] This discriminatory effect results from harassing verbal, written, graphic, or physical conduct that is severe or pervasive ***and*** objectively offensive.

When discriminatory harassment rises to the level of creating a hostile environment, Midway University may also impose sanctions on the Respondent through application of the appropriate grievance process below.

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

For assistance with Alternate Resolution and other informal resolution techniques and approaches, employees should contact the Director of Human Resources, and students should contact Student Affairs.

b. Sexual Harassment

The Department of Education's Office for Civil Rights (OCR), the Equal Employment Opportunity Commission (EEOC), and the State of Kentucky regard Sexual Harassment, a specific form of discriminatory harassment, as an unlawful discriminatory practice.

Midway University has adopted the following definition of Sexual Harassment in order to address the unique environment of an academic community, which consists not only of employer and employees, but of students as well.

Acts of sexual harassment may be committed by any person upon any other person, regardless of the sex, sexual orientation, and/or gender identity of those involved.

Sexual Harassment, as an umbrella category, includes the offenses of sexual harassment, sexual assault, domestic violence, dating violence, and stalking, and is defined as:

Conduct on the basis of sex that satisfies one or more of the following:

1) Quid Pro Quo:
    a. an employee of the Midway University,
    b. conditions the provision of an aid, benefit, or service of the Midway University,
    c. on an individual's participation in unwelcome sexual conduct; and/or

2) Sexual Harassment:

[5] This definition of hostile environment is based on Federal Register / Vol. 59, No. 47 / Thursday, March 10, 1994: Department of Education Office for Civil Rights, Racial Incidents and Harassment Against Students At Educational Recipients Investigative Guidance.

a. unwelcome conduct,
b. determined by a reasonable person,
c. to be so severe, and
d. pervasive, and,
e. objectively offensive,
f. that it effectively denies a person equal access to Midway University's education program or activity.[6]

3) Sexual assault, defined as:

a) Sex Offenses, Forcible:
   i) Any sexual act directed against another person,
   ii) without the consent of the Complainant,
   iii) including instances in which the Complainant is incapable of giving consent.
b) Forcible Rape:
   i) Penetration,
   ii) no matter how slight,
   iii) of the vagina or anus with any body part or object, or
   iv) oral penetration by a sex organ of another person,
   v) without the consent of the Complainant.
c) Forcible Sodomy:
   i) Oral or anal sexual intercourse with another person,
   ii) forcibly,
   iii) and/or against that person's will (non-consensually), or
   iv) not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age[7] or because of temporary or permanent mental or physical incapacity.
d) Sexual Assault with an Object:
   i) The use of an object or instrument to penetrate,
   ii) however slightly,
   iii) the genital or anal opening of the body of another person,
   iv) forcibly,
   v) and/or against that person's will (non-consensually),
   vi) or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
e) Forcible Fondling:
   i) The touching of the private body parts of another person (buttocks, groin, breasts),
   ii) for the purpose of sexual gratification,
   iii) forcibly,

[6] Unwelcomeness is subjective and determined by the Complainant (except when the Complainant is below the age of consent). Severity, pervasiveness, and objective offensiveness are evaluated based on the totality of the circumstances from the perspective of a reasonable person in the same or similar circumstances ("in the shoes of the Complainant"), including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

[7] Per state law.

iv) and/or against that person's will (non-consensually),
v) or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

f) Sex Offenses, Non-forcible:
   i) Incest:
      1) Non-forcible sexual intercourse,
      2) between persons who are related to each other,
      3) within the degrees wherein marriage is prohibited by Kentucky law.
   ii) Statutory Rape:
      1) Non-forcible sexual intercourse,
      2) with a person who is under the statutory age of consent of 16.

4) Dating Violence, defined as:
   a. violence,
   b. on the basis of sex,
   c. committed by a person,
   d. who is in or has been in a social relationship of a romantic or intimate nature with the Complainant.
      i. The existence of such a relationship shall be determined based on the Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition—
      ii. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
      iii. Dating violence does not include acts covered under the definition of domestic violence.

5) Domestic Violence, defined as:
   a. violence,
   b. on the basis of sex,
   c. committed by a current or former spouse or intimate partner of the Complainant,
   d. by a person with whom the Complainant shares a child in common, or
   e. by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or
   f. by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of Kentucky, or
   g. by any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of Kentucky.

   *To categorize an incident as Domestic Violence, the relationship between the Respondent and the Complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.

6) Stalking, defined as:
   a. engaging in a course of conduct,
   b. on the basis of sex,
   c. directed at a specific person, that

i. would cause a reasonable person to fear for the person's safety, or
ii. the safety of others; or
iii. Suffer substantial emotional distress.

For the purposes of this definition—

(i) Course of conduct means two or more acts, including, but not limited to, acts in which the Respondent 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.

(ii) Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.

(iii) Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

Midway University reserves the right to impose any level of sanction, ranging from a reprimand up to and including suspension or expulsion/termination, for any offense under this policy.

c. Force, Coercion, Consent, and Incapacitation[8]

As used in the offenses above, the following definitions and understandings apply:

Force: Force is the use of physical violence and/or physical imposition to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent (e.g., "Have sex with me or I'll hit you," "Okay, don't hit me, I'll do what you want.").

Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Silence or the absence of resistance alone is not consent. Consent is not demonstrated by the absence of resistance. While resistance is not required or necessary, it is a clear demonstration of non-consent.

Coercion: Coercion is unreasonable pressure for sexual activity. Coercive conduct differs from seductive conduct based on factors such as the type and/or extent of the pressure used to obtain consent. When someone makes clear that they do not want to engage in certain sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

Consent is:

- knowing, and

[8] Under Kentucky law, there is no consent if there is forcible compulsion, incapacity to consent or, in the case of sexual abuse, any circumstances in addition to forcible compulsion or incapacity to consent in which the victim does not expressly or impliedly acquiesce in the actor's conduct. This definition is applicable to criminal prosecutions for sex offenses in Kentucky but may differ from the definition used on campus to address policy violations. KRS 510.020.

- voluntary, and
- clear permission
- by word or action
- to engage in sexual activity.

Since individuals may experience the same interaction in different ways, it is the responsibility of each party to determine that the other has consented before engaging in the activity.

If consent is not clearly provided prior to engaging in the activity, consent may be ratified by word or action at some point during the interaction or thereafter, but clear communication from the outset is strongly encouraged.

For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Reasonable reciprocation can be implied. For example, if someone kisses you, you can kiss them back (if you want to) without the need to explicitly obtain *their* consent to being kissed back.

Consent can also be withdrawn once given, as long as the withdrawal is reasonably and clearly communicated. If consent is withdrawn, that sexual activity should cease within a reasonable time.

Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). A current or previous intimate relationship is not sufficient to constitute consent.

Proof of consent or non-consent is not a burden placed on either party involved in an incident. Instead, the burden remains on Midway University to determine whether its policy has been violated. The existence of consent is based on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

Consent in relationships must also be considered in context. When parties consent to BDSM[9] or other forms of kink, non-consent may be shown by the use of a safe word. Resistance, force, violence, or even saying "no" may be part of the kink and thus consensual, so Midway University's evaluation of communication in kink situations should be guided by reasonableness, rather than strict adherence to policy that assumes non-kink relationships as a default.

Incapacitation: A person cannot consent if they are unable to understand what is happening or is disoriented, helpless, asleep, or unconscious, for any reason, including by alcohol or other drugs. As stated above, a Respondent violates this policy if they engage in sexual activity with someone who is incapable of giving consent.

It is a defense to a sexual assault policy violation that the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated. "Should have known" is an objective, reasonable person standard which assumes that a reasonable person is both sober and exercising sound judgment.

[9] Bondage, discipline/dominance, submission/sadism, and masochism.

Incapacitation occurs when someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the "who, what, when, where, why, or how" of their sexual interaction).

Incapacitation is determined through consideration of all relevant indicators of an individual's state and is not synonymous with intoxication, impairment, blackout, and/or being drunk.

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

d. Other Civil Rights Offenses

In addition to the forms of sexual harassment described above, which fall within the coverage of Title IX, Midway University additionally prohibits the following offenses as forms of discrimination outside of Title IX when the act is based upon the Complainant's actual or perceived membership in a protected class.

- Sexual Exploitation, defined as: taking non-consensual or abusive sexual advantage of another for their own benefit or for the benefit of anyone other than the person being exploited, and that conduct does not otherwise constitute sexual harassment under this policy. Examples of Sexual Exploitation include, but are not limited to:
    - Sexual voyeurism (such as observing or allowing others to observe a person undressing or using the bathroom or engaging in sexual acts, without the consent of the person being observed)
    - Invasion of sexual privacy.
    - Taking pictures, video, or audio recording of another in a sexual act, or in any other sexually-related activity when there is a reasonable expectation of privacy during the activity, without the consent of all involved in the activity, or exceeding the boundaries of consent (such as allowing another person to hide in a closet and observe sexual activity, or disseminating sexual pictures without the photographed person's consent), including the making or posting of revenge pornography
    - Prostituting another person
    - Engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or a sexually transmitted disease (STD) or infection (STI), without informing the other person of the infection
    - Causing or attempting to cause the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give consent to sexual activity, or for the purpose of making that person vulnerable to non-consensual sexual activity
    - Misappropriation of another person's identity on apps, websites, or other venues designed for dating or sexual connections
    - Forcing a person to take an action against that person's will by threatening to show, post, or share information, video, audio, or an image that depicts the person's nudity or sexual activity
    - Knowingly soliciting a minor for sexual activity
    - Engaging in sex trafficking
    - Creation, possession, or dissemination or child pornography

- Threatening or causing physical harm, extreme verbal, emotional, or psychological abuse, or other conduct which threatens or endangers the health or safety of any person;

- Discrimination, defined as actions that deprive, limit, or deny other members of the community of educational or employment access, benefits, or opportunities;

- Intimidation, defined as implied threats or acts that cause an unreasonable fear of harm in another;

- Hazing, defined as acts likely to cause physical or psychological harm or social ostracism to any person within Midway University community, when related to the admission, initiation, pledging, joining, or any other group-affiliation activity.

- Bullying, defined as:
  - Repeated and/or severe
  - Aggressive behavior
  - Likely to intimidate or intentionally hurt, control, or diminish another person, physically and/or mentally
  - That is not speech or conduct otherwise protected by the First Amendment.

Violation of any other Midway University policies may constitute a Civil Rights Offense when a violation is motivated by actual or perceived membership in a protected class, and the result is a discriminatory limitation or denial of employment or educational access, benefits, or opportunities.

Sanctions for the above-listed Civil Rights Offenses range from reprimand through expulsion/termination.

Retaliation

Protected activity under this policy includes reporting an incident that may implicate this policy, participating in the grievance process, supporting a Complainant or Respondent, assisting in providing information relevant to an investigation, and/or acting in good faith to oppose conduct that constitutes a violation of this Policy.

Acts of alleged retaliation should be reported immediately to the Title IX Coordinator and will be promptly investigated. Midway University is prepared to take appropriate steps to protect individuals who fear retaliation.

It is prohibited for Midway University or any member of Midway University's community to take materially adverse action by intimidating, threatening, coercing, harassing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by law or 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 and procedure.

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 complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX, constitutes retaliation.

The exercise of rights protected under the First Amendment does not constitute retaliation.

Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this policy and procedure does not constitute retaliation, provided that a determination regarding responsibility, alone, is not sufficient to conclude that any party has made a materially false statement in bad faith.

Mandated Reporting

In order to make informed choices, it is important to be aware of confidentiality and mandatory reporting requirements when consulting campus resources. On campus, some resources may maintain confidentiality and are not required to report actual or suspected discrimination or harassment. They may offer options and resources without any obligation to inform an outside agency or campus official unless a Complainant has requested the information be shared.

If a Complainant expects formal action in response to their allegations, reporting to any Mandated Reporter can connect them with resources to report crimes and/or policy violations, and these employees will immediately pass reports to the Title IX Coordinator (and/or police, if desired by the Complainant), who will take action when an incident is reported to them.

The following sections describe the reporting options at Midway University for a Complainant or third-party (including parents/guardians when appropriate):

Confidential Resources

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

- On-campus licensed professional counselors
- On-campus health service providers and staff
- On-campus Victim Advocates
- On-campus members of the clergy/chaplains working within the scope of their licensure or ordination
- Off-campus (non-employees):
    - Licensed professional counselors and other medical providers
    - Local rape crisis counselors
    - Domestic violence resources
    - Local or state assistance agencies
    - Clergy/Chaplains
    - Attorneys

All of the above-listed individuals will maintain confidentiality when acting under the scope of their licensure, professional ethics, and/or professional credentials, except in extreme cases of immediacy of threat or danger or abuse of a minor/elder/individual with a disability, or when required to disclose by law or court order.

Campus counselors [and/or the Employee Assistance Program] are available to help free of charge and may be consulted on an emergency basis during normal business hours.

Midway University employees who are confidential will timely submit anonymous statistical information for Clery Act purposes unless they believe it would be harmful to their client, patient, or parishioner.

Mandated Reporters

The following are Mandated Reporters under this policy:

Title IX Coordinator, Deputy Coordinators, President of the University, Members of President's Advisory Council, Full-Time Faculty, Director of Student Activities, Director of Housing and Residence Life, Athletic Director, Assistant Athletic Director, Athletic Trainers, all Athletic Coaches and Campus Security Officers

Anonymous Notice to Mandated Reporters

At the request of a Complainant, notice may be given by a Mandated Reporter to the Title IX Coordinator anonymously, without identification of the Complainant. The Mandated Reporter cannot remain anonymous themselves.

If a Complainant has requested that a Mandated Reporter maintain the Complainant's anonymity, the Mandated Reporter may do so unless it is reasonable to believe that a compelling threat to health or safety could exist. The Mandated Reporter can consult with the Title IX Coordinator on that assessment without revealing personally identifiable information.

Anonymous notice will be investigated by Midway University to the extent possible, both to assess the underlying allegation(s) and to determine if supportive measures or remedies can be provided.

However, anonymous notice typically limits the Midway University's ability to investigate, respond, and provide remedies, depending on what information is shared.

When a Complainant has made a request for anonymity, the Complainant's personally identifiable information may be withheld by a Mandated Reporter, but all other details must be shared with the Title IX Coordinator. Mandated reporters may not be able to maintain requests for anonymity for Complainants who are minors, elderly, and/or disabled, depending on state reporting of abuse requirements.

Mandated Reporters and Formal Notice/Complaints

Mandated Reporters must promptly share with the Title IX Coordinator all known details of a report made to them in the course of their employment.

Mandated Reporters must also promptly share all details of behaviors under this policy that they observe or have knowledge of, even if not reported to them by a Complainant or third-party.

Complainants may want to carefully consider whether they share personally identifiable details with non-confidential Mandated Reporters, as those details must be shared with the Title IX Coordinator.

Generally, disclosures in climate surveys, classroom writing assignments or discussions, human subjects research, or at events such as "Take Back the Night" marches or speak-outs do not provide notice that

must be reported to the Coordinator by employees, unless the Complainant clearly indicates that they desire a report to be made or a seek a specific response from Midway University.

Supportive measures may be offered as the result of such disclosures without formal Midway University action.

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

When a Complainant Does Not Wish to Proceed

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

The Title IX Coordinator has ultimate discretion over whether Midway University proceeds when the Complainant does not wish to do so, and the Title IX Coordinator may sign a formal complaint to initiate a grievance process upon completion of an appropriate violence risk assessment the results of which show a compelling risk to health and/or safety that requires Midway University to pursue formal action to protect the community.

A compelling risk to health and/or safety may result from evidence of patterns of misconduct, predatory conduct, threats, abuse of minors, use of weapons, and/or violence.

The Title IX Coordinator must also consider the effect that non-participation by the Complainant may have on the availability of evidence and Midway University's ability to pursue a Formal Grievance Process fairly and effectively.

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

When Midway University proceeds, the Complainant (or their Advisor) may have as much or as little involvement in the process as they wish. The Complainant retains all rights of a Complainant under this Policy irrespective of their level of participation. Typically, when the Complainant chooses not to participate, the Advisor may be appointed as proxy for the Complainant throughout the process, acting to ensure and protect the rights of the Complainant.

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

In cases in which the Complainant requests confidentiality/no formal action and the circumstances allow Midway University to honor that request, Midway University will offer informal resolution options (see below), supportive measures, and remedies to the Complainant and the community, but will not otherwise pursue formal action.

If the Complainant elects to take no action, they can change that decision if they decide to pursue a formal complaint later.

Federal Timely Warning Obligations

Parties reporting sexual assault, domestic violence, dating violence, and/or stalking should be aware that under the Clery Act, Midway University must issue timely warnings for incidents reported to them that pose a serious or continuing threat of bodily harm or danger to members of the campus community.

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

False Allegations and Evidence

Deliberately false and/or malicious accusations under this policy, as opposed to allegations which, even if erroneous, are made in good faith, are a serious offense and will be subject to appropriate disciplinary action.

Additionally, witnesses and parties knowingly providing false evidence, tampering with or destroying evidence after being directed to preserve such evidence, or deliberately misleading an official conducting an investigation can be subject to discipline under Midway University policy.

Amnesty for Complainants and Witnesses

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

It is in the best interests of Midway University community that Complainants choose to report misconduct to Midway University officials, that witnesses come forward to share what they know, and that all parties be forthcoming during the process.

To encourage reporting and participation in the process, Midway University maintains a policy of offering parties and witnesses amnesty from minor policy violations – such as underage consumption of alcohol or the use of illicit drugs – related to the incident.

Amnesty does not apply to more serious allegations such as physical abuse of another or illicit drug distribution. The decision not to offer amnesty to a Respondent is based on neither sex nor gender, but on the fact that collateral misconduct is typically addressed for all students within a progressive discipline system, and the rationale for amnesty – the incentive to report serious misconduct – is rarely applicable to Respondent with respect to a Complainant.

Students: Sometimes, students are hesitant to assist others for fear that they may get in trouble themselves (for example, an underage student who has been drinking or using marijuana might hesitate to help take an individual who has experienced sexual misconduct to Campus Security.

Midway University maintains a policy of amnesty for students who offer help to others in need. While policy violations cannot be overlooked, Midway University may provide purely educational options with no official disciplinary finding, rather than punitive sanctions, to those who offer their assistance to others in need.

Federal Statistical Reporting Obligations

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

a) All "primary crimes," which include homicide, sexual assault, robbery, aggravated assault, burglary, motor vehicle theft, and arson;
b) Hate crimes, which include any bias motivated primary crime as well as any bias motivated larceny or theft, simple assault, intimidation, or destruction/damage/vandalism of property;
c) VAWA[10]-based crimes, which include sexual assault, domestic violence, dating violence, and stalking; and
d) Arrests and referrals for disciplinary action for weapons-related law violations, liquor-related law violations, and drug abuse-related law violations.

All personally identifiable information is kept private, but statistical information must be passed along to [campus law enforcement] regarding the type of incident and its general location (on or off-campus or in the surrounding area, but no addresses are given) for publication in the Annual Security Report and daily campus crime log.

Campus Security Authorities include: student affairs staff, campus security, local police, coaches, athletic directors, residence life staff, human resources staff, advisors to student organizations, and any other official with significant responsibility for student and campus activities.

[10] VAWA is the Violence Against Women Act, enacted in 1994 codified in part at 42 U.S.C. sections 13701 through 14040.

INTERIM RESOLUTION PROCESS FOR ALLEGED VIOLATIONS OF THE POLICY ON EQUAL OPPORTUNITY, HARASSMENT, AND NONDISCRIMINATION (KNOWN AS PROCESS "A")

1. Overview

Midway University will act on any formal or informal notice/complaint of violation of the policy on Equal Opportunity, Harassment, and Nondiscrimination ("the Policy") that is received by the Title IX Coordinator[11] or any other Official with Authority by applying these procedures, known as "Process A."

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

If other policies are invoked, such as policies on protected class harassment or discrimination above, please refer to the Unlawful Discrimination and Harassment Policy located in the Employee and Student Handbooks.

If other policies are invoked, such as policies on protected class harassment or discrimination above, please see Appendix A for a description of the procedures applicable to the resolution of such offenses, known as "Process B"

Process B can also apply to sexual harassment (including sexual assault, dating violence, domestic violence, and stalking, as defined above) when jurisdiction does not fall within Process A, as determined by the Title IX Coordinator.

The procedures below may be used to address collateral misconduct arising from the investigation of or occurring in conjunction with reported misconduct (e.g., vandalism, physical abuse of another). All other allegations of misconduct unrelated to incidents covered by the Policy will be addressed through procedures elaborated in the student and employee handbooks.

2. Notice/Complaint

Upon receipt of a complaint or notice to the Title IX Coordinator of an alleged violation of the Policy, Midway University will initiate at least one of three responses:

1) Offering supportive measures because the Complainant does not want to proceed formally; and/or

2) An informal resolution; and/or

3) A Formal Grievance Process including an investigation and a hearing.

[11] Anywhere this procedure indicates "Title IX Coordinator," Midway University may substitute a trained designee.

The investigation and grievance process will determine whether or not the Policy has been violated. If so, Midway University will implement remedies designed to address any determined harassment or discrimination, their potential recurrence, or their effects.

3. Initial Assessment

Following receipt of notice or a complaint of an alleged violation of this Policy, the Title IX Coordinator[12] engages in an initial assessment, which is typically one to five business days in duration. The steps in an initial assessment can include:

- If notice is given, the Title IX Coordinator seeks to determine if the person impacted wishes to make a formal complaint, and will assist them to do so, if desired.
    - If they do not wish to do so, the Title IX Coordinator determines whether to initiate a complaint because a violence risk assessment indicates a compelling threat to health and/or safety.
- If a formal complaint is received, the Title IX Coordinator assesses its sufficiency and works with the Complainant to make sure it is correctly completed.
- The Title IX Coordinator reaches out to the Complainant to offer supportive measures.
- The Title IX Coordinator works with the Complainant to ensure they are aware of the right to have an Advisor.
- The Title IX Coordinator works with the Complainant to determine whether the Complainant prefers a supportive and remedial response, an informal resolution option, or a formal investigation and grievance process.
    - If a supportive and remedial response is preferred, the Title IX Coordinator works with the Complainant to identify their wishes and then seeks to facilitate implementation. No Formal Grievance Process is initiated, though the Complainant can elect to initiate one later, if desired.
    - If an informal resolution option is preferred, the Title IX Coordinator assesses whether the complaint is suitable for informal resolution, which informal mechanism may serve the situation best or is available and may seek to determine if the Respondent is also willing to engage in informal resolution.
    - If a Formal Grievance Process is preferred, the Title IX Coordinator determines if the misconduct alleged falls within the scope of Title IX:
        - If it does, the Title IX Coordinator will initiate the formal investigation and grievance process, directing the investigation to address:
            - an incident, and/or
            - a pattern of alleged misconduct, and/or
            - a culture/climate issue, based on the nature of the complaint.
        - If it does not, the Title IX Coordinator determines that Title IX does not apply (and will "dismiss" that aspect of the complaint, if any), assesses which policies may apply and refers the matter for resolution under applicable policy, if any.

[12] If circumstances require, the President or Title IX Coordinator will designate another person to oversee the process below should an allegation be made about the Coordinator or the Coordinator be otherwise unavailable or unable to fulfill their duties.

a. Violence Risk Assessment

In many cases, the Title IX Coordinator may determine that a Violence Risk Assessment (VRA) should be conducted by the Care Team as part of the initial assessment. A VRA can aid in ten critical and/or required determinations, including:

- Emergency removal of a Respondent on the basis of immediate threat to physical health/safety;
- Whether the Title IX Coordinator should pursue/sign a formal complaint absent a willing/able Complainant;
- Whether to put the investigation on the footing of incident and/or pattern and/or climate;
- To help identify potential predatory conduct;
- To help assess/identify grooming behaviors;
- Whether it is reasonable to try to resolve a complaint through informal resolution, and what modality may be most successful;
- Whether to permit a voluntary withdrawal by the Respondent;
- Whether to impose transcript notation or communicate with a transfer Midway University about a Respondent;
- Assessment of appropriate sanctions/remedies (to be applied post-hearing); and/or
- Whether a Clery Act Timely Warning/ Trespass order/Persona-non-grata is needed.

Threat assessment is the process of evaluating the actionability of violence by an individual against another person or group following the issuance of a direct or conditional threat. A VRA is a broader term used to assess any potential violence or danger, regardless of the presence of a vague, conditional, or direct threat.

VRAs require specific training and are typically conducted by psychologists, clinical counselors, social workers, case managers, law enforcement officers, student conduct officers, or other Behavioral Intervention Team (BIT/CARE team members). A VRA authorized by the Title IX Coordinator should occur in collaboration with the BIT/CARE or threat assessment team. Where a VRA is required by the Title IX Coordinator, a Respondent refusing to cooperate may result in a charge of failure to comply within the appropriate student or employee conduct process.

A VRA is not an evaluation for an involuntary behavioral health hospitalization (e.g., 5150 in California, Section XII in Massachusetts, Baker Act in Florida), nor is it a psychological or mental health assessment. A VRA assesses the risk of actionable violence, often with a focus on targeted/predatory escalations, and is supported by research from the fields of law enforcement, criminology, human resources, and psychology.

b. Dismissal (Mandatory and Discretionary)[13]

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

[13] These dismissal requirements are mandated by the 2020 Title IX Regulations, 34 CFR Part 106.45.

1) The conduct alleged in the formal complaint would not constitute sexual harassment as defined in the Policy hereinabove, even if proved; and/or

2) The conduct did not occur in an educational program or activity controlled by Midway University (including buildings or property controlled by recognized student organizations), and/or Midway University does not have control of the Respondent; and/or

3) The conduct did not occur against a person in the United States; and/or

4) At the time of filing a formal complaint, a complainant is not participating in or attempting to participate in the education program or activity of Midway University.

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

1) A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations therein; or

2) The Respondent is no longer enrolled in or employed by the Midway University; or

3) Specific circumstances prevent Midway University from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

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

This dismissal decision is appealable by any party under the procedures for appeal below. The decision not to dismiss is also appealable by any party claiming that a dismissal is required or appropriate. A Complainant who decides to withdraw a complaint may later request to reinstate it or refile it.

4. Counterclaims

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

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

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

5. Right to an Advisor

The parties may each have an Advisor of their choice present with them for all meetings and interviews within the resolution process if they so choose. The parties may select whoever they wish to serve as their Advisor as long as the Advisor is eligible and available.

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

a. Who Can Serve as an Advisor

The Advisor may be a friend, mentor, family member, attorney, or any other individual a party chooses to advise, support, and/or consult with them throughout the resolution process. The parties may choose Advisors from inside or outside of Midway University community. [14]

The Title IX Coordinator will also offer to assign a trained Advisor for any party if the party so chooses. If the parties choose an Advisor from the pool available from Midway University, the Advisor will be trained by Midway University and be familiar with Midway University's resolution process.

If the parties choose an Advisor from outside the pool of those identified by Midway University, the Advisor may not have been trained by Midway University and may not be familiar with Midway University policies and procedures.

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

b. Advisors in Hearings/Midway University-Appointed Advisor

Under U.S. Department of Education regulations applicable to Title IX, cross-examination is required during the hearing, but must be conducted by the parties' Advisors. The parties are not permitted to directly cross-examine each other or any witnesses. If a party does not have an Advisor for a hearing, Midway University will appoint an Advisor for the limited purpose of conducting any cross-examination.

A party may reject this appointment and choose their own Advisor, but they may not proceed without an Advisor. If the party's Advisor does not conduct cross-examination, Midway University will appoint an Advisor who will do so thoroughly, regardless of the participation or non-participation of the advised party in the hearing itself. Extensive questioning of the parties and witnesses will also be conducted by the Decision-maker(s) during the hearing.

c. Advisor's Role

The parties may be accompanied by their Advisor in all meetings and interviews at which the party is entitled to be present, including intake and interviews. Advisors should help the parties prepare for each meeting and are expected to advise ethically, with integrity, and in good faith.

[14] The Title IX regulations do not permit a party to conduct cross-examination on their own behalf in any hearing under this policy, but instead require that examination be conducted by the party's advisor. Kentucky law further directs that the conduct of cross-examination in an administrative proceeding constitutes the practice of law, and therefore must be conducted by an attorney. To assure compliance with Kentucky law, a party may choose any individual to act as their advisor for purposes of accompanying them to meetings and interviews related to the investigation and resolution process, and to advise them as to this process. However, in the event a hearing is conducted under this process it will be necessary for each party to choose an attorney to act as their advisor for purposes of conducting cross-examination on their behalf at the hearing. Parties may engage any attorney of their choosing for hearing purposes.

Midway University cannot guarantee equal Advisory rights, meaning that if one party selects an Advisor who is an attorney, but the other party does not or cannot afford an attorney, Midway University is not obligated to provide an attorney.

d. Pre-Interview Meetings

Advisors may request to meet with the administrative officials conducting interviews/meetings in advance of these interviews or meetings. This pre-meeting allows Advisors to clarify and understand their role and Midway University's policies and procedures.

e. Advisor Violations of Midway University Policy

All Advisors are subject to the same Midway University policies and procedures, whether they are attorneys or not. Advisors are expected to advise their advisees without disrupting proceedings.

Advisors should not address Midway University officials in a meeting or interview unless invited to (e.g., asking procedural questions). The Advisor may not make a presentation or actively represent their advisee during any meeting or proceeding and may not speak on behalf of the advisee to the Investigator(s) or other Decision-maker(s) except during a hearing proceeding, during cross-examination].

The parties are expected to ask and respond to questions on their own behalf throughout the investigation phase of the resolution process. Although the Advisor generally may not speak on behalf of their advisee, the Advisor may consult with their advisee, either privately as needed, or by conferring or passing notes during any resolution process meeting or interview. For longer or more involved discussions, the parties and their Advisors should ask for breaks to allow for private consultation.

Any Advisor who oversteps their role as defined by this policy will be warned only once. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the meeting will be ended, or other appropriate measures implemented. Subsequently, the Title IX Coordinator will determine how to address the Advisor's non-compliance and future role.

f. Sharing Information with the Advisor

Midway University expects that the parties may wish to have Midway University share documentation and evidence related to the allegations with their Advisors. Parties may share this information directly with their Advisor or other individuals if they wish. Doing so may help the parties participate more meaningfully in the resolution process.

Midway University also provides a consent form that authorizes Midway University to share such information directly with their Advisor. The parties must either complete and submit this form to the Title IX Coordinator or provide similar documentation demonstrating consent to a release of information to the Advisor before Midway University is able to share records with an Advisor.

If a party requests that all communication be made through their attorney Advisor, Midway University will comply with that request at the discretion of the Title IX Coordinator.

g. Privacy of Records Shared with Advisor

Advisors are expected to maintain the privacy of the records shared with them. These records may not be shared with third parties, disclosed publicly, or used for purposes not explicitly authorized by Recipient. Midway University may seek to restrict the role of any Advisor who does not respect the sensitive nature of the process or who fails to abide by Midway University's privacy expectations.

h. Expectations of an Advisor

Midway University generally expects an Advisor to adjust their schedule to allow them to attend Midway University meetings when planned but may change scheduled meetings to accommodate an Advisor's inability to attend, if doing so does not cause an unreasonable delay.

Midway University may also make reasonable provisions to allow an Advisor who cannot attend in person to attend a meeting by telephone, video conferencing, or other similar technologies as may be convenient and available.

i. Expectations of the Parties with Respect to Advisors

A party may elect to change Advisors during the process and is not obligated to use the same Advisor throughout. The parties are expected to inform the Investigator(s) of the identity of their Advisor at least two (2) business days before the date of their first meeting with Investigators (or as soon as possible if a more expeditious meeting is necessary or desired).

The parties are expected to provide timely notice to the Title IX Coordinator if they change Advisors at any time. It is assumed that if a party changes Advisors, consent to share information with the previous Advisor is terminated, and a release for the new Advisor must be secured. Parties are expected to inform the Title IX Coordinator of the identity of their hearing Advisor at least two (2) business days before the hearing.

j. Assistance in Securing an Advisor

For representation, Respondents may wish to contact organizations such as:

- FACE (http://www.facecampusequality.org)
- SAVE (http://www.saveservices.org).

Complainants may wish to contact organizations such as:

- The Victim Rights Law Center (http://www.victimrights.org),
- The National Center for Victims of Crime (http://www.victimsofcrime.org), which maintains the Crime Victim's Bar Association.]
- The Time's Up Legal Defense Fund: https://nwlc.org/times-up-legal-defense-fund/]

6. Resolution Processes

Resolution proceedings are private. All persons present at any time during the resolution process are expected to maintain the privacy of the proceedings in accordance with Midway University policy. While

there is an expectation of privacy around what Investigators share with parties during interviews, the parties have discretion to share their own knowledge and evidence with others if they so choose. Midway University encourages parties to discuss this with their Advisors before doing so.

a. Informal Resolution

Informal Resolution can include three different approaches:

- When the parties agree to resolve the matter through an alternate resolution mechanism including mediation, restorative practices, etc.;
- When the Respondent accepts responsibility for violating policy, and desires to accept a sanction and end the resolution process; or
- When the Title IX Coordinator can resolve the matter informally by providing supportive measures to remedy the situation.

To initiate Informal Resolution, a Complainant needs to submit a formal complaint, as defined above. If a Respondent wishes to initiate Informal Resolution, they should contact the Title IX Coordinator to so indicate.

It is not necessary to pursue Informal Resolution first in order to pursue a Formal Grievance Process, and any party participating in Informal Resolution can stop the process at any time and begin or resume the Formal Grievance Process.

Prior to implementing Informal Resolution, Midway University will provide the parties with written notice of the reported misconduct and any sanctions or measures that may result from participating in such a process, including information regarding any records that will be maintained or shared by Midway University.

The decision to participate in Informal Resolution is strictly voluntary. Midway University will obtain voluntary, written confirmation that all parties wish to resolve the matter through Informal Resolution before proceeding.

b. Alternate Resolution

Alternate Resolution is an informal process, including mediation or restorative practices, etc. by which a mutually agreed upon resolution of an allegation is reached. All parties must consent to the use of Alternate Resolution.

The Title IX Coordinator may look to the following factors to assess whether Alternate Resolution is appropriate, or which form of Alternate Resolution may be most successful for the parties:

- The parties' amenability to Alternate Resolution;
- Likelihood of potential resolution, taking into account any power dynamics between the parties;
- The parties' motivation to participate;
- Civility of the parties;
- Cleared violence risk assessment/ongoing risk analysis;
- Disciplinary history;
- Whether an emergency removal is needed;

- Skill of the Alternate Resolution facilitator with this type of complaint;
- Complaint complexity;
- Emotional investment/intelligence of the parties;
- Rationality of the parties;
- Goals of the parties;
- Adequate resources to invest in Alternate Resolution (time, staff, etc.)

The ultimate determination of whether Alternate Resolution is available or successful is to be made by the Title IX Coordinator. The Title IX Coordinator maintains records of any resolution that is reached, and failure to abide by the resolution agreement may result in appropriate responsive/disciplinary actions. Results of complaints resolved by Informal Resolution or Alternate Resolution are not appealable.

c. Respondent Accepts Responsibility for Alleged Violations

The Respondent may accept responsibility for all or part of the alleged policy violations at any point during the resolution process. If the Respondent indicates an intent to accept responsibility for all of the alleged misconduct, the formal process will be paused, and the Title IX Coordinator will determine whether Informal Resolution can be used according to the criteria in that section above.

If Informal Resolution is applicable, the Title IX Coordinator will determine whether all parties and Midway University are able to agree on responsibility, sanctions, and/or remedies. If so, the Title IX Coordinator implements the accepted finding that the Respondent is in violation of Midway University policy and implements agreed-upon sanctions and/or remedies, in coordination with other appropriate administrator(s), as necessary.

This result is not subject to appeal once all parties indicate their written assent to all agreed upon terms of resolution. When the parties cannot agree on all terms of resolution, the Formal Grievance Process will resume at the same point where it was paused.

d. Negotiated Resolution

Title IX Coordinator, with the consent of the parties, may negotiate and implement an agreement to resolve the allegations that satisfies all parties and Midway University. Negotiated Resolutions are not appealable.

7. Grievance Process Pool

The Formal Grievance Process relies on a pool of administrators ("the Pool") to carry out the process. Members of the Pool are announced in an annual distribution of this policy to all students, parents/guardians of students, employees, prospective students, and prospective employees. They are also listed in the Annual Title IX Report published by the Title IX Office.

a. Pool Member Roles

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

- To provide appropriate intake of and initial guidance pertaining to complaints
- To act as an Advisor to the parties
- [To serve in a facilitation role in informal resolution or Alternate Resolution if appropriately trained
  in appropriate resolution modalities (e.g., mediation, restorative practices]
- [To perform or assist with initial assessment]
- To investigate complaints
- To serve as a hearing facilitator (process administrator, no decision-making role)
- To serve as an Appeal Decision-maker

b. Pool Member Appointment

The Title IX Coordinator, in consultation with the President, appoints the Pool[15], which acts with independence and impartiality. While members of the Pool are typically trained in a variety of skill sets and can rotate amongst the different roles listed above in different cases, Midway University can also designate permanent roles for individuals in the Pool, using others as substitutes or to provide greater depth of experience when necessary. This process of role assignment may be the result of particular skills, aptitudes, or talents identified in members of the Pool that make them best suited to particular roles].

c. Pool Member Training

The Pool members receive annual training based on their respective roles. This training includes, but is not limited to:

- The scope of Midway University's Discrimination and Harassment Policy and Procedures
- How to conduct investigations and hearings that protect the safety of Complainants and Respondents, and promote accountability
- Implicit bias
- Disparate treatment and impact
- Reporting, confidentiality, and privacy requirements
- Applicable laws, regulations, and federal regulatory guidance
- How to implement appropriate and situation-specific remedies
- How to investigate in a thorough, reliable, and impartial manner
- How to uphold fairness, equity, and due process
- How to weigh evidence
- How to conduct questioning
- How to assess credibility
- Impartiality and objectivity
- How to render findings and generate clear, concise, evidence-based rationales
- The definitions of all offenses
- How to apply definitions used by the Midway University with respect to consent (or the absence or negation of consent) consistently, impartially, and in accordance with policy

[15] This does not preclude Midway University from having all members of the Pool go through an application and/or interview/selection process.

- How to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes
- How to serve impartially by avoiding prejudgment of the facts at issue, conflicts of interest, and bias
- Any technology to be used at a live hearing
- Issues of relevance of questions and evidence
- Issues of relevance to create an investigation report that fairly summarizes relevant evidence
- How to determine appropriate sanctions in reference to all forms of harassment, discrimination, and/or retaliation allegations

Specific training is also provided for Appeal Decision-makers, intake personnel, and Chairs. All Pool members are required to attend these trainings annually. The materials used to train all members of the Pool are publicly posted .

d. Pool Membership

The Pool includes:

- 3 or more members of the Academic Affairs administration and/or faculty
- 3 or more members of the administration/staff
- 1 or more members from Campus Safety
- 1 representative from Athletics

Pool members are usually appointed to two-year terms. Individuals who are interested in serving in the Pool are encouraged to contact the Title IX Coordinator.

8. Formal Grievance Process: Notice of Investigation and Allegations

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

The NOIA will include:

- A meaningful summary of all of allegations,
- The identity of the involved parties (if known),
- The precise misconduct being alleged,
- The date and location of the alleged incident(s) (if known),
- The specific policies implicated,
- A description of the applicable procedures,
- A statement of the potential sanctions/responsive actions that could result,
- A statement that Midway University presumes the Respondent is not responsible for the reported misconduct unless and until the evidence supports a different determination,
- A statement that determinations of responsibility are made at the conclusion of the process and that the parties will be given an opportunity to inspect and review all directly related and/or relevant evidence obtained during the review and comment period,

- A statement about Midway University's policy on retaliation,
- Information about the privacy of the process,
- Information on the need for each party to have an Advisor of their choosing and suggestions for ways to identify an Advisor,
- A statement informing the parties that Midway University's Policy prohibits knowingly making false statements, including knowingly submitting false information during the resolution process,
- Detail on how the party may request disability accommodations during the interview process,
- A link to Midway University's VAWA Brochure,
- The name(s) of the Investigator(s), along with a process to identify, in advance of the interview process, to the Title IX Coordinator any conflict of interest that the Investigator(s) may have, and
- An instruction to preserve any evidence that is directly related to the allegations.

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

Notice will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address(es) of the parties as indicated in official Midway University records, or emailed to the parties' Midway University-issued email or designated accounts. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

9. Resolution Timeline

Midway University will make a good faith effort to complete the resolution process within a sixty-to-ninety (60-90) business day time period, including appeal, which can be extended as necessary for appropriate cause by the Title IX Coordinator, who will provide notice and rationale for any extensions or delays to the parties as appropriate, as well as an estimate of how much additional time will be needed to complete the process.

10. Appointment of Investigators

Once the decision to commence a formal investigation is made, the Title IX Coordinator appoints Pool members to conduct the investigation typically using a team of two investigators) usually within two (2) business days of determining that an investigation should proceed.

11. Ensuring Impartiality

Any individual materially involved in the administration of the resolution process [including the Title IX Coordinator, Investigator(s), and Decision-maker(s)] may neither have nor demonstrate a conflict of interest or bias for a party generally, or for a specific Complainant or Respondent.

The Title IX Coordinator will vet the assigned Investigator(s) to ensure impartiality by ensuring there are no actual or apparent conflicts of interest or disqualifying biases. The parties may, at any time during the resolution process, raise a concern regarding bias or conflict of interest, and the Title IX Coordinator will determine whether the concern is reasonable and supportable. If so, another Pool member will be assigned and the impact of the bias or conflict, if any, will be remedied. If the source of the conflict of interest or bias is the Title IX Coordinator, concerns should be raised with the President of the

University.

The Formal Grievance Process involves an objective evaluation of all relevant evidence obtained, including evidence which supports that the Respondent engaged in a policy violation and evidence which supports that the Respondent did not engage in a policy violation. Credibility determinations may not be based solely on an individual's status or participation as a Complainant, Respondent, or witness.

Midway University operates with the presumption that the Respondent is not responsible for the reported misconduct unless and until the Respondent is determined to be responsible for a policy violation by the applicable standard of proof.

12. Investigation Timeline

Investigations are completed expeditiously, normally within thirty (30) business days, though some investigations may take weeks or even months, depending on the nature, extent, and complexity of the allegations, availability of witnesses, police involvement, etc.

Midway University will make a good faith effort to complete investigations as promptly as circumstances permit and will communicate regularly with the parties to update them on the progress and timing of the investigation.

13. Delays in the Investigation Process and Interactions with Law Enforcement

Midway University may undertake a short delay in its investigation (several days to a few weeks) if circumstances require. Such circumstances include but are not limited to: a request from law enforcement to temporarily delay the investigation, the need for language assistance, the absence of parties and/or witnesses, and/or accommodations for disabilities or health conditions.

Midway University will communicate in writing the anticipated duration of the delay and reason to the parties and provide the parties with status updates if necessary. Midway University will promptly resume its investigation and resolution process as soon as feasible. During such a delay, Midway University will implement supportive measures as deemed appropriate.

Midway University action(s) are not typically altered or precluded on the grounds that civil or criminal charges involving the underlying incident(s) have been filed or that criminal charges have been dismissed or reduced.

14. Steps in the Investigation Process

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

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

The Investigator(s) typically take(s) the following steps, if not already completed (not necessarily in this order):

- Determine the identity and contact information of the Complainant
- In coordination with campus partners (e.g., the Title IX Coordinator), initiate or assist with any necessary supportive measures
- Identify all policies implicated by the alleged misconduct and notify the Complainant and Respondent of all of the specific policies implicated
- Assist the Title IX Coordinator with conducting a prompt initial assessment to determine if the allegations indicate a potential policy violation
- Commence a thorough, reliable, and impartial investigation by identifying issues and developing a strategic investigation plan, including a witness list, evidence list, intended investigation timeframe, and order of interviews for all witnesses and the parties
- Meet with the Complainant to finalize their interview/statement, if necessary
- Prepare the initial Notice of Investigation and Allegation (NOIA). The NOIA may be amended with any additional or dismissed allegations
    - Notice should inform the parties of their right to have the assistance of an Advisor, who could be a member of the Pool or an Advisor of their choosing present for all meetings attended by the party
- Provide each interviewed party and witness an opportunity to review and verify the Investigator's summary notes (or transcript) of the relevant evidence/testimony from their respective interviews and meetings
- Make good faith efforts to notify the parties of any meeting or interview involving the other party, in advance when possible
- When participation of a party is expected, provide that party with written notice of the date, time, and location of the meeting, as well as the expected participants and purpose
- Interview all available, relevant witnesses and conduct follow-up interviews as necessary
- Allow each party the opportunity to suggest witnesses and questions they wish the Investigator(s) to ask of the other party and witnesses, and document in the report which questions were asked, with a rationale for any changes or omissions.
- Complete the investigation promptly and without unreasonable deviation from the intended timeline
- Provide regular status updates to the parties throughout the investigation.
- Prior to the conclusion of the investigation, provide the parties and their respective Advisors (if so desired by the parties) with a list of witnesses whose information will be used to render a finding
- Write a comprehensive investigation report fully summarizing the investigation, all witness interviews, and addressing all relevant evidence. Appendices including relevant physical or documentary evidence will be included
- The Investigator(s) gather, assess, and synthesize evidence, but make no conclusions, engage in no policy analysis, and render no recommendations as part of their report.
- Prior to the conclusion of the investigation, provide the parties and their respective Advisors (if so desired by the parties) a secured electronic or hard copy of the draft investigation report as well as an opportunity to inspect and review all of the evidence obtained as part of the investigation that is directly related to the reported misconduct, including evidence upon which the Midway University does not intend to rely in reaching a determination, for a ten (10) business day review and comment period so that each party may meaningfully

respond to the evidence. The parties may elect to waive the full ten days. Each copy of the materials shared will be watermarked on each page with the role of the person receiving it (e.g., Complainant, Respondent, Complainant's Advisor, Respondent's Advisor).

- The Investigator(s) may elect to respond in writing in the investigation report to the parties' submitted responses and/or to share the responses between the parties for additional responses
- The Investigator(s) will incorporate relevant elements of the parties' written responses into the final investigation report, include any additional relevant evidence, make any necessary revisions, and finalize the report. The Investigator(s) should document all rationales for any changes made after the review and comment period
- The Investigator will incorporate any relevant feedback, and the final report is then shared with all parties and their Advisors through secure electronic transmission or hard copy at least ten (10) business days prior to a hearing. The parties are also provided with a file of any directly related evidence that was not included in the report

15. Role and Participation of Witnesses in the Investigation

Witnesses (as distinguished from the parties) who are employees of Midway University are expected to cooperate with and participate in Midway University's investigation and resolution process. Failure of such witnesses to cooperate with and/or participate in the investigation or resolution process constitutes a violation of policy and may warrant discipline.

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

16. Recording of Interviews

No unauthorized audio or video recording of any kind is permitted during investigation meetings. Investigator(s) may request to audio and/or video record interviews with the knowledge and consent of the involved parties.

17. Evidentiary Considerations in the Investigation

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

18. Referral for Hearing

Provided that the complaint is not resolved through Informal Resolution, once the final investigation report is shared with the parties, the Title IX Coordinator will refer the matter for a hearing.

The hearing cannot be less than ten (10) business days from the conclusion of the investigation –when the final investigation report is transmitted to the parties and the Decision-maker–unless all parties and the Decision-maker agree to an expedited timeline.

The Title IX Coordinator will select an appropriate Decision-maker and/or Decision-makers from the Pool depending on whether the Respondent is an employee or a student.

19. Hearing Decision-maker Composition

Midway University will designate a single Decision-maker at the discretion of the Title IX Coordinator.

The Decision-maker(s) will not have had any previous involvement with the investigation. The Title IX Coordinator may elect to have an alternate from the Pool sit in throughout the resolution process in the event that a substitute is needed for any reason.

The Title IX Coordinator may not serve as a Decision-maker or Chair in the matter but may serve as an administrative facilitator of the hearing if their previous role(s) in the matter do not create a conflict of interest. Otherwise, a designee may fulfill this role. The hearing will convene at a time determined by the Chair or designee.

20. Evidentiary Considerations in the Hearing

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

Previous disciplinary action of any kind involving the Respondent may be considered in determining an appropriate sanction upon a determination of responsibility, assuming Midway University uses a progressive discipline system. This information is only considered at the sanction stage of the process.

The parties may each submit a written impact statement prior to the hearing for the consideration of the Decision-maker(s) at the sanction stage of the process when a determination of responsibility is reached.

After post-hearing deliberation, the Decision-maker renders a determination based on the preponderance of the evidence standard; whether it is more likely than not that the Respondent violated the Policy as alleged.

21. Notice of Hearing

No less than ten (10) business days prior to the hearing, the Title IX Coordinator will send notice of the hearing to the parties. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

The notice will contain:

- A description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable procedures, and a statement of the potential sanctions/responsive actions that could result.
- The time, date, and location of the hearing and a reminder that attendance is mandatory, superseding all other campus activities.
- Any technology that will be used to facilitate the hearing.
- Information about the option for the live hearing to occur with the parties located in separate rooms using technology that enables the Decision-maker(s) and parties to see and hear a party or witness answering questions. Such a request must be raised with the Title IX Coordinator at least five (5) business days prior to the hearing.
- A list of all those who will attend the hearing, along with an invitation to object to any Decision-maker based on demonstrated bias. This must be raised with the Title IX Coordinator at least two (2) business days prior to the hearing.
- Information on how the hearing will be recorded and on access to the recording for the parties after the hearing.
- A statement that if any party or witness does not appear at the scheduled hearing, the hearing may be held in their absence, and the party's or witness's testimony and any statements given prior to the hearing will not be considered by the Decision-maker(s). For compelling reasons, the Chair may reschedule the hearing.
- Notification that the parties may have the assistance of an Advisor of their choosing at the hearing and will be required to have one present for any questions they may desire to ask. The party must notify the Title IX Coordinator if they do not have an Advisor, and Midway University will appoint one. Each party must have an Advisor present. There are no exceptions.
- A copy of all the materials provided to the Decision-maker(s) about the matter, unless they have been provided already.[16]
- An invitation to each party to submit to the Chair an impact statement pre-hearing that the Decision-maker will review during any sanction determination.
- An invitation to contact the Title IX Coordinator to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing, at least seven (7) business days prior to the hearing.

Hearings for possible violations that occur near or after the end of an academic term (assuming the Respondent is still subject to this Policy) and are unable to be resolved prior to the end of term will typically be held immediately after the end of the term or during the summer, as needed, to meet the resolution timeline followed by Midway University and remain within the 60-90 business day goal for resolution.

In these cases, if the Respondent is a graduating student, a hold may be placed on graduation and/or

[16] The final investigation report may be shared using electronic means that preclude downloading, forwarding, or otherwise sharing.

official transcripts until the matter is fully resolved (including any appeal). A student facing charges under this Policy is not in good standing to graduate.

22. Alternative Hearing Participation Options

If a party or parties prefer not to attend or cannot attend the hearing in person, the party should request alternative arrangements from the Title IX Coordinator at least five (5) business days prior to the hearing.

The Title IX Coordinator can arrange to use technology to allow remote testimony without compromising the fairness of the hearing. Remote options may also be needed for witnesses who cannot appear in person. Any witness who cannot attend in person should let the Title IX Coordinator know at least five (5) business days prior to the hearing so that appropriate arrangements can be made.

23. Pre-Hearing Preparation

The Chair, after any necessary consultation with the parties, Investigator(s) and/or Title IX Coordinator, will provide the names of persons who will be participating in the hearing, all pertinent documentary evidence, and the final investigation report to the parties at least ten (10) business days prior to the hearing.

Any witness scheduled to participate in the hearing must have been first interviewed by the Investigator(s) or have proffered a written statement or answered written questions, unless all parties and the Chair assent to the witness's participation in the hearing. The same holds for any evidence that is first offered at the hearing. If the parties and Chair do not assent to the admission of evidence newly offered at the hearing, the Chair will delay the hearing and instruct that the investigation needs to be re-opened to consider that evidence.

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

The Title IX Coordinator will give the Decision-maker(s) a list of the names of all parties, witnesses, and Advisors at least five (5) business days in advance of the hearing. Any Decision-maker who cannot make an objective determination must recuse themselves from the proceedings. If a Decision-maker is unsure whether a bias or conflict of interest exists, they must raise the concern to the Title IX Coordinator as soon as possible.

During the ten (10) business day period prior to the hearing, the parties have the opportunity for continued review and comment on the final investigation report and available evidence. That review and comment can be shared with the Chair at the pre-hearing meeting or at the hearing and will be exchanged between each party by the Chair.

24. Pre-Hearing Meetings

The Chair may convene a pre-hearing meeting(s) with the parties and/or their Advisors to invite them to submit the questions or topics they (the parties and/or their Advisors) wish to ask or discuss at the hearing, so that the Chair can rule on their relevance ahead of time to avoid any improper evidentiary introduction in the hearing or provide recommendations for more appropriate phrasing. However, this advance review opportunity does not preclude the Advisors from asking at the hearing for reconsideration based on any *new* information or testimony offered at the hearing. The Chair must document and share their rationale for any exclusion or inclusion at this pre-hearing meeting.

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

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

The pre-hearing meeting(s) will be recorded.

25. Hearing Procedures

At the hearing (which may be virtual), the Decision-maker(s) has the authority to hear and make determinations on all allegations of discrimination, harassment, and/or retaliation and may also hear and make determinations on any additional alleged policy violations that have occurred in concert with the discrimination, harassment, and/or retaliation, even though those collateral allegations may not specifically fall within the policy on Equal Opportunity, Harassment, and Nondiscrimination.

Participants at the hearing will include the Chair, the Decision-maker, the Investigator(s) who conducted the investigation, Advisors to the parties, any called witnesses, the Title IX Coordinator and anyone providing authorized accommodations or assistive services.

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

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

26. Joint Hearings

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

However, the Title IX Coordinator may permit the investigation and/or hearings pertinent to each Respondent to be conducted separately if there is a compelling reason to do so. In joint hearings,

separate determinations of responsibility will be made for each Respondent with respect to each alleged policy violation.

27. The Order of the Hearing – Introductions and Explanation of Procedure

The Chair explains the procedures and introduces the participants. This may include a final opportunity for challenge or recusal of the Decision-maker(s) on the basis of bias or conflict of interest. The Chair will rule on any such challenge unless the Chair is the individual who is the subject of the challenge, in which case the Title IX Coordinator will review and decide the challenge.

At the hearing, recording, witness logistics, party logistics, curation of documents, separation of the parties, and other administrative elements of the hearing process are managed by a non-voting hearing facilitator appointed by the Title IX Coordinator. The hearing facilitator may attend to: logistics of rooms for various parties/witnesses as they wait; flow of parties/witnesses in and out of the hearing space; ensuring recording and/or virtual conferencing technology is working as intended; copying and distributing materials to participants, as appropriate, etc.

28. Investigator Presents the Final Investigation Report

The Investigator(s) will then present a summary of the final investigation report, including items that are contested and those that are not, and will be subject to questioning by the Decision-maker(s) and the parties (through their Advisors). The Investigator(s) will be present during the entire hearing process, but not during deliberations.

Neither the parties nor the Decision-maker(s) should ask the Investigator(s) their opinions on credibility, recommended findings, or determinations, and the Investigators, Advisors, and parties will refrain from discussion of or questions about these assessments. If such information is introduced, the Chair will direct that it be disregarded.

29. Testimony and Questioning

Once the Investigator(s) present their report and are questioned, the parties and witnesses may provide relevant information in turn, beginning with the Complainant, and then in the order determined by the Chair. The parties/witnesses will submit to questioning by the Decision-maker(s) and then by the parties through their Advisors (“cross-examination”).

All questions are subject to a relevance determination by the Chair. The Advisor, who will remain seated during questioning, will pose the proposed question orally, electronically, or in writing (orally is the default, but other means of submission may be permitted by the Chair upon request or agreed to by the parties and the Chair), the proceeding will pause to allow the Chair to consider it, and the Chair will determine whether the question will be permitted, disallowed, or rephrased.

The Chair may explore arguments regarding relevance with the Advisors if the Chair so chooses. The Chair will then state their decision on the question for the record and advise the party/witness to whom the question was directed, accordingly. The Chair will explain any decision to exclude a question as not relevant, or to reframe it for relevance.

The Chair will limit or disallow questions on the basis that they are irrelevant, unduly repetitious (and

thus irrelevant), or abusive. The Chair has final say on all questions and determinations of relevance, subject to any appeal. The Chair may consult with legal counsel on any questions of admissibility. The Chair may ask advisors to frame why a question is or is not relevant from their perspective but will not entertain argument from the advisors on relevance once the Chair has ruled on a question.

If the parties raise an issue of bias or conflict of interest of an Investigator or Decision-maker at the hearing, the Chair may elect to address those issues, consult with legal counsel, and/or refer them to the Title IX Coordinator, and/or preserve them for appeal. If bias is not in issue at the hearing, the Chair should not permit irrelevant questions that probe for bias.

30. Refusal to Submit to Cross-Examination and Inferences

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

If the party or witness attends the hearing and answers some cross-examination questions, only statements related to the cross-examination questions they refuse to answer cannot be relied upon. However, if the statements of the party who is refusing to submit to cross-examination or refuses to attend the hearing are the subject of the allegation itself (e.g., the case is about verbal harassment or a quid pro quo offer), then those statements are not precluded from admission.

The Decision-maker(s) may not draw any inference solely from a party's or witness's absence from the hearing or refusal to answer cross-examination or other questions.

If charges of policy violations other than sexual harassment are considered at the same hearing, the Decision-maker(s) may consider all evidence it deems relevant, may rely on any relevant statement as long as the opportunity for cross-examination is afforded to all parties through their Advisors, and may draw reasonable inferences from any decision by any party or witness not to participate or respond to questions.

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

31. Recording Hearings

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

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

32. Deliberation, Decision-making, and Standard of Proof

The Decision-maker(s) will deliberate in closed session to determine whether the Respondent is responsible or not responsible for the policy violation(s) in question. If a panel is used, a simple majority vote is required to determine the finding. The preponderance of the evidence is used.

When there is a finding of responsibility on one or more of the allegations, the Decision-maker(s) may then consider the previously submitted party impact statements in determining appropriate sanction(s).

The Chair will ensure that each of the parties has an opportunity to review any impact statement submitted by the other party(ies). The Decision-maker(s) may – at their discretion – consider the statements, but they are not binding.

The Decision-maker(s) will review the statements and any pertinent conduct history provided by the Office of Student Affairs and will determine the appropriate sanction(s) in consultation with other appropriate administrators, as required.

The Chair will then prepare a written deliberation statement and deliver it to the Title IX Coordinator, detailing the determination, rationale, the evidence used in support of its determination, the evidence disregarded, credibility assessments, and any sanctions or recommendations.

This report will be submitted to the Title IX Coordinator within two (2) business days of the end of deliberations, unless the Title IX Coordinator grants an extension. If an extension is granted, the Title IX Coordinator will notify the parties.

33. Notice of Outcome

Using the deliberation statement, the Title IX Coordinator will work with the Chair to prepare a Notice of Outcome. The Title IX Coordinator will then share the letter, including the final determination, rationale, and any applicable sanction(s) with the parties and their Advisors within 5 business days of receiving the Decision-maker(s)' deliberation statement.

The Notice of Outcome will then be shared with the parties and their Advisors simultaneously. Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official Midway University records, or emailed to the parties' Midway University-issued email or otherwise approved account. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

The Notice of Outcome will identify the specific policy(ies) reported to have been violated, including the relevant policy section, and will contain a description of the procedural steps taken by Midway University from the receipt of the misconduct report to the determination, including any and all notifications to the parties, interviews with parties and witnesses, site visits, methods used to obtain evidence, and hearings held.

The Notice of Outcome will specify the finding on each alleged policy violation; the findings of fact that support the determination; conclusions regarding the application of the relevant policy to the facts at issue; a statement of, and rationale for, the result of each allegation to the extent the Midway University is permitted to share such information under state or federal law; any sanctions issued which the

Midway University is permitted to share according to state or federal law; and any remedies provided to the Complainant designed to ensure access to Midway University's educational or employment program or activity, to the extent Midway University is permitted to share such information under state or federal law (this detail is not typically shared with the Respondent unless the remedy directly relates to the Respondent).

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

34. Sanctions

Factors considered when determining a sanction/responsive action may include, but are not limited to:

- The nature, severity of, and circumstances surrounding the violation(s)
- The Respondent's disciplinary history
- Previous allegations or allegations involving similar conduct
- The need for sanctions/responsive actions to bring an end to the discrimination, harassment, and/or retaliation
- The need for sanctions/responsive actions to prevent the future recurrence of discrimination, harassment, and/or retaliation
- The need to remedy the effects of the discrimination, harassment, and/or retaliation on the Complainant and the community
- The impact on the parties
- Any other information deemed relevant by the Decision-maker(s)

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

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

a. Student Sanctions

The following are the usual sanctions[17] that may be imposed upon students.

- *Warning:* A formal statement that the conduct was unacceptable and a warning that further violation of any Midway University policy, procedure, or directive will result in more severe sanctions/responsive actions.
- *Required Counseling:* A mandate to meet with and engage in either Midway University-sponsored or external counseling to better comprehend the misconduct and its effects.
- *Probation:* A written reprimand for violation of institutional policy, providing for more severe disciplinary sanctions in the event that the student or organization is found in violation of any institutional policy, procedure, or directive within a specified period of time. Terms of the probation will be articulated and may include denial of specified social privileges, exclusion from co-curricular activities, exclusion from designated areas of campus, no-contact orders, and/or

[17] Midway University policies on transcript notation will apply to these proceedings.

other measures deemed appropriate.

- *Suspension:* Termination of student status for a definite period of time not to exceed two years and/or until specific criteria are met. Students who return from suspension are automatically placed on probation through the remainder of their tenure as a student at Midway University.
- *Expulsion:* Permanent termination of student status and revocation of rights to be on campus for any reason or to attend Midway University-sponsored events. This sanction will be noted permanently as a Conduct Expulsion on the student's official transcript, [subject to any applicable expungement policies.]
- *Withholding Diploma*: Midway University may withhold a student's diploma for a specified period of time and/or deny a student participation in commencement activities if the student has an allegation pending or as a sanction if the student is found responsible for an alleged violation.
- *Revocation of Degree:* Midway University reserves the right to revoke a degree previously awarded from Midway University for fraud, misrepresentation, and/or other violation of Midway University policies, procedures, or directives in obtaining the degree, or for other serious violations committed by a student prior to graduation.
- *Organizational Sanctions*: Deactivation, loss of recognition, loss of some or all privileges (including Midway University registration) for a specified period of time.
- *Other Actions:* In addition to or in place of the above sanctions, Midway University may assign any other sanctions as deemed appropriate.

b. Employee Sanctions

Responsive actions for an employee who has engaged in harassment, discrimination, and/or retaliation include:

- *Warning – Verbal or Written*
- *Performance Improvement/Management Process*
- *Required Counseling*
- *Required Training or Education*
- *Probation*
- *Loss of Annual Pay Increase*
- *Loss of Oversight or Supervisory Responsibility*
- *Demotion*
- *Suspension with pay*
- *Suspension without pay*
- *Termination*
- *Other Actions:* In addition to or in place of the above sanctions, Midway University may assign any other sanctions as deemed appropriate.

36. Withdrawal or Resignation While Charges Pending

Students: If a student has an allegation pending for violation of the Policy on Equal Opportunity, Harassment, and Nondiscrimination, Midway University may place a hold on a student's ability to graduate and/or to receive an official transcript/diploma.

Should a student decide to not participate in the resolution process, the process proceeds absent their participation to a reasonable resolution. Should a student Respondent permanently withdraw from

Midway University, the resolution process ends, as Midway University no longer has disciplinary jurisdiction over the withdrawn student.

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

If the student Respondent only withdraws or takes a leave for a specified period of time (e.g., one semester or term), the resolution process may continue remotely and that student is not permitted to return to Midway University unless and until all sanctions have been satisfied.

During the resolution process, Midway University may put a hold on a responding student's transcript or place a notation on a responding student's transcript or dean's disciplinary certification that a disciplinary matter is pending.

Employees: Should an employee Respondent resign with unresolved allegations pending, the resolution process ends, as Midway University no longer has disciplinary jurisdiction over the resigned employee.

However, Midway University will continue to address and remedy any systemic issues, variables that contributed to the alleged violation(s), and any ongoing effects of the alleged harassment or discrimination.

The employee who resigns with unresolved allegations pending is not eligible for rehire with Midway University, and the records retained by the Title IX Coordinator will reflect that status.

All Midway University responses to future inquiries regarding employment references for that individual will include that the former employee resigned during a pending disciplinary matter.

37. Appeals

Any party may file a request for appeal ("Request for Appeal"), but it must be submitted in writing to the Title IX Coordinator within 5 days of the delivery of the Notice of Outcome.

A three-member Appeal Panel will be appointed by the Title IX Coordinator. No appeal Decision-maker will have been involved in the process previously, including any dismissal appeal that may have been heard earlier in the process. The appeal panel will have one Chair who will oversee the review process.

The Request for Appeal will be forwarded to the Appeal Chair for consideration to determine if the request meets the grounds for appeal (a Review for Standing).

This review is not a review of the merits of the appeal, but solely a determination as to whether the request meets the grounds and is timely filed.

a. Grounds for Appeal

Appeals are limited to the following grounds:

(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, Investigator(s), or Decision-maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent that affected the outcome of the matter.

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

If any of the grounds in the Request for Appeal meet the grounds in this Policy, then the Appeal Chair will notify the other party(ies) and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigators and/or the original Decision-maker(s).

The other party(ies) and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigators and/or the original Decision-maker(s) will be mailed, emailed, and/or provided a hard copy of the request with the approved grounds and then be given 5 business days to submit a response to the portion of the appeal that was approved and involves them. All responses will be forwarded by the Chair to all parties for review and comment.

The non-appealing party (if any) may also choose to raise a new ground for appeal at this time. If so, that will be reviewed for standing by the Appeal Chair and either denied or approved. If approved, it will be forwarded to the party who initially requested an appeal, the Investigator(s) and/or original Decision-maker(s), as necessary, who will submit their responses in 5 business days, which will be circulated for review and comment by all parties.

Neither party may submit any new requests for appeal after this time period. The Appeal Chair will collect any additional information needed and all documentation regarding the approved grounds and the subsequent responses [will be shared with the Appeal Panel,] and the Chair/Panel will render a decision in no more than 5 business days, barring exigent circumstances. All decisions [are by majority vote] and apply the preponderance of the evidence standard.

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

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

mailed, emailed, and/or received in-person, notice will be presumptively delivered.

b. Sanctions Status During the Appeal

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

If any of the sanctions are to be implemented immediately post-hearing, then emergency removal procedures (detailed above) for a hearing on the justification for doing so must be permitted within 48 hours of implementation.

Midway University may still place holds on official transcripts, diplomas, graduations, and course registration pending the outcome of an appeal when the original sanctions included separation.

c. Appeal Considerations

- Decisions on appeal are to be deferential to the original decision, making changes to the finding only when there is clear error and to the sanction(s)/responsive action(s) only if there is a compelling justification to do so.
- Appeals are not intended to provide for a full re-hearing (de novo) of the allegation(s). In most cases, appeals are confined to a review of the written documentation or record of the original hearing and pertinent documentation regarding the specific grounds for appeal.
- An appeal is not an opportunity for Appeal Decision-makers to substitute their judgment for that of the original Decision-maker(s) merely because they disagree with the finding and/or sanction(s).
- The Appeal Chair/Panel may consult with the Title IX Coordinator on questions of procedure or rationale, for clarification, if needed. Documentation of all such consultation will be maintained.
- Appeals granted based on new evidence should normally be remanded to the original Investigator(s) and/or Decision-maker(s) for reconsideration. Other appeals may be remanded at the discretion of the Title IX Coordinator or, in limited circumstances, decided on appeal.
- Once an appeal is decided, the outcome is final: further appeals are not permitted, even if a decision or sanction is changed on remand (except in the case of a new hearing).
- In rare cases where a procedural [or substantive] error cannot be cured by the original Decision-maker(s) (as in cases of bias), the appeal may order a new hearing with a new Decision-maker(s).
- The results of a remand to a Decision-maker(s) cannot be appealed. The results of a new hearing can be appealed, once, on any of the three available appeal grounds.
- In cases in which the appeal results in reinstatement to Midway University or resumption of privileges, all reasonable attempts will be made to restore the Respondent to their prior status, recognizing that some opportunities lost may be irreparable in the short term.

38. Long-Term Remedies/Other Actions

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

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

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

At the discretion of the Title IX Coordinator, certain long-term support or measures may also be provided to the parties even if no policy violation is found.

When no policy violation is found, the Title IX Coordinator will address any remedies available to the Respondent to ensure no effective denial of educational access.

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

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

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

Failure to abide by the sanction(s)/action(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanction(s)/action(s), including suspension, expulsion, and/or termination from the Midway University and may be noted on a student's official transcript.

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

40. Recordkeeping

Midway University will maintain for a period of at least seven years records of:

1. Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required under federal regulation;
2. Any disciplinary sanctions imposed on the Respondent;
3. Any remedies provided to the Complainant designed to restore or preserve equal access to the Midway University's education program or activity;
4. Any appeal and the result therefrom;
5. Any Informal Resolution and the result therefrom;
6. All materials used to train Title IX Coordinators, Investigators, Decision-makers, and any person

who facilitates an Informal Resolution process. Midway University will make these training materials publicly available on Midway University's website; and

7. Any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment, including:
    a. The basis for all conclusions that the response was not deliberately indifferent;
    b. Any measures designed to restore or preserve equal access to Midway University's education program or activity; and
    c. If no supportive measures were provided to the Complainant, document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

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

41. Disabilities Accommodations in the Resolution Process

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

Anyone needing such accommodations or support should contact the Director of Student Involvement or Director of Human Resources, if employee, who will review the request and, in consultation with the person requesting the accommodation and the Title IX Coordinator, determine which accommodations are appropriate and necessary for full participation in the process.

42. Revision of this Policy and Procedures

This Policy and procedures supersede any previous policy(ies) addressing harassment, sexual misconduct, discrimination, and/or retaliation and will be reviewed and updated annually by the Title IX Coordinator. Midway University reserves the right to make changes to this document as necessary, and once those changes are posted online, they are in effect.

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

If government laws or regulations change – or court decisions alter – the requirements in a way that impacts this document, this document will be construed to comply with the most recent government regulations or holdings.

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

This Policy and procedures are effective August 14, 2020.

APPENDIX A

Unlawful Discrimination and Harassment

It is the policy of Midway University to maintain a work and academic environment that is free of harassment and discriminatory actions based on race, color, religion, national or ethnic origin, marital status, sex, age, disability, or any other category protected by law. Unlawful discrimination and harassment by officers, managers, faculty, supervisors, employees, students, advisors, vendors, and contractors will not be tolerated.

This policy and procedures are applicable and available to faculty, staff, students, and any third parties with a relationship, contractual or otherwise, to Midway University. Notwithstanding any provision of University policy that may suggest otherwise, allegations and reports of sexual misconduct (i.e., sexual harassment, sexual assault, domestic violence, dating violence, stalking and sexual exploitation) will be addressed and should be reported pursuant to the University's Sexual Misconduct Policy. All other forms of unlawful harassment and discrimination will be addressed and should be reported pursuant to this policy.

Further, retaliation against an individual who has complained about unlawful discrimination or harassment, or retaliation against individual for cooperating with an investigation of a complaint of unlawful discrimination or harassment, will not be tolerated.

Persons who violate this policy will be subject to disciplinary action up to and including termination of employment, expulsions and/or termination of the contractual relationship, if one exists.

1. Definitions of Unlawful Discrimination and Harassment:
    a. Unlawful Discrimination—Unlawful discrimination is strictly prohibited by the University and will not be tolerated. Treating an employee or student differently in the terms or conditions of his or her employment or education on the basis of the employee's or student's race, color, religion, national or ethnic origin, marital status, sex, age, disability, or any other category protected by law constitutes unlawful discrimination.
    b. Harassment—Harassment is any action, oral or written expression, repeated or persistent series of actions, or expressions that are reasonably perceived as creating an intimidating, offensive, hostile or demeaning educational, employment or University living environment for a student or University employee. A hostile environment is one that unreasonably interferes with an individual's ability to participate in all and any aspects of academic, professional or residential life.

2. Retaliation: It is a violation of this policy to retaliate against a person who has complained about unlawful discrimination or harassment, or for assisting, participating or cooperating in an investigation or grievance of a complaint hereunder.

3. Wrongful Allegations: It is a violation of this policy to bring a knowingly false complaint under this policy. However, failure to prove a claim of unlawful discrimination or harassment does not alone constitute proof of a false and/or malicious accusation.

4. Educational Setting: The academic setting is distinct in the workplace, and the University will maintain and encourage academic freedom. Academic curriculum and pedagogical goals that serve legitimate and reasonable educational purposes do not, in and of themselves, constitute unlawful discrimination or harassment. Those participating in the educational setting bear a responsibility to balance their professional academic responsibilities and academic freedoms with a consideration of the reasonable sensitivities of other participants. Nothing contained in this policy shall be construed to limit the legitimate and reasonable academic responsibilities and academic freedoms of the University's professional educators.

5. Procedures for Addressing Complaints of Unlawful Discrimination and Harassment

   Anyone who believes he/she has been subjected to discrimination or harassment in violation of this policy should immediately report those concerns to the Executive Director of Human Resources, Dean of Students, instructor, chair, dean or any other member of administration with whom you feel comfortable in making such a report. No one is required to make a complaint to the person who is the subject of the complaint. The report should be in writing. If the initial report is oral, the person to whom the report was made shall inform the complainant of the right to file a written complaint through these procedures. There is no established time frame for filing a complaint; however, individuals are urged to file a complaint as soon as possible after the alleged event or offending act or behavior.

   All students and employees should bring to the University's attention any indication of unlawful discrimination or harassment and to report promptly any act or event that is believed to be a violation of this policy so that the matter can be investigated promptly and appropriate corrective action taken, if warranted. Complaints or reports shall be directed to the Executive Director of Human Resources, Marrs Hall, Lower Level, 512 E. Stephens St., Midway, KY 40347, 859.846.5784.

   The Executive Director of Human Resources or her/his designee is responsible for accepting and processing discrimination and harassment complaints under this policy. Instructors, chairs, deans, supervisors and other members of the administration should notify the Executive Director of Human Resources when they receive or otherwise become aware of complaints. To the extent permissible and practicable all complaints shall be treated confidentially and will be investigated by the University in an impartial, prompt, and responsible manner.

   Each complaint of unlawful discrimination or harassment must be evaluated on a case-by-case basis impartially with reference to the pertinent circumstances. If appropriate, a complaint may be resolved informally. Informal resolutions may be reached by direct communication between

the individuals involved or with the help of mediation of a third party. However, such a strategy may be inappropriate when the conduct is severe or when the person responsible for the alleged behavior holds a position of authority. At either Complainant's or Respondent's request any complaint will be removed from an informal resolution process to a formal investigation.

Other complaints will be conducted as formal investigations, including but not necessarily limited to interviews of the Complainant, the Respondent, and witnesses, and review of documents. The rights of both parties are considered in conducting the investigation. Both parties have the right to present witnesses and other evidence on his/her behalf. Both the complainant and the respondent will be notified of the outcome of the investigation and the basis for the decision either orally or in writing. Absent extraordinary circumstances, the investigation will be completed, and the parties notified of the results within 15 working days from the date the written complaint is received by the Executive Director of Human Resources. In the event of extraordinary circumstances (to be defined by the Executive Director of Human Resources but to include but not limited to situations with a large number of witnesses or evidence to review, non-cooperation from one or more parties or witnesses), the Complainant and Respondent shall be informed in writing of the need for an extension of time to complete the investigation not to exceed an additional 15 working days, the reasons for an extension of time, and the amount of time needed. In determining whether conduct constitutes a violation of the University's Policy Against Unlawful Discrimination and Harassment, University officials will look at the record as a whole and at all of the circumstances of the situation. The Human Resources Generalist or her/his designee, shall conduct the impartial formal investigation and make recommendations for appropriate corrective action and discipline as necessary to the Dean of Students where the Respondent is a student and to the Executive Director of Human Resources where the Respondent is an employee or a third party who is not an employee or student of the University. Either the Dean of Students, or his/her designees or the Executive Director of Human Resources or his/her designees shall decide appropriate corrective action and discipline as necessary. If a violation of this policy is found, Midway will take steps to prevent further unlawful harassment and/or discrimination.

Members of the University community are also advised that behavior that does not rise to the level of unlawful discrimination or harassment may nonetheless be unprofessional, inappropriate or disruptive in the workplace, classroom, or residence halls and could warrant appropriate corrective action and discipline.

Members of the University community are expected to cooperate in investigations by designated University officials of alleged unlawful discrimination or harassment. Student complaints of unlawful discrimination or harassment by other students may also be covered by certain provisions of Code of Student Conduct contained in the Midway University Student Handbook and may be referred to the Dean of Students or his/her designees or the Student Appeals Board for final resolution and disciplinary action, if warranted. More complete information concerning the student judicial process, rights of the student who is the subject of

the complaint, rights of the student bringing forward the complaint, and possible sanctions can be found in the Code of Student Conduct section of the Midway University Student Handbook.

6. Confidentiality

   The University will make reasonable efforts to keep all information relating to complaints under this policy confidential on a need-to-know basis, to the extent consistent with the University's legal obligations, its need to investigate allegations, and its need to take corrective and/or disciplinary actions. All participants in the grievance process or any investigation of any allegation hereunder shall respect the confidentiality of the process and violation of confidentiality on a need-to-know basis is a violation of this policy.

7. Corrective and/or Disciplinary Action

   In the event that the investigation reveals that unlawful discrimination or harassment, or other inappropriate or unprofessional conduct (even if not unlawful) has occurred, further action will be taken, including corrective and/or disciplinary action, up to and including termination or expulsion in accordance with appropriate University procedures. If a violation of this policy is found, Midway will take steps to prevent further unlawful discrimination and/or harassment.

8. State and Federal Agencies

   In addition to the above, employees or students who believe they may have been subjected to unlawful discrimination or harassment, may file a formal complaint with government agencies. Using the University's complaint process does not prohibit an employee or student from filing a complaint with these agencies.

   U. S. Department of Education
   Office for Civil Rights
   Philadelphia Office
   100 Penn Square East, Suite 515
   The Wanamaker Building
   Philadelphia, PA 19104-3326
   (215) 596-6787; TDD: (215) 596-6794

   Kentucky Commission on Human Rights
   332 W. Broadway, 7th Floor
   Louisville, KY 40202
   Phone: (502) 595-4024
   Toll-free: (800) 292-5566; TDD: (502) 595-4084

   U.S. Equal Employment Opportunity Commission
   1801 L. Street, N.W.
   Washington, D.C. 20507
   (800) 669-4000

APPENDIX B

MIDWAY UNIVERSITY FRAMEWORK FOR INFORMAL RESOLUTION (IR)

Midway University has framed a process for IR that includes:

1. A response based on supportive measures; and/or
2. A response based on a Respondent accepting responsibility; and/or
3. A response based on alternative resolution, which could include various approaches and facilitation of dialogue.

Alternative resolution approaches like mediation, restorative practices, transformative justice, etc. may be used.

All IR processes through Midway University will be designed and executed carefully and thoughtfully and be facilitated by well-trained administrators who take the necessary time to prepare and lay a foundation for success.

The following principles may be considered for supporting various approaches to informal resolution:

- IR can be applied in any sex/gender-based interpersonal conflict but should be only be cautiously considered for violent incidents (sexual violence, stalking, domestic and dating violence, severe sexual harassment, sexual exploitation, etc.)
- Situations involving dangerous patterns or significant ongoing threat to the community should not be resolved by IR.
- The determination of whether to permit an IR-based resolution is entirely at the discretion of the Title IX Coordinator (TIXC) and in line with the requirements for IR laid out in the Title IX regulations.
- Any party can end IR early-, mid-, or late-process for any reason or no reason.
- IR can be attempted before and in lieu of formal resolution as a diversion-based resolution (although a formal complaint must be filed if you are within Section 106.30, per OCR).
- Alternative approaches can inform formal resolution, as in a formal resolution model infused with restorative practices.
- IR could be deployed after formal resolution, as an adjunct healing/catharsis opportunity (that could potentially mitigate sanctions or be a form of sanction).
- Alternate Resolution approaches to IR must be facilitated by the recipient or a third-party. There may be value in creating clearly agreed-upon ground rules, which the parties must sign in advance and agree to abide by, otherwise the informal resolution process will be deemed to have failed.
- Technology-facilitated IR can be made available, should the parties not be able or willing to meet in person.
- If IR fails, a formal resolution can take place thereafter. No evidence elicited within the “safe space” of the IR facilitation is later admissible in the formal resolution unless all parties consent.
- With cases involving violence, the preferred alternative approach typically involves a minimal number of essential parties and is not a wide restorative circle approach in order to ensure confidentiality.
- Some approaches require a reasonable gesture toward accountability (this could be more than an acknowledgement of harm) and some acceptance, or at least recognition, by the Respondent that catharsis is of value and likely the primary goal of the Complainant. A full admission by the

Respondent is not a prerequisite. This willingness needs to be vetted carefully in advance by the TIXC before determining that an incident is amenable/appropriate for resolution by IR.

- IR can result in an accord or agreement between the parties (Complainant, Respondent, Midway University) which is summarized in writing by and enforced by Midway University. This can be a primary goal of the process.
- IR can result in the voluntary imposition of safety measures, remedies, and/or agreed-upon resolutions by the parties, that are enforceable by Midway University. These can be part of the accord/agreement.
- As a secondary goal, IR can result in the voluntary acceptance of "sanctions," meaning that a Respondent could agree to withdraw, self-suspend (by taking a leave of absence), or undertake other restrictions/transfers/online course options that would help to ensure the safety/educational access of the Complainant, in lieu of formal sanctions that would create a formal record for the Respondent. These are enforceable by Midway University as part of the accord/agreement, as may be terms of mutual release, non-disparagement, and/or non-disclosure.
- While a non-disclosure agreement (NDA) could result from IR, it would have to be mutually agreed-upon by the parties in an environment of non-coercion verified by the TIXC.
- Institutions must develop clear rules for managing/facilitating the conference/meeting/dialogue of alternative resolution approaches, to ensure they are civil, age-appropriate, culturally-competent, reflective of power imbalances, and maximize the potential for the resolution process to result in catharsis, restoration, remedy, etc., for the harmed party(ies).

APPENDIX C:

STATEMENT OF RIGHTS OF THE PARTIES

- The right to an equitable investigation and resolution of all credible allegations of prohibited harassment or discrimination made in good faith to Midway University officials.

- The right to timely written notice of all alleged violations, including the identity of the parties involved (if known), the precise misconduct being alleged, the date and location of the alleged misconduct (if known), the implicated policies and procedures, and possible sanctions.

- The right to timely written notice of any material adjustments to the allegations (e.g., additional incidents or allegations, additional Complainants, unsubstantiated allegations) and any attendant adjustments needed to clarify potentially implicated policy violations.

- The right to be informed in advance of any public release of information regarding the allegation(s) or underlying incident(s), whenever possible.

- The right not to have any personally identifiable information released to the public without consent provided, except to the extent permitted by law.

- The right to be treated with respect by Midway University officials.

- The right to have Midway University policies and procedures followed without material deviation.

- The right not to be pressured to mediate or otherwise informally resolve any reported misconduct involving violence, including sexual violence.

- The right not to be discouraged by Midway University officials from reporting sexual misconduct or discrimination to both on-campus and off-campus authorities.

- The right to be informed by Midway University officials of options to notify proper law enforcement authorities, including on-campus and local police, and the option(s) to be assisted by Midway University authorities in notifying such authorities, if the party so chooses. This also includes the right not to be pressured to report, as well.

- The right to have allegations of violations of this Policy responded to promptly and with sensitivity by Midway University officials.

- The right to be informed of available interim actions and supportive measures, such as counseling; advocacy; health care; legal, student financial aid, visa, and immigration assistance; or other services, both on campus and in the community.

- The right to a Midway University-implemented no-contact order when a person has engaged in or threatens to engage in stalking, threatening, harassing, or other improper conduct that presents a danger to the welfare of the party or others.

- The right to be informed of available assistance in changing academic, living, and/or working situations after an alleged incident of discrimination, harassment, and/or retaliation, if such changes are reasonably available. No formal report, or investigation, either campus or criminal, needs to occur before this option is available. Such actions may include, but are not limited to:
    - Relocating an on-campus student's housing to a different on-campus location
    - Assistance from Midway University staff in completing the relocation
    - Changing an employee's work environment (e.g., reporting structure, office/workspace relocation)
    - Transportation accommodations
    - Visa/immigration assistance
    - Arranging to dissolve a housing contract and a pro-rated refund
    - Exam, paper, and/or assignment rescheduling or adjustment
    - Receiving an incomplete in, or a withdrawal from, a class (may be retroactive)
    - Transferring class sections
    - Temporary withdrawal/leave of absence (may be retroactive)
    - Campus safety escorts
    - Alternative course completion options.

- The right to have Midway University maintain such actions for as long as necessary and for supportive measures to remain private, provided privacy does not impair Midway Universities ability to provide the supportive measures.

- The right to receive sufficiently advanced, written notice of any meeting or interview involving the other party, when possible.

- The right to ask the Investigator(s) and Decision-maker(s) to identify and question relevant witnesses, including expert witnesses.

- The right to provide the Investigator(s)/Decision-maker(s) with a list of questions that, if deemed relevant by the Investigator(s)/Chair, may be asked of any party or witness.

- The right not to have irrelevant prior sexual history or character admitted as evidence.

- The right to know the relevant and directly related evidence obtained and to respond to that evidence.

- The right to fair opportunity to provide the Investigator(s) with their account of the alleged misconduct and have that account be on the record.

- The right to receive a copy of the investigation report, including all factual, policy, and/or credibility analyses performed, and all relevant and directly related evidence available and used to produce the investigation report, subject to the privacy limitations imposed by state and federal law, prior to the hearing, and the right to have at least ten (10) business days to review the report prior to the hearing.

- The right to respond to the investigation report, including comments providing any additional relevant evidence after the opportunity to review the investigation report, and to have that response on the record.

- The right to be informed of the names of all witnesses whose information will be used to make a finding, in advance of that finding, when relevant.

- The right to regular updates on the status of the investigation and/or resolution.

- The right to have reports of alleged Policy violations addressed by Investigators, Title IX Coordinators, and Decision-maker(s) who have received relevant annual training.

- The right to a Hearing Panel that is not single sex in its composition, if a panel is used.

- The right to preservation of privacy, to the extent possible and permitted by law.

- The right to meetings, interviews, and/or hearings that are closed to the public.

- The right to petition that any Midway University representative in the process be recused on the basis of disqualifying bias and/or conflict of interest.

- The right to have an Advisor of their choice to accompany and assist the party in all meetings and/or interviews associated with the resolution process.

- The right to have Midway University compel the participation of faculty and staff witnesses.

- The right to the use of the appropriate standard of evidence. Midway shall use preponderance of the evidence; to make a finding after an objective evaluation of all relevant evidence.

- The right to be present, including presence via remote technology, during all testimony given and evidence presented during any formal grievance hearing.

- The right to have an impact statement considered by the Decision-maker(s) following a determination of responsibility for any allegation, but prior to sanctioning.

- The right to be promptly informed in a written Notice of Outcome letter of the finding(s) and sanction(s) of the resolution process and a detailed rationale therefor (including an explanation of how credibility was assessed), delivered simultaneously (without undue delay) to the parties.

- The right to be informed in writing of when a decision by Midway University is considered final and any changes to the sanction(s) that occur before the decision is finalized.

- The right to be informed of the opportunity to appeal the finding(s) and sanction(s) of the resolution process, and the procedures for doing so in accordance with the standards for appeal established by Midway University.

- The right to a fundamentally fair resolution as defined in these procedures.