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## **DISCRIMINATION, HARASSMENT, AND SEXUAL MISCONDUCT**

### ***Purpose***

The mission of York University is to transform lives through Christ-centered education and to equip students for lifelong service to God, family, and society.

York University believes in and promotes that the Biblical standard for consensual sex, in all of its forms, is between a man and a woman and reserved for marriage alone. Sexual expression outside of marriage is a violation of Scripture and York University's Code of Conduct.

In harmony with its mission, York University strives to provide a Christian environment that is countercultural and does not tolerate discrimination, harassment, and sexual misconduct. Discrimination, harassment, and sexual misconduct is contrary to Biblical teaching and a violation of human dignity. The students, faculty, and staff of York University have the right to work and learn free of sexual misconduct, harassment, and discrimination. The University will take action to prevent and promptly correct instances of discrimination, harassment, and sexual misconduct. The purpose of this policy is:

- To communicate the mechanisms for investigating complaints in a manner that reasonably protects the privacy of individuals involved in situations of alleged sexual misconduct, harassment and/or discrimination and grievances;
- To ensure the provision of equal employment and educational opportunities to faculty, staff, students and applicants for such opportunities without regard to race, color, national or ethnic origin, gender, religion or handicap;
- To protect all those involved who report or provide information related to sexual misconduct, harassment, discrimination, and/or grievances from retaliation of any kind;
- To set for guidance for preventing sexual misconduct, harassment and/or discrimination
- To take timely corrective action when sexual misconduct, harassment and/or discrimination is alleged to have occurred;
- To ensure that students, faculty and staff have the opportunity to present grievances to the Office of the Title IX Coordinator regarding a certain action(s) perceived to be in violation of institutional policies by a member of the University community; and

- To establish a consistent process for resolving complaints of sexual misconduct, harassment and/or discrimination and grievances in a fair and just manner.

### ***Statement of Non-Discrimination***

York University does not discriminate on the basis of sex in its educational programs and activities, including employment and admission. Complaints of discrimination based on sex will be handled under this Sexual Misconduct Policy or other appropriate University grievance procedures.

### ***Rationale for Policy***

York University is committed to providing a workplace and educational environment, as well as other benefits, programs, and activities, that are free from sexual 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,

York University has developed internal policies and procedures that provide a prompt, fair, and impartial process for those involved in an allegation sexual harassment or retaliation. York 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.

### ***Title IX and Jurisdiction of the Policy***

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

Because York University receives federal funds, the University is required to abide by Title IX and all applicable regulations implementing Title IX, including those published in May 2020. The Title IX regulations published in 2020 clarify the definition of "sexual harassment" prohibited under Title IX and require specific procedures to be followed when

addressing such conduct. Title IX "sexual harassment" includes Sexual Harassment, Sexual Harassment (Quid Pro Quo), Sexual Assault, Dating Violence, Domestic Violence, and Stalking.

Title IX regulations require the University to dismiss a formal complaint of allegations of conduct that do not meet the regulation's definition of "sexual harassment," did not occur in the University's education programs or activities, and/or where the individual was located outside the United States when the conduct allegedly occurred, and/or where a Complainant is not participating in or attempting to participate in a York University education program or activity. However, York University may still take action on allegations that fall outside the jurisdiction of Title IX, but violate this broader Sexual Misconduct Policy. Such action may include using the informal resolution process and/or formal grievance process described below or using any other University policy the University deems applicable.

In cases where a York University faculty or staff member is accused of other forms of serious misconduct in addition to Sexual Misconduct, Human Resources and/or Vice President of the respective department may take immediate action following other policies governing misconduct, thereby making this Policy inapplicable (e.g., in cases where a faculty/staff member is immediately terminated). If the Respondent is a student and an employee, the York University Title IX Coordinator will determine which University policy should apply based upon the facts and circumstances (including, but not limited to, the context of the prohibited conduct, the roles of the parties at the time of the conduct, and the location of the incident).

The jurisdiction of this Sexual Misconduct Policy may be broader than the jurisdiction of Title IX, and applies to the education programs and activities of York University, to conduct that takes place on the campus or on property owned or controlled by York University, at University-sponsored events, or in buildings owned or controlled by York University's recognized student organizations. This Policy may also be applicable to the effects of off-campus misconduct that effectively deprive someone of access to York University's educational programs or activities. The University may also extend jurisdiction to Study Abroad programs and/or to off-campus or online conduct. Regardless of whether Title IX is applicable or which procedures are followed, York University is committed to a fair, accurate, consistent, transparent, and prompt response to allegations of Sexual Misconduct.

### ***Scope/Eligibility***

The policy applies to all students, faculty, staff, and visitors who may come into contact with the campus of York University.

The core purpose of this policy is the prohibition of sexual harassment and retaliation. When an alleged violation of this policy is reported, the allegations are subject to resolution using York 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 York 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 York University community. This community includes, but is not limited to, students, 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.

### ***Title IX Coordinator***

Roni Miller serves as the Title IX Coordinator and oversees implementation of this policy. The Title IX Coordinator has the primary responsibility for coordinating York University's efforts related to the intake, investigation, resolution, and implementation of supportive measures to stop, remediate, and prevent sexual harassment, and retaliation prohibited under this policy. When appropriate, the Title IX Coordinator may appoint a designee to conduct or assist with the stated duties.

- Roni Miller  
Title IX Coordinator  
Senior Woman Administrator  
York University- Freeman Center  
1125 East 8th Street  
York, NE 68467  
(402)363-5717  
[titleix@york.edu](mailto:titleix@york.edu)

## Reporting Procedures

The safety and well-being of members of our community is of the utmost importance to York University. Anyone who feels they have been the subject of discrimination, harassment, sexual misconduct, or retaliation directed to them by another member of the community on campus should contact the Title IX Coordinator. The Office of the Title IX Coordinator will take steps to ensure an adequate, prompt, reliable, and impartial investigation.

The University encourages all individuals to report incidents of Sexual Misconduct or suspected Sexual Misconduct, whether they are Complainants or Witnesses. Individuals subjected to Sexual Misconduct have several reporting options. At the University, individuals can anonymously report, confidentially report, or file a formal complaint of Sexual Misconduct, as explained below. Outside the University, individuals can report Sexual Misconduct to community resource centers that specialize in providing resources to victims of Sexual Misconduct, file a criminal charge with local law enforcement, or file civil litigation against the Respondent. Some individuals will choose to pursue criminal charges (i.e., through the police and criminal courts). Others will choose to pursue University disciplinary options, if the Respondent is a York University student or employee. Some will choose a combination of the above options, and some will choose none.

Any member of York University who experiences a violation of this policy has the following options available to them:

- File criminal charges against the suspect. The complainant should contact the Title IX Coordinator for assistance in filing charges through the York Police Department. Criminal charges being filed will require the student to be interviewed by police investigators and prosecuting attorneys. Students may be required to give testimony in court proceedings.
- File a civil lawsuit or request a restraining order. (A private attorney can assist students with these options.)
- File a complaint against the alleged offender with the Title IX Coordinator. Students choosing this option can expect the following:
  - to be interviewed by Title IX Investigator(s), who will assist the student in developing a written statement and explain the student's rights in the disciplinary process;
  - to be notified in writing if the case proceeds to a Title IX Adjudicator following the preliminary investigation by Title IX Investigator(s);
  - to be accorded the rights expressed in this policy and the Student Handbook.

- Inform the Title IX Coordinator without filing formal charges. In this case the Office of the Title IX Coordinator may:
  - discuss with the accused the potential disciplinary responses if charges were to be filed; and
  - keep a record for future reference without informing the accused of the report.

Students may pursue these options concurrently or separately. The choice always belongs to the individual student. Personal counseling is available to any victim of crime through York University's Director of Spiritual Development or the Counseling Coordinator. The Office of the Title IX Coordinator can only pursue an investigation if an official report is filed with the Title IX Coordinator or it is perceived there is an ongoing threat to the campus community. Every consideration will be afforded students to assure their safety and well-being.

### **Reports to a Title IX Coordinator**

If there is any immediate danger, call 911.

Anyone may report Sexual Misconduct or Retaliation related to Sexual Misconduct (whether or not the person reporting is the person alleged to have been subjected to Sexual Misconduct) to the University by contacting the Title IX Coordinator in person, by mail, by telephone, or by email, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. 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 under [Title IX Coordinator](#). Students, employees, or third parties making reports should contact the Title IX Coordinator.

An individual reporting Sexual Misconduct may do so verbally or in a written report. If a written report is submitted, it should contain a brief written statement citing the type(s) of Sexual Misconduct that occurred (see [Definitions](#)) and supporting facts (e.g., Respondent name, what happened, when and where the incident occurred, Witness(es), etc.).

### **Responsible Employees**

Faculty and staff in leadership or supervisory positions or who have significant responsibility for the welfare of students or employees are considered responsible employees. These

employees include, but are not limited to, Department Chairs, Coaches, Advisors, program directors, and Residence Life staff. Responsible employees are required to report immediately any information they know about suspected prohibited conduct or potential violations of this Policy. Student workers who have supervisory responsibility or responsibility for the welfare of other students, such as Resident Assistants, are also considered responsible employees when they learn of potential violations of this Policy in the scope of their employment. Contact the Title IX Coordinator if you are unsure of your obligations to report as an employee of the institution.

Responsible employees must report all known information, including the identities of the parties, the date, time and location, and any details about the reported incident to the Title IX Coordinator (see [Reports to a Title IX Coordinator](#)). The Title IX Coordinator will promptly contact the Complainant to discuss the availability of supportive measures, consider the Complainant's wishes with respect to supportive measures, inform the Complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the Complainant the process for filing a formal complaint.

Responsible employees may provide support and assistance to a Complainant, Witness, or Respondent; but they cannot promise confidentiality or withhold information about prohibited conduct. Failure by a responsible employee to report suspected prohibited conduct in a timely manner may subject them to appropriate discipline, including removal from a position or termination of employment.

A Complainant may choose not to make a complaint or report in their own case, even if the Complainant would otherwise have reporting obligations by virtue of being a faculty member, staff member, or student worker.

Any faculty or staff members that are not considered a responsible employee or confidential resource are strongly encouraged, but not required, to report details of incidents or suspected incidents of sexual and gender-based harm or discrimination with the Title IX Coordinator.

### **Confidential Resources On Campus**

York University has designated confidential resources who are not obligated to report information that is provided to them. This allows individuals to explore their options in a supportive environment while they make informed decisions. Confidential resources will not

share these communications or that these communications occurred without consent from the Complainant. There are rare exceptions where confidentiality cannot be honored; for example, in cases of court subpoena, child or elder abuse, or where harm to self or others is probable. An individual who is not prepared to make a report or formal complaint, or who may be unsure how to label what happened, but still seeks information and support, is strongly encouraged to contact a confidential resource.

When a report or formal complaint is made to a Title IX Coordinator, York University will keep confidential the identity of any individual who has made a report or formal complaint, including any Complainant, Respondent, or Witness, except as may be permitted by the Family Educational Rights and Privacy Act (FERPA), or as required by law, or to carry out the procedures in this Policy. This means that York University will protect the individual's privacy but may disclose information to those who have a legitimate need to know.

In accordance with the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, York University will conduct record-keeping on reports of dating violence, domestic violence, stalking, and sexual assault, which excludes personally-identifiable information. Confidential resources will not report Clery crimes they learn about through confidential communications for purposes of York University's compilation of campus crime statistics.

The following parties are considered Confidential Resources at York University:

- Vice President of Spiritual Development, Dr. Sam Garner (402) 363-5620
- Counseling Coordinator, Dr. Randy Ervin (402) 363-5701
- Faculty or staff who are closely-related (e.g. sibling, parent, guardian, grandparent, or spouse) to the person experiencing or reporting an incident

### **Reporting Options Outside York University**

If you are the subject of sexual misconduct, go immediately to a safe place and speak with someone you trust. York University encourages you to call the police. Seeking immediate medical attention and preserving any evidence (bed linens, undergarments, etc.) is encouraged.

*Note: Victims of rape should immediately seek medical attention before showering, changing clothes or destroying evidence in any other way.*

- Emergency 911
- Local Police non-emergency (402) 363-2640
- York County Sheriff (402) 362-4927
- York General Hospital (402) 362-6671
- York Medical Clinic (402) 362-5555
- York Urgent Care (402) 745-6279
- Memorial Hospital (Seward, NE) (402) 643-2971
- Henderson Health Care Services (Henderson, NE) (402) 723-4512
- Hope Crisis Center Hotline (877) 388-4673
  - Local Office (402) 362-7527
- Rape Crisis Center Hotline (866) 995-4422
- Voices of Hope Hotline (Lincoln, NE) (402)475-7273

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](mailto:OCR@ed.gov)  
 Web: <http://www.ed.gov/ocr>

***Complaint or Notice to the Title IX Coordinator***

Upon receipt of a complaint or notice to a Title IX Coordinator of an alleged violation of this Policy, the Title IX Coordinator initiates a prompt initial assessment to determine the next steps the University needs to take. The Title IX Coordinator will initiate at least one of three responses:

- Offer [supportive measures](#) because the Complainant does not want to file a [formal complaint](#); and/or
- An [informal resolution process](#) (upon submission of a formal complaint); and/or
- A [formal grievance process](#) including an investigation and a hearing (upon submission of a formal complaint).

The University uses the formal grievance process to determine whether or not the Policy has been violated. If so, York University will promptly implement effective remedies designed to help restore access to the University's educational programs and activities.

### ***Initial Meeting with the Title IX Coordinator***

When Sexual Misconduct is reported, the Title IX Coordinator meets with student and employee Complainants. The Title IX Coordinator will promptly contact the Complainant to discuss the availability of supportive measures, consider the Complainant's wishes with respect to supportive measures, inform the Complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the Complainant the process for filing a formal complaint. The Title IX Coordinator will also explain the options for a formal grievance process (including an investigation and hearing) and an informal resolution process. At this initial meeting, the Title IX Coordinator will also explain the Complainant's and Respondent's right to an Advisor. The Complainant may bring a support person to this initial meeting with the Title IX Coordinator. The support person may also serve as the Complainant's Advisor in future meetings with University officials.

### ***Supportive Measures***

Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to York University's education programs or activities without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the University's educational environment, or deter Sexual Misconduct. York University will maintain as confidential any supportive measures provided to the Complainant or Respondent, to the extent that maintaining such confidentiality would not impair the ability of the University to provide the supportive measures.

During the initial meeting with the Title IX Coordinator, Complainants will have the opportunity to express what they would like in the form of supportive measures, and the Title IX Coordinator will take into account the Complainant's wishes in determining which supportive measures to offer. The Title IX Coordinator will coordinate the implementation of the supportive measures they deem appropriate.

### **Available Supportive Measures**

The Title IX Coordinator, at their discretion, may implement supportive measures which may be applied to the Complainant and/or the Respondent including, but not limited to:

- Access to counseling services and assistance in setting up an initial appointment, on and off campus;
- Imposition of mutual restrictions on contact between the parties (or a one-way no-contact order when appropriate);
- Timely warnings;
- Limiting an individual's or organization's access to certain University facilities or activities pending resolution of the matter;
- Increased security and monitoring of certain areas of the campus;
- Providing an escort to ensure safe movement between classes and activities;
- Assisting individuals as they seek proper medical services;
- Providing pregnancy support;
- Providing academic support services, such as tutoring; and/or
- Any other actions deemed appropriate by the Title IX Coordinator.

### ***Formal Complaint of Sexual Misconduct***

A "formal complaint" is a document filed by a Complainant or signed by the Title IX Coordinator alleging Sexual Misconduct against a Respondent and requesting that the University investigate the allegation. The formal complaint must be submitted to the Title IX Coordinator in person, by mail, email with a physical or digital signature or which otherwise indicates that the Complainant is the person filing the formal complaint. At the time of filing a formal complaint, a Complainant must be participating in or attempting to participate in a York University education program or activity. The [Title IX Coordinator](#) coordinates formal complaints by students (regardless of the status of the Respondent) and formal complaints by employees who report Sexual Misconduct against another employee.

Requiring Complainants to file a formal complaint is meant to ensure that Complainants retain more autonomy and control over when the Complainant's reported victimization leads to a formal grievance process (which includes the investigation and hearing procedures described below). In rare circumstances, the Title IX Coordinator may determine that an investigation is necessary over the wishes of a Complainant out of concerns for the welfare and safety of the Complainant and the community (for example, to pursue a grievance

process against a potential serial sexual perpetrator). If so, the Title IX Coordinator will sign a formal complaint; however, the Title IX Coordinator is not a Complainant or a party during the grievance process. When the Title IX Coordinator determines that an investigation is necessary even where the Complainant does not want such an investigation, the grievance process can proceed without the Complainant's participation; however, the Complainant will still be treated as a party in such a grievance process, which means continuing to provide supportive measures, an invitation to participate in the investigation and hearing process, and notification of the final outcome. The decision to initiate a grievance process in situations where the Complainant does not want an investigation, or where the Complainant intends not to participate, will be made thoughtfully and intentionally, taking into account the circumstances of the situation, including the reasons why the Complainant wants or does not want the University to investigate.

When weighing a Complainant's request that no investigation or discipline be pursued, the Title IX Coordinator will consider a range of factors, including the following:

- the effect that non-participation by the Complainant may have on the availability of evidence and York University's ability to pursue the formal
- grievance process fairly and effectively;
- whether there have been other Sexual Misconduct complaints about the same Respondent;
- whether the Respondent has a history of arrests or records from a prior school indicating a history of violence;
- whether the Respondent threatened further Sexual Misconduct or other violence against the individual or others;
- whether the Sexual Misconduct was committed by multiple Respondents;
- whether the Sexual Misconduct was perpetrated with a weapon;
- whether the individual is a minor (Please note the age of majority in Nebraska is 19 years old);
- whether the report reveals a pattern of perpetration (e.g., via illicit use of drugs or alcohol) at a given location or by a particular group..

The presence of one or more of these factors may lead York University to initiate its formal grievance process. If none of these factors are present, the Title IX Coordinator will typically honor the Complainant's decision not to file a formal complaint.

If the Title IX Coordinator determines that a formal investigation is necessary over the wishes of a Complainant, York University will inform the Complainant prior to starting an investigation and will offer supportive measures and informal resolution options when appropriate. When York University proceeds with the formal grievance process (including the investigation and hearing), the Complainant (or their Advisor) may have as much or as little involvement in the process as desired. The Complainant retains all rights of a Complainant under this Policy irrespective of their level of participation. Note that York University's ability to respond to the report may be limited if the Complainant does not want to proceed with an investigation and/or hearing process or requests that their identity remain confidential. The goal is to provide the Complainant with as much control over the process as possible, while balancing York University's obligation to protect the Complainant and the community. Complainants who elect to take no action can change that decision if they decide to pursue a formal complaint at a later date. After a formal complaint is filed, both parties will be given timely notice of meetings at which the parties (one or all) may be present.

### ***Informal Resolution Process***

Informal resolution is a voluntary process that a student Complainant and a student Respondent can mutually agree to participate in as an alternative to a formal grievance process. An informal resolution process will not be offered to resolve allegations of Sexual Misconduct against a student by a York University employee. However, informal resolution may be appropriate to resolve allegations of Sexual Misconduct against an employee by another York University employee.

The informal resolution process can take 30 business days to reach a resolution; typically they are resolved earlier. The University will make a good faith effort to complete the informal resolution process as promptly as circumstances permit and will update the parties on the reason and timing of any delay.

Before initiating an informal resolution process, a Complainant first needs to submit a formal complaint. If a student Complainant or student Respondent wishes to initiate an informal resolution, they should contact the [Title IX Coordinator](#) to make this request. In cases of an employee Complainant who has made allegations against an employee Respondent, either party may initiate an informal resolution by contacting the [Title IX Coordinator](#).

All parties must consent to the use of informal resolution. However, the Title IX Coordinator, in their sole discretion, determines whether the informal resolution process will be used in a matter. The Title IX Coordinator may appoint a facilitator with appropriate training in Title IX and informal resolution processes to work with both parties toward a resolution.

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 prior to reaching resolution and begin or resume the formal grievance process.

Prior to implementing an informal resolution, the Title IX Coordinator will provide the parties with written notice of the reported misconduct and any sanctions or measures that may result from participating in an informal resolution process, including information regarding any records that will be maintained or shared by the University. York University will obtain voluntary, written confirmation that all parties wish to resolve the matter through informal resolution before proceeding and will not pressure the parties to participate in an informal resolution.

The informal resolution agreement is not subject to appeal once all parties indicate their written agreement to all terms of the informal resolution. After the written agreement is signed by both parties, the formal grievance process is no longer available concerning the allegations raised in the formal complaint.

When the parties cannot agree on all terms of resolution, the formal grievance process will resume at the same point where it was paused. Information disclosed during the informal resolution process that is not already in the record (e.g., in the formal complaint or from any investigation or hearing conducted before the information resolution process starts) is confidential and cannot be used in the formal grievance process that resumes after the informal resolution process is terminated.

When an informal resolution is accomplished, the appropriate responsive actions and/or mutually agreed upon sanctions are promptly implemented in order to effectively stop the harassment or discrimination, prevent its recurrence, and remedy the effects of the misconduct, both on the Complainant and the community. 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 and/or disciplinary actions.

## ***Formal Grievance Process***

### **Overview**

After a Complainant (or the Title IX Coordinator in exceptional cases) files a formal complaint against a Respondent, the Title IX Coordinator will initiate a formal grievance process that includes an investigation and a hearing. Before the investigation begins, both parties will receive a written statement of the allegations with sufficient time to prepare before meeting with a trained, professional investigator. The purpose of the investigation is to collect the relevant evidence with the equitable participation of both parties. After the investigation is complete, a final investigation report is sent to both parties. The investigation report makes no conclusions about the allegations. Both parties have the opportunity to respond in writing to the evidence related to the allegations collected by the investigator(s), and then again to the final investigation report.

The next step is to schedule a video conference hearing with both parties and their Advisors and any relevant Witnesses. The purpose of the hearing is to give both parties and Witnesses the opportunity to provide testimony and respond to the evidence at the hearing with the Decision Maker. After the hearing the Decision Maker will make a determination of responsibility regarding the Sexual Misconduct allegation(s) and send that determination in writing to both parties.

Either party may appeal the decision to a designated University Appeal Officer who was not involved in the investigation or hearing process. The Appeal Officer's decision is final. The Title IX Coordinator will continue to work with both parties throughout this process, providing supportive measures and, if the Respondent is found responsible, remedies to the Complainant to help restore access to York University's educational programs and activities.

### **Initial Assessment**

After a Complainant files a formal complaint, the [Title IX Coordinator](#) will conduct an initial assessment. The initial assessment may include determining whether the Sexual Misconduct alleged falls within the scope of Title IX. Under the Title IX regulations, York University must dismiss a formal complaint or any allegations therein if, at any time during the investigation or hearing, it is determined that:

- The conduct alleged in the formal complaint would not constitute Title IX "sexual harassment" as described under [Title IX and Jurisdiction of the Policy](#), even if proved; and/or
- The alleged conduct did not occur in York University's educational programs or activities (includes locations, events, or circumstances over which York University exercises substantial control over both the Respondent and the context in which the "sexual harassment" occurs, and also includes buildings or property controlled by officially recognized student organizations); and/or
- The alleged conduct did not occur against a person in the United States; and/or
- At the time of filing a formal complaint, a Complainant is not participating in or attempting to participate in the education programs or activities of the University

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

- A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations therein (a Complainant who decides to withdraw a complaint may later request to reinstate it or refile it); or
- The Respondent is no longer enrolled in or employed by the University; or
- Specific circumstances prevent York University from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

Because Sex Discrimination and Sexual Exploitation are not considered Title IX "sexual harassment," the University is not obligated to follow the procedures required by the Title IX regulations in Sex Discrimination and Sexual Exploitation cases. Formal complaints of Sex Discrimination or Sexual Exploitation by a student against another student may be resolved using the procedures in this Policy. Formal complaints of Sex Discrimination or Sexual Exploitation by a student against a York University employee may be resolved using the school's [Formal Complaint form](#) on Panethnet. Formal complaints of Sex Discrimination or Sexual Exploitation by an employee against another employee may be resolved through the [Employee Grievance Procedure](#) in the Policies and Procedures Manuall.

Upon any dismissal of the formal complaint, the Title IX Coordinator will promptly send written notice of the dismissal and the rationale for doing so simultaneously to the parties. In some cases, the dismissal may only be a procedural requirement under the Title IX

regulations, because the regulations also allow the University to still address the allegations using the [formal grievance process](#) or the [informal resolution process](#). Therefore, the Title IX Coordinator will indicate in the written notice if York University will continue with the informal resolution process or the formal grievance process (including the investigation and hearing) or under this Policy even though it has been dismissed as a Title IX matter. If York University proceeds using the formal grievance process, the parties will be notified of any procedural modification in the written notice of the allegations and/or the written notice of the hearing before the procedure begins (e.g., to time frames and cross examination requirements).

The formal complaint dismissal decision is appealable to the Appeals Official on any of the following bases: 1) Procedural irregularity that affected the outcome of the matter; 2) New evidence that was not reasonably available at the time the dismissal was made which could affect the outcome of the matter; or 3) The Title IX Coordinator had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter. York University will notify the other party in writing when an appeal is filed. Appeals procedures will be implemented equally for both parties, which includes the opportunity to submit a written statement in support of, or challenging, the dismissal decision. The University will issue a written decision describing the result of the appeal and the rationale for the result, which will be provided simultaneously to both parties. The appeal process normally takes fifteen 15 business days from the time the appeal is submitted by either party. The Appeals Official will make a good faith effort to complete the appeal process as promptly as circumstances permit and will update the parties on the timing of any delay and the reasons for the delay.

### **Written Notice of the Allegations**

Upon receipt of a formal complaint, the Title IX Coordinator will provide the Complainant and Respondent (or the parties who are known at the time) a written notice that includes:

- Notice of York University's formal grievance process and informal resolution process.
- Notice of the allegations of Sexual Misconduct (see [Definitions](#)), including sufficient details known at the time and with sufficient time to prepare for the initial interview. Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting Sexual Misconduct, and the date and location of the alleged incident, if known.

- A statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.
- A statement that the parties may have an Advisor of their choice, who may be, but is not required to be, an attorney, and may inspect and review evidence as described in the Formal Investigation section below.
- A reference to the provision in this Policy that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.
- A statement about the University's policy on Retaliation.
- Information on how parties may request disability accommodations during the formal grievance (including investigation and hearing) and informal resolution processes.

If, in the course of an investigation, York University decides to investigate allegations regarding the Respondent that are not included in the original written notice, the University will provide notice of the additional allegations to the parties whose identities are known.

The written notice will be delivered by one or more of the following methods: emailed to the parties' York University email or designated accounts, in person, or mailed to the local or permanent address(es) of the parties as indicated in official University records.

### **Formal Investigation**

***Authority and Responsibility.*** Investigations are conducted by trained, professional investigators. In some cases, the University may choose to utilize the services of an outside investigator to conduct the investigation, which will follow the procedures below and be overseen by the appropriate Title IX Coordinator.

***Investigation Timeline.*** Investigations are completed expeditiously, normally within 90 business days, though some investigations may take longer, depending on the nature, extent, and complexity of the allegations, availability and number of Witnesses, law enforcement involvement, etc. If there is a delay, the University will communicate in writing the anticipated duration of the delay and reason to the parties. Investigations are typically not delayed, 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. York 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, including the reason for any delay.

***Participation of Witnesses in the Investigation.*** Normally, interviews for parties and all Witnesses are conducted in person; however, circumstances (e.g., study abroad, summer break) may require individuals to be interviewed remotely. In exceptional circumstances, Witnesses may also provide written statements in lieu of interviews, if deemed appropriate by the investigator(s). If a Witness submits a written statement, but is not present for cross-examination at a subsequent hearing, their written statement may not be able to be used as evidence, unless both parties agree that such statement can be used.

***Recording of Interviews.*** No unauthorized audio or video recording or transcription of any kind is permitted during investigation meetings. The investigator(s) will audio and/or video record interviews, and all involved parties will be made aware of audio and/or video recording. Recordings or transcriptions of investigation meetings will not be shared with any involved party (Complainant, Respondent, Advisor, or Witnesses); however, a summary of any relevant evidence obtained in an investigation interview that is directly related to the allegations raised in the formal complaint will be shared in writing with the Complainant and Respondent and their Advisors as described below in the investigation process.

***Investigation Process.*** When investigating a formal complaint, York University will:

- Ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rests on the University and not on the parties. The University cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the University obtains that party's voluntary, written consent to do so for the grievance process under this Policy.
- Provide an equal opportunity for the parties to present Witnesses and other inculpatory and exculpatory evidence. Inculpatory evidence tends to incriminate or

place responsibility on someone, and exculpatory evidence tends to show a person's innocence.

- Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.
- Provide the parties with the same opportunities to have others present during any investigation meeting, including the opportunity to be accompanied to any related meeting or proceeding by the Advisor of their choice. However, the Advisor cannot speak for the parties. The role of the Advisor is to accompany the parties and advise them privately.
- Provide, to a party, written notice of the date, time, location, participants, and purpose of all investigative interviews with sufficient time (normally two calendar days) for the party to prepare to participate.
- Provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which the University does not intend to rely on in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation. York University will send to each party and the party's Advisor, if any, the evidence subject to inspection and review in an electronic format. In order to protect confidential information, the investigator will redact or remove information that is not directly related to the allegations (or that is otherwise barred from use under Title IX, such as information protected by a legally recognized privilege, or a party's treatment records if the party has not given written consent) before sending the evidence to the parties for inspection and review.

The evidence will be emailed to the parties' York University email account and the Advisors' (if any) email account provided to the University by the parties. The parties will have ten (10) calendar days to submit a written response, which the investigator will consider prior to completion of the final investigative report. The parties may elect to waive the full ten (10) calendar days. Both parties may provide additional evidence in their response. Each party's written response, if submitted, will be shared with the other party. 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.

York University will make all evidence subject to the parties' inspection and review, including any written responses, available at any hearing following the investigation to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.

- Create a final investigation report that includes a description of the procedural steps taken during the investigation and that fairly summarizes relevant evidence. The report will be sent to each party and the party's Advisor, if any, in an electronic format for their review. The parties will have ten (10) calendar days to submit a written response prior to the hearing. The parties may elect to waive the full ten (10) calendar days. The evidence will be emailed to the parties' York University email account and the Advisors' (if any) email account provided to the University by the parties. Both parties may provide additional evidence in their response. Each party's written response, if submitted, will be shared with the other party. Parties will have the opportunity to respond to any new evidence at the hearing.

***Evidentiary Considerations in the Investigation.*** The investigation does not consider: 1) incidents not directly related to the possible violation, unless they are considered relevant because, for example, they evidence a pattern; or 2) evidence about the Complainant's sexual predisposition or prior sexual behavior, unless such 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 evidence concerns specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

***Sexual Misconduct Claims that are not Title IX "Sexual Harassment."*** For allegations of Sexual Misconduct that fall outside the jurisdiction of Title IX, the Title IX Coordinator in collaboration with the investigator(s) reserves the right to modify the investigation procedures, including but not limited to timelines. For example, the University may reduce the number of days provided to the parties to review the related evidence and the final investigation report if it is determined that this may help provide a prompt resolution without compromising a thorough, reliable, impartial, and fair process for both parties. The parties will be notified of any modifications in the written notice of the allegations that are sent by the Title IX Coordinator before the investigation begins.

### **Hearing Procedures**

After the final investigation report is shared with the parties, the Title IX Coordinator will refer the matter for a live hearing. The hearing will be with one Decision Maker (an administrative hearing). All hearings will be conducted via video conferencing that will allow all parties, Witnesses, and other participants simultaneously to see and hear each other. Other than as outlined below, hearings need not adhere to formal rules of procedure or evidence followed by courts of law.

***Authority and Responsibility.*** The term "Hearing Officer" is used throughout these hearing procedures to refer to the person who is the single Decision Maker of the administrative hearing.

At the hearing, the Decision Maker has the authority to hear and make determinations on all allegations of Sexual Misconduct, and/or Retaliation and may also hear and make determinations on any additional alleged policy violations by the Respondent that have occurred in connection with the Sexual Misconduct allegations (e.g., violations by the Respondent of the Alcohol and Drug policies). The Hearing Officer may designate a staff member to serve as the hearing facilitator, which includes, for example, scheduling the hearing, distributing materials to participants, ensuring that the virtual conferencing and recording technology is working as intended, and coordinating the flow of Witnesses and other participants in and out of the video conferencing as appropriate. York University will provide a transcript of the hearing to the parties for inspection and review upon request.

**Hearing Timeline.** The hearing cannot be less than ten (10) calendar days from the conclusion of the investigation, which is the date that the final investigation report is transmitted to the parties. However, all parties (the Complainant and the Respondent) and the Decision Maker may agree to an expedited timeline. Hearings may be conducted prior to, simultaneously with, or following criminal or civil proceedings. After the hearing is concluded, a written letter of determination is normally sent to both parties within three (3) business days. The time frame from the notice of the hearing to the written letter of determination is normally fifteen (15) business days. When employee Respondents are involved and sanctions are recommended by the Decision Maker, additional time may be necessary for a sanction review by the appropriate supervisor or faculty body. The sanctions are included in the written letter of determination, which concludes the hearing process. The Hearing Officer will make a good faith effort to complete the hearing process as promptly as circumstances permit and will update the parties on the reason and timing of any delay of the hearing or the written letter of determination.

**Notice of Hearing.** No less than ten (10) calendar days prior to the hearing, the Hearing Officer will simultaneously send notice of the hearing to the parties' York University email account. The notice will contain:

- A description of the alleged violation(s) and a list of all policies allegedly violated.
- The time and date of the hearing and a reminder that attendance is mandatory, superseding all other University activities.
- A description of the video conferencing technology that will be used to facilitate the hearing with the parties in separate locations and enables the Decision Maker and parties to see and hear a party or Witness answering questions.
- A list of all those who will attend the hearing, along with an invitation to object to any Decision Maker on the basis of demonstrated bias. This must be raised with the Hearing Officer or the Title IX Coordinator (regarding the Hearing Officer) in writing at least seven (7) calendar days prior to the hearing.
- A copy of all the materials provided to the Decision Maker(s) about the matter, unless they have been provided already. This includes, for example, the final investigation report, the parties' written responses to the report (if submitted), and any relevant materials the Hearing Officer has approved to be reviewed at the hearing.
- An invitation to each party to identify any relevant Witnesses in the final investigation report whose testimony is sufficient in the report and does not need to present live testimony or submit to cross-examination questions by the party's Advisor at the

hearing. If there is agreement by both parties, and the credibility or live testimony of the Witness is not critical to the adjudication of the allegations, the Hearing Officer may determine that it is not necessary to require the Witness to attend the hearing, and the Decision Maker(s) will rely upon the Witness' testimony in the final investigation report in making its determination of responsibility.

- An invitation to each party to submit the cross-examination questions they intend their Advisor to ask the other party or Witnesses at the hearing, so that the Hearing Officer can rule on their relevance ahead of time to avoid any delays in the hearing or to provide recommendations for more appropriate phrasing. Parties will also be given the opportunity to submit cross-examination questions during the live hearing.
- An invitation to each party to submit to the Hearing Officer an impact statement pre-hearing that the Decision Maker will review during any sanction determination.
- An invitation to contact the Office of Student Development (students) or Human Resources (employees) to arrange any disability accommodations or interpretation services that may be needed at the hearing, at least seven (7) calendar days prior to the hearing.

***Witnesses.*** The Hearing Officer will schedule critical Witnesses to appear at a portion of the live hearing in order to present testimony and to respond to questions from the Decision Maker and the parties, after which they will be excused. Any Witness scheduled to participate in the hearing must have been first interviewed by the investigator(s). The Hearing Officer may make an exception to this rule if they believe the circumstances warrant such exception.

***Evidentiary Considerations in the Hearing.*** Any evidence that is first offered after the final investigation report or during the hearing will be reviewed by the Hearing Officer to determine whether circumstances warrant allowing the evidence to be considered at the hearing. If the Hearing Officer does not allow the admission of the new evidence, the Hearing Officer may delay the hearing and instruct that the investigation needs to be re-opened to consider that evidence.

Any evidence the Decision Maker determines relevant and credible may be considered. The Decision Maker does not consider: 1) incidents not directly related to the possible violation, unless they are considered relevant because, for example, they evidence a pattern; or 2) 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 concerns 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. This information is only considered at the sanction stage of the process during deliberation by the Decision Maker following the live hearing with the parties.

### ***Other Hearing Procedures.***

- The Hearing Officer will answer all questions of procedure raised before or during a hearing.
- In hearings involving more than one Respondent or in which two 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, in consultation with the appropriate office(s) (e.g., Human Resources), 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.
- 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.
- York University will make all evidence subject to the parties' inspection and review, including any written responses, available at the hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.
- Parties may confer with their Advisor during the hearing, but if a party repeatedly confers with the Advisor every time a question is asked, the Hearing Officer may inform the party that such conduct will be considered when weighing the party's credibility. Also, the Hearing Officer reserves the right to limit the timing and length of breaks requested by parties to confer with Advisors, and any conferring must be in private so that it does not disturb the hearing and is not overheard by other participants.

- If, during the course of the hearing, additional policy violations are discovered, the Respondent will be notified of the new alleged violation(s) and will be granted additional time, if needed, for an investigation to be conducted and/or to prepare a defense of the new alleged violation(s). The Respondent may waive an investigation related to the new alleged violation(s) and/or the additional time to prepare a defense, and the hearing can proceed with the new alleged violation(s) taken under consideration by the Decision Maker(s). A record will be made of the additional alleged violation(s) and whether or not the Respondent waived or requested an investigation to be conducted and/or additional preparation time.
- The University will provide a transcript of the hearing to both parties upon request for purposes of review in the event of an appeal. The parties may not record the hearing and no other unauthorized recordings are permitted.

***Cross-Examination.*** The Title IX regulations require York University to permit cross-examination by each party's Advisor in order to give the Decision Maker the opportunity to observe parties and Witnesses answer questions. The Title IX regulations grant the right of cross-examination equally to Complainants and Respondents, so that either party may direct the Decision Maker's attention to the implausibility, inconsistency, unreliability, ulterior motives, and lack of credibility in the other party's or the Witnesses statements.

At the live hearing, the Title IX regulations require that the Decision Maker must permit each party's Advisor to ask the other party and any Witnesses all relevant questions and follow-up questions, including those challenging credibility. Such cross-examination at the live hearing must be conducted directly, orally, and in real time by the party's Advisor of choice and never by a party personally. Only relevant cross-examination and other questions may be asked of a party or Witness. Before a Complainant, Respondent, or Witness answers a question, the Hearing Officer must first determine whether the question is relevant and explain any decision to exclude a question as not relevant. The parties or Advisors may immediately challenge any decision regarding relevance by the Hearing Officer, who may pause the hearing and consult with others before making a final ruling on the challenge. Duplicative questions are irrelevant and will not be permitted by either party.

If a party does not have an Advisor for a hearing, York 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 a party may not proceed with the hearing without an Advisor. If the party's Advisor will not conduct cross-examination, York University will appoint an Advisor who will do so, regardless of the participation or non-participation of the advised party in the hearing itself. If a York University-appointed Advisor is used by a party to conduct cross-examination, the role of that Advisor is to relay any questions the party wishes to ask the other party or Witnesses. The York University-appointed Advisor will not develop questions independently on behalf of the party.

Cross-examination by Advisors must follow the hearing procedures and York University's rules of decorum, which prohibit questioning in an abusive, badgering, intimidating, or disrespectful manner. If a party's Advisor of choice refuses to comply with these rules of decorum for the hearing, the Hearing Officer may require the party to use a different Advisor. If a University-provided Advisor refuses to comply with these rules of decorum, the Hearing Officer may provide that party with a different Advisor to conduct cross-examination on behalf of that party.

If a party or Witness chooses not to submit to cross-examination at the hearing, either because they do not attend the hearing, or they attend but refuse to participate in questioning, then the Decision Maker 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. The Decision Maker must disregard that statement. Evidence provided that is something other than a statement by the party or Witness may be considered (e.g., video evidence of the misconduct). 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.

***Title IX Jurisdiction.*** For allegations of Sexual Misconduct that fall outside the jurisdiction of Title IX (see [Title IX and Jurisdiction of the Policy](#)), the Hearing Officer reserves the right to modify the hearing procedures, including but not limited to cross-examination. For example, in allegations of Sexual Assault occurring outside of Title IX's jurisdiction, the University may rely upon indirect cross-examination to conduct a thorough, reliable, impartial, and fair hearing process. Parties will submit cross-examination questions to the Hearing Officer who, after determining relevance, will ask the questions directly to the parties rather than having an Advisor ask the cross-examination questions. The parties will be notified of any hearing procedure modifications in the written notice of the hearing that is sent by the Hearing Officer before the hearing.

### ***Hearing Order.***

- The Hearing Officer confirms that all the participants, including the Complainant, Respondent, Advisors, Decision Maker, and hearing facilitator, are present at the video conference, and invites the participants to introduce themselves. The introductions will also allow the hearing facilitator to confirm that all participants can see and hear each other.
- The Hearing Officer provides an overview of the hearing agenda and a list of the Witnesses (if any) in the order they are scheduled to participate in the hearing.
- The Hearing Officer offers both parties the opportunity to make a brief opening statement (maximum of ten (10) minutes) to the Decision Maker(s), beginning with the Complainant. Advisors are not allowed to make opening statements.
- The Hearing Officer asks the parties and Witnesses to provide any relevant information beginning with the Complainant and then in the order determined by the Hearing Officer. The Decision Maker asks questions directly to the parties and Witnesses about their testimony or relevant evidence in the materials provided to the participants in advance of the hearing. The parties and Witnesses will submit to questioning by the Decision Maker(s) and then by the parties through their Advisors ("cross-examination") after the Hearing Officer reviews each question for relevance before it is asked by the Advisor. Witnesses are excused from the hearing following the cross-examination.
- The Hearing Officer offers both parties the opportunity to make a brief closing statement (maximum of five (5) minutes) to the Decision Maker. Advisors are not allowed to make closing statements.

***Determination of Responsibility.*** The Decision Maker will deliberate in closed session to determine whether the Respondent is responsible for the Policy violation(s). The preponderance of the evidence standard of proof is used (whether it is more likely than not that the Respondent violated the Sexual Misconduct Policy).

When there is a finding of responsibility on one or more of the allegations, the Decision Maker may then consider the previously submitted party impact statements in recommending appropriate sanction(s). The Hearing Officer will ensure that each of the parties has an opportunity to review any impact statement submitted by the other party. The Decision Maker will review previous disciplinary history as well.

Student Respondents. The Hearing Officer who will make the final determination on appropriate sanction(s). The Hearing Officer may consult with the Title IX Coordinator for students on any appropriate remedies for the Complainant.

Employee Respondents. If the Decision Maker decides that there was a policy violation, they will recommend sanctions against the faculty or staff member. The decision and any sanction recommendations against a staff member will be forwarded to Human Resources for a decision on the recommended sanction(s). The decision and any sanction recommendations against a faculty member will be forwarded to the supervising Vice President for a decision on the recommended sanctions(s), and any other applicable procedures, will be followed prior to the sanction becoming final. After receiving the decision on the recommended sanction(s) from HR or the Vice President, the Hearing Officer will include the final sanctions in the written letter of determination. The Hearing Officer may consult with the Title IX Coordinator on any appropriate remedies for the Complainant.

Written Letter of Determination. The Hearing Officer will then prepare a written letter of determination. The letter of determination will identify the specific policy(ies) reported to have been violated, and will contain a description of the procedural steps taken by the University from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and Witnesses, site visits, methods used to gather other evidence, and hearings held. The letter will also 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; a statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the University imposes on the Respondent, and whether remedies

designed to restore or preserve equal access to the York University's education programs or activities will be provided by the University to the Complainant. The remedies are not typically shared with the Respondent unless the remedy directly relates to the Respondent. The Title IX Coordinator is responsible for the implementation of any remedies.

Finally, the letter of determination will include York University's procedures and permissible bases for the Complainant and Respondent to appeal. Any sanctions imposed as a result of the hearing are stayed during the appeal process. To best provide support, parties are encouraged to let the Hearing Officer know immediately if they are appealing so that the sanctions (if any) may be stayed and the appropriate offices may be notified.

This letter of determination will be shared with the parties simultaneously by one or more of the following methods: emailed to the parties' York University email or designated accounts, delivered in person, or mailed to the local or permanent address(es) of the parties as indicated in official University records.

The determination regarding responsibility becomes final after the time period to file an appeal has expired, or if a party does file an appeal, after the appeal decision has been sent to the parties.

### **Appeal Process**

Both parties may appeal a determination of responsibility by the Decision Maker to the Appeals Officer.

The appeal must be submitted in writing via email within seven (7) calendar days of the issuance date of the written letter of determination. Any sanctions imposed as a result of the hearing are stayed during the appeal process.

In the written appeal, the party must specifically address at least one of the following criteria:

- New evidence that was not reasonably available at the time the determination regarding responsibility was made that could affect the outcome of the matter. The appealing party must provide a summary of this new evidence and its impact.
- Procedural irregularity that affected the outcome of the matter. The appealing party must identify the specific investigative or hearing procedure that was not followed, along with a summary of how it affected the outcome of the matter.

- Bias or conflict of interest by the Title IX Coordinator, investigator(s) or Decision Maker for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter. The appealing party must state the basis for this belief and provide any supporting information.
- Inappropriateness of the sanction for the violation of the Policy.

The written appeal will be shared with the other party, who may submit a written response within seven (7) calendar days from the time the appeal is emailed to the student's or employee's York University account. This written response will be shared with the other party.

The appeal process normally takes twenty (20) business days from the time the appeal is submitted by either party. The Appeal Officer will make a good faith effort to complete the appeal process as promptly as circumstances permit and will update the parties on the timing of any delay and the reasons for the delay.

Generally, the appellate process does not require the Appeal Officer to make personal contact with the involved parties or the Decision Maker. The Appeal Officer may, but is not required to, convene an Advisory committee to assist in making a recommendation regarding the appeal. The Appeal Officer will not be bound by the committee's recommendation.

The Appeal Officer may affirm, reverse, or modify the sanction. The Appeal Officer may also return the case to the Decision Maker for further consideration. The Appeal Officer's decision will be final and effective immediately. A letter describing the result of the appeal and the rationale for the decision will be emailed simultaneously to both parties' york.edu account.

### ***Retention of Records***

All records and investigations will be private and confidential to the greatest extent possible and will not be publicly disclosed except to the extent required by law. However, no member of the University's staff or faculty, or any student is promised strict or absolute confidentiality. Additionally, all records will be retained for a minimum of seven years. Records will be stored with the Office of the Title IX Coordinator.

### ***Amnesty for Victims and Good Samaritans***

York University encourages the reporting of discrimination, harassment, and/or sexual misconduct; therefore, the University may offer victims immunity from disciplinary action for policy violations related to sexual misconduct. Furthermore, for students who offer assistance (by contacting medical services, the police department, and/or York University personnel) to other students in need, both on and off campus, both parties may receive immunity from disciplinary action.

### ***Amendments or Termination of this Policy***

York University reserves the right to modify, amend, or terminate this policy at any time.

## APPENDIX A: SEXUAL MISCONDUCT DEFINITIONS

### *Definitions*

- **Bullying and Intimidation** Bullying includes any intentional electronic, written, verbal or physical act or series of acts, directed at another student or students, that is used to cause fear, shame and/or mental suffering. Intimidation is any verbal, written, or electronic threats of violence or other threatening behavior directed toward another person or group that reasonably leads the person or persons in the group to fear for their physical well-being. Anyone who attempts to use bullying or intimidation to retaliate against someone who reports an incident, brings a complaint, or participates in an investigation will be subject to disciplinary action as outlined in the Student Handbook, up to and including dismissal.
- **Dating Violence** Violence committed by a person who is or has been in a social relationship of a romantic nature with the alleged victim.
- **Discrimination** occurs when an individual is treated in a manner that is less than respectful based on that individual's belonging to or identity with a class protected by applicable law; specifically, in regard to the University's educational programs and activities, on-campus housing, admissions and financial aid.
- **Domestic Assault** consists of intentionally or knowingly causing physical injury to an intimate partner, threatening an intimate partner with immediate physical injury, or threatening an intimate partner in a menacing manner. Engaging in any sexual act with another without that individual's expressed consent constitutes domestic assault, as does using a weapon to scare someone. Bodily injury is an injury involving physical pain or impairment. It includes less serious harm such as bruising, cuts, and abrasions
- **Retaliatory Harassment** Intentional action taken by an accused individual or third party that harms a complainant, witness, reporter, or any other individual for filing or participating in a University investigation
- **Sexual Assault** As defined under Nebraska law 28-320. Any person who subjects another person to sexual contact (a) without consent of the victim, or (b) who knew or should have known that the victim was physically or mentally incapable of resisting or appraising the nature of his or her conduct is guilty of sexual assault.
- **Sexual Discrimination** As defined above, on the basis of one's gender.
- **Sexual Exploitation** is an act or acts committed through non-consensual abuse or exploitation of another person's sexuality for the purpose of sexual gratification, financial gain, personal benefit or advantage, or any other non-legitimate purpose.

This includes, but is not limited to non-consensual streaming of images, video or audio of sexual activity or nudity.

- **Sexual Misconduct** includes sex discrimination, sexual harassment, sexual assault, domestic violence, dating violence and stalking. It can occur between members of the opposite or same sex.
- **Sexual Harassment** means conduct on the basis of sex that satisfies one or more of the following:
  - An employee of York University conditioning the provision of an aid, benefit, or service of York University on an individual's participation in the unwelcome sexual conduct, called Quid Pro Quo Sexual Harassment;
  - Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the York University's education program or activity; or
  - "Sexual assault" as defined in 20 U.S.C. § 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. §12291(a)(10), "domestic violence" as defined in 34 U.S.C. §12291(a)(8), or "stalking" as defined in 34 U.S.C. §12291(a)(30).is defined as unwelcome conduct of a sexual nature. It includes an inappropriate emphasis on sexual identity and is generally understood to include a wide range of behaviors, whether subtle or blatant. It may include but is not limited to, inappropriate jokes, intimate language, inappropriate sexual advances, request for sexual favors and other physical and expressive behavior of a sexual nature in which:
    - submission to such conduct becomes a term or condition of an individual's employment or education;
    - submission to such conduct becomes a basis for academic or employment evaluation; or
    - the conduct creates a hostile or demeaning employment or educational environment.

Note: Employees experiencing or witnessing harassment in the workplace should immediately report these situations to the Title IX Coordinator. Students should immediately report such behaviors to the Title IX Coordinator. Appropriate disciplinary responses, including suspension and dismissal or termination of employment, will be assessed against anyone found to have violated this policy. Students or employees reporting incidents of sexual harassment will be treated with compassion and confidentiality.

- **Stalking** Under Nebraska law, 28-311.03, any person who willfully harasses another person or a family or household member of such person with the intent to injure, terrify, threaten, or intimidate commits the offense of stalking.
- **Student-Employee Relationships** York University does not condone romantic relationships between students and employees of the University. It should be noted that these relationships are simply unwise. Relationships of this nature are strictly prohibited if:
  - there is a disproportionate allocation of power
  - any conduct of a sexual nature, even consensual conduct, between an employee and student is strictly prohibited and will result in sanctions up to and including termination of employment
- **Violence** includes verbal harassment, any act of physical assault, any threat to harm or endanger the safety of themselves or others, behaviors or actions interpreted by a reasonable person as acts of aggression, any threat to destroy, or the actual destruction of, property.

## APPENDIX B: OTHER POLICY DEFINITIONS

### *Definitions*

- **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 for the party at the hearing, if any.
- **Complainant** means an individual who is alleged to be the victim of conduct that could sexual harassment based on a protected class; or retaliation for engaging in a protected activity.
- **Complaint (formal)** means a document submitted or signed by a Complainant or signed by the Title IX Coordinator alleging sexual harassment or retaliation for engaging in a protected activity against a Respondent and requesting that York University investigate the allegation.
- **Confidential Resource** means an employee who is not required to report notice of harassment and/or retaliation (irrespective of Clery Act Campus Security Authority status). Confidential resources include the Vice President of Spiritual Development, the Counseling Coordinator, or faculty or staff who are closely-related (e.g. sibling, parent, guardian, grandparent, or spouse) to the person experiencing or reporting an incident.
- **Consent** must be voluntary, sober, informed, and mutual. Refusal of consent does not have to be verbal; it may be expressed with gestures, body language or attitude. A prior sexual history does not constitute consent. It is the responsibility of the initiator of any sexual activity to ensure that he or she has the other person's consent before engaging in sexual activity. Consent may never be obtained through the use of force, coercion, manipulation, or intimidation. Sexual contact with anyone who is a minor, or who is under the influence of alcohol and/or other drugs, or who is mentally or physically impaired, or incapacitated is a violation of this policy. People who have a mental illness or deficiency, are unconscious for any reason, or are physically unable to communicate are assumed to be incapable of giving consent.

York University believes in and promotes that the Biblical standard for consensual sex, in all of its forms, is between a man and a woman and reserved for marriage alone. Sexual expression outside of marriage is a violation of Scripture and York University's Code of Conduct.

- **Education program or activity** means locations, events, or circumstances where York University exercises substantial control over both the Respondent and the context in which the sexual harassment occurs and also includes any building owned or controlled by a student organization that is officially recognized by the York University.
- **Final Determination:** A conclusion by preponderance of evidence that the alleged conduct did or did not violate policy.
- **Finding:** A conclusion by preponderance of evidence that the conduct did or did not occur as alleged (as in a “finding of fact”).
- **Formal Grievance Process** means “Process A,” a method of formal resolution designated by the recipient to address conduct that falls within the policies included below, and which complies with the requirements of the Title IX regulations (34 CFR §106.45).
- **Grievance Process Pool** includes any investigators, hearing officers, appeal officers, and Advisors who may perform any or all of these roles (though not at the same time or with respect to the same case).
- **Hearing Decision Maker** refers to those who have decision-making and sanctioning authority within York University’s Formal Grievance process.
- **Incapacitation** is the inability, temporarily or permanently, to give consent because the individual is mentally and/or physically helpless, either voluntarily or involuntarily, or the individual is unconscious, asleep, or otherwise unaware that the sexual activity is occurring. In addition, an individual is incapacitated if they demonstrate that they are unaware at the time of the incident of where they are, how they got there, or why or how they became engaged in a sexual interaction.

When alcohol is involved, incapacitation is a state beyond drunkenness or intoxication. When drug use is involved, incapacitation is a state beyond being under the influence or impaired by use of the drug. Alcohol and other drugs impact each individual differently, and determining whether an individual is incapacitated requires an individualized determination.

Some of the factors used to determine incapacitation include:

- Stumbling or otherwise exhibited loss of equilibrium
- Bloodshot, glassy or unfocused eyes
- Slurred speech or word confusion
- Vomiting, especially repeatedly

- Outrageous or unusual behavior
- Being disoriented, or confused as to time, place, etc.
- Loss of consciousness

None of these factors, except for the last, may constitute—in and of themselves—Incapacitation. But, the process of finding someone responsible for a violation of the Policy related to incapacity involves careful examination of all evidence, amounting to a sufficient or insufficient meeting of the preponderance of the evidence standard.

The use of alcohol or other drugs can lower inhibitions and create an atmosphere of confusion about whether consent is effectively sought and freely given. If there is any doubt as to the level or extent of one's own or the other individual's intoxication or Incapacitation, the safest course of action is to forgo or cease any sexual activity. A Respondent's voluntary intoxication is never an excuse for or a defense to prohibited conduct, and it does not diminish the responsibility to determine that the other person has given consent.

In evaluating consent in cases of reported Incapacitation due to alcohol or other drugs, the University considers all of the above factors in determining two issues:

- Is there a preponderance of evidence that the Complainant was Incapacitated?
- Did the Respondent know that the Complainant was Incapacitated? And if not, should a sober, reasonable person in a similar set of circumstances as the Respondent have known that the Complainant was Incapacitated?

If the answer to both of these questions is "yes," there was no consent; and the conduct is a violation of this Policy.

- **Investigator** means the person or persons charged by York 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.
- **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 York University explicitly vested with the responsibility to implement corrective measures for sexual harassment and/or retaliation on behalf of York 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 any process designated by York University to apply only when Process A does not, as determined by the Title IX Coordinator.
- **Recipient** means a postsecondary education program that is a recipient of federal funding, in this case, York University.
- **Remedies** are post-finding actions directed to the Complainant and/or the community as mechanisms to address safety, prevent recurrence, and restore access to York University's educational program.
- **Respondent** means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment or retaliation for engaging in a protected activity.
- **Responsible Employee** means a faculty, staff, or student worker of York University who is obligated by policy to share knowledge, notice, and/or reports of harassment and/or retaliation with the Title IX Coordinator due to their leadership or supervisory positions or significant responsibility for the welfare of students or employees.
- **Resolution** means the result of an informal or Formal Grievance Process.
- **Sanction** means a consequence imposed by York University on a Respondent who is found to have violated this policy.
- **Title IX Coordinator** is at least one official designated by York University to ensure compliance with Title IX and York 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, Decision Maker, Investigator(s) and any member of the Grievance Process Pool.

## **APPENDIX C: EMERGENCY REMOVAL AND TIMELY WARNINGS**

### ***Emergency Removal***

York University can remove a student Respondent 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 Dean of Students (or designee), who may consult as necessary with other University officials to conduct an objective threat assessment. The emergency removal may be a full restriction from all York University property, programs and activities or a limited removal (e.g., from certain locations, classes, teams, organizations, or activities). The Dean of Students 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 permanent dismissal.

When it is determined that an emergency removal is justified, the student Respondent will be given written notice, which will include the basis for the removal decision and the specific restrictions, conditions, and duration. Immediately after the emergency removal, the student Respondent will be given the opportunity to challenge the decision by submitting in writing why the removal should not be implemented or should be modified to the Vice President of Student Development within 72 hours of the emergency removal. The emergency removal does not replace the regular investigation and hearing process, which will proceed as set forth in this Policy, up to and through the conclusion of any appeal, if required.

Employee Respondents may be placed on paid administrative leave by Human Resources while the formal grievance process described below is pending. Human Resources' decision to do so is final and is not subject to review.

### ***Timely Warning Obligations***

Parties reporting Sexual Assault, Domestic Violence, Dating Violence, and/or Stalking should be aware that under the Clery Act, York University must issue timely warnings for incidents reported to the University that pose a serious or continuing threat of bodily harm or danger to members of the campus community. York 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.

## **APPENDIX D: ROLE OF ADVISORS**

Involved parties may be assisted by an Advisor of their choice at pre-hearing meetings (e.g., meetings with the Title IX Coordinator or the Investigator), at hearing and appeal meetings, and at informal resolution meetings. The Advisor cannot speak for the parties. The role of the Advisor is to accompany the parties and advise them privately during the pre-hearing, hearing, and informal resolution processes.

The only exception is at Title IX hearings where the Advisor of each party is required by the Title IX regulations to relay the party's cross-examination questions to the other party and Witnesses (after each cross-examination question has been screened for relevance by the hearing chair) so that a party never personally conducts cross-examination. See [Hearing Procedures](#) for additional information.

Choosing an Advisor who is also a Witness in the hearing 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.

York University expects Advisors to adjust their schedules to allow them to attend 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. 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. 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.

## **APPENDIX E: REQUIRED TRAININGS**

The Title IX Coordinator, Investigators, Decision Makers, and any person who facilitates an informal resolution process will receive training on the definitions of [Sexual Misconduct](#) under this policy, the scope of York University's education program or activity, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias. These individuals will receive annual training on the issues related to domestic violence, dating violence, sexual assault, and stalking and how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability.

Investigators will receive training on issues of relevance to create an investigation report that fairly summarizes relevant evidence. Decision Makers will receive training on issues of relevance of questions and evidence, including when questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant.

Any materials used to train the Title IX Coordinator, Investigators, Decision Makers, and any person who facilitates an informal resolution process, will not rely on sex stereotypes and will promote impartial investigations and adjudications of [Formal Complaints of Sexual Misconduct](#).



# Title IX Process for Sexual Misconduct Violations

