

***Hannah E. Mullins School of Practical Nursing Policy Prohibiting  
Sex Discrimination, Sexual Harassment, Stalking and Retaliation  
Effective March 2021***

**Policy Sections:**

**I. Introduction**

***Hannah E. Mullins School of Practical Nursing*** (“HEMSPN” or “the School”) is committed to sustaining a learning, living, and work community for its students, faculty, and staff free from prohibited sex and gender discrimination, harassment, sexual assault, and related misconduct, and free from prohibited retaliation. Our community expects all members to conduct themselves in a manner that does not violate this Policy Prohibiting Sex Discrimination, Sexual Harassment, Stalking, and Retaliation, (“Policy”).

HEMSPN prohibits discrimination on the basis of sex, gender, gender identity, gender expression or sexual orientation in its educational, extracurricular, athletic, or other programs, or in the context of admissions or employment, in accordance with Title IX of the Education Amendments of 1972. Title IX is a federal law that provides 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.” Consistent with HEMSPN’s commitment to Title IX compliance, the School will respond in a manner that is prompt and thorough to all reports of Sex Discrimination in order to end the conduct, prevent its recurrence, and address its effects on any individual or the community. Individuals found responsible under this policy may face disciplinary sanctions up to and including dismissal from the School and/or termination of employment.

HEMSPN will not tolerate retaliation against an individual who makes a report or participates in any proceedings under this policy. HEMSPN policy prohibits any form of retaliation and community members engaging in retaliation will be subject to disciplinary action, whether such acts are implicit or explicit, or committed directly or indirectly.

This policy provides the HEMSPN community with (1) resources and recourse for individuals who experience prohibited conduct, (2) guidance to a reporting party, complainant, respondent or other affected community members (see Section II for definitions), (3) HEMSPN’s expectations for healthy respectful interpersonal interaction and communication, and (4) a procedural outline for addressing behaviors that are counter to HEMSPN’s mission and prohibited by this policy.

All School proceedings under this policy are conducted in compliance with the requirements of Title IX, the Clery Act, as amended by the Violence Against Women Act, the Family Educational Rights and Privacy Act (FERPA), and state and federal law. No information shall be released from such proceedings except as required or permitted by law and School policy.

**A. Scope and applicability**

HEMSPN does not discriminate in its education programs or activities, which include admission to and employment at HEMSPN. The School’s Policy Prohibiting Sex Discrimination, Sexual Harassment, Stalking, and Retaliation outlines the policies and procedures that HEMSPN will use to address reports of conduct that constitute sex discrimination and sexual harassment. The Policy applies regardless of sex, gender, gender identity, gender expression or sexual orientation of either the Complainant or the

Respondent. This Policy's formal adjudication process does not apply to conduct against persons who are not in the United States.

HEMSPN has also adopted a grievance procedure to provide the prompt and equitable resolution of student and employee complaints. This procedure further describes how members of HEMSPN's community can report or file a complaint of sex discrimination or sexual harassment, and will outline how HEMSPN will respond to these reports and formal complaints.

This Policy regulates Prohibited Conduct (as defined in Section III) and, unless otherwise noted, the Policy and underlying procedures apply to all students, faculty, administrative staff, supportive operating staff, persons engaged in business with HEMSPN, visitors, and guests.

HEMSPN has designated and authorized the following employees to coordinate its efforts to comply with Title IX. Their contact information is below:

Title IX Coordinator:

DeAnn Russell

[drussell@hemspn.edu](mailto:drussell@hemspn.edu)

(33)332-8940

Hannah E. Mullins School of Practical Nursing

239 N. Lincoln Ave., Suite 3

Salem, OH 44460

Reports of Prohibited Conduct can also be made by sending an email to [drussell@hemspn.edu](mailto:drussell@hemspn.edu).

Any person may report sex discrimination, including sexual harassment, whether or not the person reporting is the person who has been subject to the conduct that constitutes sex discrimination or sexual harassment. This could be done in person, by mail, by telephone, or by electronic mail using the contact information listed above. Such a report can be made at any time (including during non-business hours) by using the telephone number, email address, or by sending mail to the office address listed above.

Please note that a report of sexual harassment does not automatically result in a formal investigation as defined in this policy. The Title IX Coordinator will work to provide supportive measures, access to resources, information about formal and alternate resolution procedures, and information about filing a report with the appropriate law enforcement agency.

Any person who believes an education institution that receives federal financial assistance has discriminated against someone on the basis of race, color, national origin, sex, disability or age, may file a complaint with government authorities at the United States Department of Education's Office for Civil Rights, 600 Superior Avenue East, Suite 750, Cleveland, OH 44114, or by calling (216) 522-4970.

## **B. Jurisdiction**

HEMSPN seeks to prohibit and address sexual misconduct experienced by community members both on-campus and off-campus. This policy has jurisdiction for conduct that occurs on campus, and for conduct that occurs off-campus where the School reasonably determines that the conduct has a continuing adverse effect on the School's educational program or activities.

Certain conduct under the regulations implementing Title IX is required to have a more limited jurisdictional threshold. Such conduct must undergo a process called Title IX Dismissal if it occurs outside the Title IX definitions and jurisdictional threshold which is discussed in Section III. The School is

committed to addressing misconduct even if it undergoes a Title IX Dismissal and this Policy outlines how an investigation will proceed if Title IX Dismissal is required.

## II. Definitions

**Actual knowledge:** Actual Knowledge is notice of sexual harassment or allegations of sexual harassment to the School's Title IX Coordinator, or any School official who has authority to institute corrective measures on behalf of HEMSPN. These individuals include: Christina Devlin, the Director and Darla Shar, Associate Director.

**Complainant:** A Complaint is defined as an individual who is alleged to be the victim of conduct that could constitute sexual harassment.

**Consent:** Consent is defined as a freely and affirmatively communicated willingness to participate in sexual activity.

- Both words and actions can express Consent, but they must create mutually understood permission to engage in the sexual activity.
- Silence or an absence of resistance does not itself indicate Consent.
- A person cannot infer Consent because of the existence of a past sexual or dating relationship.
- Consent must exist throughout the sexual encounter and it can be withdrawn at any time.
- Consent to one form of sexual activity does not automatically imply Consent to other forms of sexual activity.
- Each participant in a sexual encounter is expected to obtain and give consent to each act of sexual activity in order for the activity to be considered consensual.
- A person who uses Force as defined below to engage in sexual activity with another person does not have Consent, and agreement to engage in sexual activity under such circumstances does not constitute Consent.
- A person cannot obtain Consent from someone who is incapacitated.

Under Ohio State law and incorporated into this Policy, a person who is eighteen or older cannot obtain consent for sexual activity from someone under the age of sixteen even if the person who is a minor wanted to engage in sexual activity. A person under the age of thirteen cannot consent to sexual activity under any circumstance.

**Force:** Force is the use of physical violence or physical imposition to engage in sexual activity with another person.

Force also includes the use of threat, intimidation, or coercion to overcome a person's free will or resistance to freely giving consent. Threat, intimidation and coercion include:

1. Actual or implied declarations to inflict physical or psychological harm, to cause damages or to commit other hostile actions to obtain sexual activity from an unwilling participant, and
2. Applying unreasonable pressure to obtain sexual activity from an unwilling participant. Unreasonable pressure shall be assessed by factors such as the frequency, intensity, degree of isolation and/or duration of the pressure and must include a real or perceived attack on safety, character, values or morals.

**Incapacitation:** Incapacitation occurs when a person is impaired temporarily or permanently by mental and/or physical deficiency, disability, illness, or by the use of drugs including alcohol to the extent

that the person lacks sufficient understanding or the ability to make or act on considered decisions to engage in sexual activity.

- States of Incapacity include sleep, unconsciousness, intermittent consciousness, physical helplessness, or any state in which an individual is not fully aware what is occurring.
- A person is incapacitated when the person's perception or judgment is so impaired that the person lacks the cognitive ability to make, understand or act on considered decisions.
- A person who is incapacitated is unable to give Consent to participate in sexual activity. To engage in sexual activity with a person whom one knows or should know is incapacitated constitutes Sexual Misconduct and violates this Policy.
- Under this Policy, determinations as to whether a person should have known that another person was incapacitated shall be objectively based on what a reasonable sober person would have known about the condition of the incapacitated person in the same situation.
- Incapacitation is not the same as an alcohol-induced "blackout." An alcohol-induced blackout is defined as a lack of memory for events occurring after consuming alcohol without a loss of consciousness. A blackout is memory loss during a period of impairment without the loss of other skills.
- Whether a person knew or should have known of another's incapacitation requires assessment of how alcohol is affecting the other person's:
  - Ability to make decisions and exercise judgment;
  - Awareness of surroundings and consequences of actions;
  - Ability to appreciate the nature of any sexual acts and circumstances surrounding the acts
- Factors that a person may use to determine incapacitation include, but are not limited to:
  - Slurred speech
  - Lack of motor skills or balance
  - Inability to focus
  - Confusion
  - Vomiting
  - Emotional volatility or reactivity
  - Unusual behavior
  - Bloodshot eyes
  - Smell of alcohol on breath
- A party's own intoxication or impairment by alcohol or other drugs does not excuse sexual misconduct or remove a responsibility to obtain consent for all sexual acts.

**Respondent:** A Respondent is defined as an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

**Title IX Coordinator:** The Title IX Coordinator is the employee, or employees, designated to coordinate the School's HEMSPN's efforts to comply with Title IX and its regulations found in Part 106 of Title 34 of the Code of Federal Regulations.

**Title IX Dismissal.** If the conduct alleged in a formal complaint does not constitute sexual harassment as defined under Title IX, did not occur in a School education program or activity, or did not occur against a person in the United States, the School must dismiss the formal complaint with regard to that conduct for purposes of sexual harassment under Title IX. When a complaint is dismissed under Title IX, it may be resolved through the Investigator Resolution Process as described in Section XI.G.5.

### III. Prohibited Conduct

The following definitions are forms of sex and gender discrimination, sexual harassment, and sexual assault and misconduct prohibited by this Policy (“Prohibited Conduct”). Section III (A) described conduct that will be considered at a live hearing process described in Section VII.

#### **A. Title IX-specific Sexual Harassment**

The Title IX Regulations define “sexual harassment” to mean conduct on the basis of sex that satisfies the definition of one or more of the following: (1) *quid pro quo* by an employee to a student; (2) unwelcome conduct that is severe, pervasive, and objectively offensive; (3) sexual assault as defined by federal law to include forcible and non-forcible sex offenses, (4) dating violence, (5) domestic violence, and (6) stalking. This Policy will refer to these definitions as “Title IX Sexual Harassment”

For reported behavior to qualify as Title IX Sexual Harassment, in addition to meeting the elements of the specific type of sexual harassment below, it must meet all of the following threshold requirements, as determined by the Title IX Coordinator and as mandated by federal regulations:

- The conduct must have occurred against a person in the United States.
- The conduct must have occurred within the School’s education program or activity. For purposes of this provision, this means that the conduct must have occurred either (a) in a location, event, or circumstances over which the School exercised substantial control over both the Respondent and the context in which the sexual harassment occurs or (b) in relation to a building owned or controlled by a student organization that is officially recognized by the School.
- The Complainant must be participating in or attempting to participate in the education program or activity of the School at the time the Formal Complaint is filed.

Conduct that does not meet these threshold requirements is subject to a Title IX Dismissal, but will continue through the Investigative Process as described more fully in Section VI.

#### **1. Quid Pro Quo**

Quid pro quo sexual harassment occurs when an employee of HEMSPN conditions the provision of aid, benefit, or service from HEMSPN the School on an individual’s participation in unwelcome sexual conduct.

#### **2. Hostile Environment Sexual Harassment**

Conduct on the basis of sex that is unwelcome determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to HEMSPN The School’s educational program or activity.

#### **3. Sexual Assault**

Under the Title IX Regulations, the term Sexual Assault is defined as a forcible or non-forcible sex offense as classified under the Uniform Crime Reporting system of the FBI.<sup>1</sup> For the purposes of this Policy the following definitions will be used:

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<sup>1</sup> The definitions used here are taken from the FBI UCR National Incident-Based Reporting System User Manual 2019.

- a) ***Penetrative Sexual Assault*** – penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the Complainant, including instances where the Complainant is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity.
- b) ***Fondling*** – The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
- c) ***Incest*** – Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law. In Ohio, Revised Code Section 3101.01(A) provides that individuals nearer of kin than second cousins may not marry.
- d) ***Statutory Rape*** – Sexual intercourse with a person who is under the statutory age of consent. In Ohio, no person may have sex with a child under the age of thirteen, nor may a person over the age of eighteen have sex with a child under the age of sixteen.

If found responsible for Sexual Assault, in accordance with the guidelines set forth within Section VII.D, discipline will be imposed which may include termination from employment or disciplinary expulsion.

#### **4. Dating Violence**

“Dating Violence” means an act of violence committed by a person who is or has been in a romantic or intimate relationship with the Complainant. The existence of such a romantic or intimate relationship is determined by the length of the relationship, the type of relationship, and the frequency of interactions between the individuals involved in the relationship. Acts of violence may include, but are not limited to: recklessly causing bodily injury; attempts to cause bodily injury; and causing fear of immediate, physical harm through threat of force.

#### **5. Domestic Violence**

The term “domestic violence” includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under Ohio’s domestic or family violence laws or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

#### **6. Stalking**

The term “stalking” means engaging in a course of conduct directed at a specific person that would cause a reasonable person with similar characteristics under similar circumstances to fear for their safety or the safety of others; or to suffer substantial emotional distress. A course of conduct includes two or more acts, including but not limited to, those in which the alleged perpetrator directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about the Complainant, or interferes with the Complainant’s property.

**B. Non-Title IX Sexual Harassment**

Sexual harassment is also defined by state and federal civil rights laws. For the purposes of this Policy, Non-Title IX Sexual Harassment means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when one of the following occurs:

1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual’s employment or access by the individual to aid, benefits, or services;
2. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting the individual or access by the individual to aid, benefits, or services; or
3. Such conduct has the purpose or effect of unreasonably interfering with an individual’s job performance or learning ability or creating an intimidating, hostile, or offensive working environment.

**C. Sexual Assault - Non-Title IX**

Conduct that meets the definition of Sexual Assault in Section A.3(a) – (d), above, but does not meet all of the threshold requirements to be charged under Title IX as listed in Section A. above will be charged as “Sexual Assault - Non-Title IX.”

**D. Dating Violence - Non-Title IX**

Conduct that meets the definition of Dating Violence in Section A.4., above, but does not meet all of the threshold requirements to be charged under Title IX as listed in Section A will be charged as “Dating Violence - Non-Title IX.”

**E. Domestic Violence - Non-Title IX**

Conduct that meets the definition of Domestic Violence in Section A.5., above, but does not meet all of the threshold requirements to be charged under Title IX as listed in Section A will be charged as “Domestic Violence - Non-Title IX.” Conduct that otherwise meets the definition of Domestic Violence in Section A.5., above, except that it is not “conduct on the basis of sex” shall also be charged as “Domestic Violence - Non-Title IX.”

**F. Stalking - Non-Title IX**

Conduct that meets the definition of Stalking in Section A.6., above, but does not meet all of the threshold requirements to be charged under Title IX as listed in Section A will be charged as “Stalking - Non-Title IX.”

Conduct that otherwise meets the definition of Stalking in Section A.6., above, except that it is not “conduct on the basis of sex” shall also be charged as “Stalking - Non-Title IX.”

**G. Sexual Exploitation**

“Sexual exploitation” is an act or acts committed through non-consensual abuse or taking advantage of another person’s sexuality for the purpose of sexual gratification, financial gain, personal benefit or advantage, or any other non-legitimate purpose. Examples include, but are not limited to:

- Invasion of sexual privacy;
- Recording or attempting to record nude, partial nude or sexual media without the consent of the person or persons depicted in the media;
- Streaming, sharing or distributing nude, partial nude or sexual media without the consent of the person depicted in the media;
- Non-consensual sexual voyeurism;
- Inducing incapacitation for the purpose of making another person vulnerable to nonconsensual sexual activity;
- Administering sexual assault facilitating drugs including, but not limited to alcohol, sleeping pills, sedatives, tranquilizers, anesthetics, depressants, and psychotropics without a person’s knowledge and permission;
- Going beyond the boundaries of consent (such as knowingly allowing another to surreptitiously watch otherwise consensual sexual activity);
- Exposing one’s genitals, in non-consensual circumstances;
- Inducing another to expose their genitals;
- Discontinuing the use of a prophylactic barrier without partner’s knowledge or consent during sexual intercourse;
- Prostituting another person; and
- Knowingly transmitting or exposing another person to a sexually transmitted infection (STI) without the knowledge of the person.

## **H. Sex/Gender Discrimination**

Discrimination occurs when a behavior or Policy has the purpose or effect of restricting or denying an individual’s or group’s access to opportunities, programs, or resources in relation to sex, gender, gender identity, gender expression, or sexual orientation in a manner that interferes with an individual’s working, academic, residential, or social environment or athletic participation or performance.

Examples of discrimination include but are not limited to:

- Treated differently in determining whether such person satisfies any requirement or condition for the provision of any aids, benefits, or services;
- Provided different aid, benefits, or services;
- Provided aid, benefits, or services in a different manner;
- Denied any aids, benefits or services;
- Subjected to separate or different rules of behavior, sanctions or other treatment;
- Treated differently concerning the domicile or residence of a student or applicant;
- Discriminated against by providing significant assistance to any agency, organization or person which discriminates on the basis of sex in providing any aid, benefit, or service to students, faculty or employees;
- Otherwise limited in the enjoyment of any rights, privileges, advantages or opportunities with regard to aids, benefits or services; or
- Treated differently with regard to terms, conditions or benefits of employment, or in the recruitment, consideration or selection thereof.

Discrimination on the basis of sex/gender in employment is permissible in situations where sex/gender is a bona fide occupational qualification reasonably necessary to the normal operation of the School. Note that the federal regulations regarding Title IX include certain exceptions, such as single-gender housing, athletic participation and chorus participation that do not constitute Sex/Gender Discrimination.

## **I. Retaliation**

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

Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or Title IX Sexual Harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or Formal Complaint of Title IX Sexual Harassment, for the purpose of interfering with any right or privilege secured by Title IX or the regulations, constitutes retaliation. Complaints alleging retaliation will be investigated under this Policy (Section IV).

Charging an individual with a Code of Student Conduct or employment policy violation for making a materially false statement in bad faith in the course of a grievance proceeding does not constitute retaliation, as described above, provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

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

## **IV. Reporting**

### **A. Reporting Options**

HEMSPN encourages prompt reporting of harassment and discrimination. To make a report about possible discrimination, sexual harassment or sexual misconduct, a party or any third party should notify the Title IX Coordinator or Deputy Title IX. A report may be made at any time, including during nonbusiness hours, in person, by telephone, by mail, or by email, using the contact information listed for the Title IX Coordinator.

**Mandatory Reporting:** Any School executive or administrative officer, department chair, director, manager, supervisor, faculty member; or human resources professional employee who becomes aware of information that would lead a reasonable person to believe that discrimination and/or harassment has occurred must notify the Title IX Coordinator as soon as possible, but in any event, within five (5) working days after becoming aware of the information. A student worker has a duty to report violations of this policy of which he/she becomes aware in the course of his/her work, when those duties include responsibility for the safety and well-being of other members of the campus community.

### **Crime Reporting Procedures**

**Reporting Crimes:**

Students, faculty, and staff are strongly encouraged to report all crimes to local law enforcement, dial 9-1-1 (emergencies only).

Kent State University the landlord of the building, employs uniformed security aids who are available during regular campus hours and special campus events. Any suspicious activity or person seen in the parking lots or loitering around vehicles, inside building should be reported to Campus Security.

<b>Local Law Enforcement Agency</b>	<b>Local Phone Number</b>	<b>Emergency Number</b>
Salem Police Department	330-337-7811	911

KSU Campus Security	330-337-4111
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While participating at clinical areas, students and faculty must abide by the policy of the facility they are attending.

In addition, students, faculty and staff should report a crime to the following areas:

Christina Devlin MSN, RN, FCN, Director  
 Administrative Staff  
 Title IX Coordinator

Timely reporting of criminal activity enables HEMSPN to respond to crime in a timely manner and potentially reduce the recurrence of that crime. Timely manner shall be defined to mean immediately or as immediately as possible under the circumstances.

For crimes where the victim does not want to or is unable to make a report, the report will be made by the HEMSPN administrative staff or Title IX Coordinator.

HEMSPN works cooperatively with local law enforcement agencies and Campus Security when necessary; however, there are no written memoranda of understanding agreements between HEMSPN and these agencies to investigate alleged crimes. HEMSPN does, in good faith effort, contact local law enforcement agencies to obtain data on Clery Act crimes that occurred on or near the campus. Not all agencies respond to our requests for data. HEMSPN does not have a police or security department and no HEMSPN employee or staff member possesses arrest authority.

### **Confidential Crime Reporting**

Victims of crime may not want to pursue action with HEMSPN or the criminal justice system and may still want to consider making a confidential report. With permission, the Director or a designee of HEMSPN can complete an incident report on details of the incident without revealing the victim's identity. The purpose of confidential reporting is to comply with the wish to keep matters confidential while taking measures to keep the campus community safe. With such information, HEMSPN can keep accurate records and become aware of any patterns of crime that may warrant action. Reports filed in this manner are counted and disclosed in the annual crimes statistics for HEMSPN.

HEMSPN does not employ or contract with any pastoral counselors who provide confidentiality services to students or employees. However, HEMSPN provides assistance in obtaining an appropriate referral to a counseling or rehabilitation agency

Medical Assistance	Salem Regional Medical Center 1995 E. State Street, Salem, OH	330-332-1551
Victim Advocacy	• Alliance Area Domestic Violence Shelter	330-823-7223

	<ul style="list-style-type: none"> <li>• Columbiana Co. Prosecutor’s Victim Assistance</li> <li>• Mahoning Co. Prosecutor’s Victim Assistance</li> <li>• Stark Co. Prosecutor’s Victim Assistance</li> </ul>	330-420-0140 330-740-2082 330-451-7452
Counseling and Other Services	Help Hotline Crisis Center Office for Victims of Crime Suicide Prevention Crisis Hotline Columbiana Co. Mental Health Center Family Recovery	211 800-582-2877 800-272-8255 330-332-1514 330-424-1468

Individuals who file criminal charges may seek an order of protection. In addition, civil protection orders may be available. More information on such protection orders may be obtained from an attorney, the applicable prosecutor’s office, or the Clerk of Courts.

Members of the School community may also access resources in the local community, including local hospitals, mental health professionals, and the hotlines listed above. These organizations can provide crisis intervention services, counseling, medical attention, and assistance in interfacing with the criminal justice system. All individuals are encouraged to use the resources that are the best suited to their needs.

The Title IX Coordinator will ensure that written information is available to students and employees about existing counseling, health, mental health, victim advocacy, legal assistance, student financial assistance, visa and immigration assistance, student financial aid, and other services available for victims within the School District community.

The Board will also provide written notification to victims about options for, available assistance in, and how to request changes in academic, transportation, and working situations or interim protective measures, and that such protective measures will be made if the victim requests them, if they are reasonably available, regardless of whether the victim chose to file a formal report or pursue criminal charges.

**B. Making a Formal Complaint**

A party may choose to resolve a Formal Complaint through the investigation process, provided that the Title IX Coordinator has conducted an initial assessment and determined that the jurisdiction and threshold requirements listed in Sections III.A and VI.B have been met, that Title IX Sexual Harassment may have occurred, and that an investigation is appropriate. A formal complaint must be received in the form of a signed writing by the complainant or an email from a HEMSPN School of Nursing official email account.

HEMSPN may also choose to move forward with a Formal Complaint signed by the Title IX Coordinator.

The investigation process will begin with the Title IX Coordinator appointing one or more investigators. An investigator will begin the full investigation promptly, and will conduct the full investigation in a manner that is complete, thorough and impartial.

At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of HEMSPN.

There is no time limit or statute of limitations on a complainant’s decision to file a formal complaint.

While reporting of all harassment by everyone is encouraged, third parties other than the Title IX Coordinator are not permitted to file formal complaints.

When a formal complaint is signed by the Title IX Coordinator, all parties must receive notice with details of the allegations and the identities of the parties, if known.

To the extent possible, HEMSPN will investigate a complainant's formal complaint, even if the respondent's identity is unknown, as the investigation may reveal the respondent's identity.

### **C. Requests for Confidentiality/No Investigation**

The School supports a Complainant's interest and choice in confidentiality, or that no action be taken. A Complainant may request confidentiality, and, at any time, may request that the School stop the investigation process. Should that occur, the Title IX Coordinator or designee shall inform the Complainant that honoring that request may serve to limit the School's ability to respond to the incident, including pursuing disciplinary action against the Respondent. Further, the Title IX Coordinator or designee shall remind the Complainant of the School's policy prohibiting Retaliation. The School must weigh requests for confidentiality and/or requests that no action be taken against the School's obligation to provide a safe, non-discriminatory environment for all persons in our community, including the Complainant.

In cases where the Complainant requests confidentiality or no action be taken and the circumstances allow the School to honor that request, the School will offer support and protection to the Complainant and the community, but will not otherwise further pursue Investigation and Resolution Procedures. A complainant has the right, and can expect, to have allegations taken seriously by the School when formally reported, and to have those incidents investigated and properly resolved through the Investigation and Resolution Procedures.

When the Title IX Coordinator believes that with or without the complainant's desire to participate in a grievance process, the allegations require an investigation, the Title IX Coordinator has the discretion to initiate a grievance process. The School will likely be unable to honor a request for confidentiality or no action be taken in cases indicating pattern, predation, weapons, violence, or if a minor is involved. In those circumstances, the School will inform the Complainant prior to any investigation and will, to the extent possible, share information with only those people directly involved in the investigation or responsible for handling HEMSPN's response. The School will remain mindful of the Complainant's well-being, will take appropriate and ongoing steps to protect the Complainant from harm, and will work with that person to create a safety plan. Further, Complainants can exercise their own choice of whether or not they want to participate in the Investigation and Resolution Process. Retaliation against the Complainant will not be tolerated.

### **D. Amnesty for Complainants, Respondents and Witnesses**

Students reporting violations of this Policy or who participate in investigations of alleged violations of this Policy will not be subject to disciplinary action by the School for violation of HEMSPN's drug or alcohol possession or consumption policies, provided that such violations did not and do not place the health or safety of any other person at risk. While policy violations cannot be overlooked, in these instances HEMSPN may initiate educational options rather than pursue disciplinary actions.

### **E. Report Resolution**

A report to the Title IX Coordinator is not the same as a Formal Complaint. In order for a report to be officially resolved, a Formal Complaint must be filed in writing alleging sexual harassment or other sexual misconduct against a respondent and requesting that the School officially investigate and resolve the

allegation. The complaint may be resolved through either Informal Resolution (Section IX) or through the formal Investigation and Live Hearing Process (Section VI).

Where a case is not eligible for a Title IX hearing but involves sexual assault, dating violence, domestic violence, or stalking allegations, the following procedural protections will be available to both parties.

- Continued access to informal resolution procedures until a determination is reached as to whether a Policy violation occurred;
- Continued access to supportive measures;
- Procedures are conducted by officials that receive annual training on issues related to dating violence, domestic violence, sexual assault, and stalking and on how to conduct an investigation and hearing process that protects the safety of the victims and promotes accountability;
- Continued ability to bring an advisor of choice to any related meeting or proceeding;
- Both parties receive simultaneous written notice of the result of the disciplinary proceeding, the procedures for appeal, any changes to the result, and when such results become final.

## **V. Supportive Measures**

When HEMSPN has actual knowledge of sexual harassment affecting its community members, 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.

“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 HEMSPN's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or HEMSPN's educational environment, or deter sexual harassment.

Supportive measures at HEMSPN may include: counseling, extension of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus and other similar measures.

“Supportive measures” may include, but are not limited to:

- Providing access to counseling services and assistance in setting up an initial appointment
- Issuing and enforcing No Contact Directives
- Assistance in relocating
- Providing an escort to ensure safe movement between classes and activities
- Modifying academic and extracurricular activities
- Providing alternative course completion options
- Providing academic support services
- Modifying transportation, parking, and working situations
- Imposing other protections or restrictions as necessary and appropriate

HEMSPN 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 HEMSPN to provide the

supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

HEMSPN offers supportive measures to both complainants and respondents. Upon receipt of a report of an identifiable complainant, 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, and inform the complainant of the availability of supportive measures with or without the filing of a formal complaint. If the Title IX Coordinator does not offer supportive measures to the complainant, the Title IX Coordinator must document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

Upon noticing a respondent of a report raising potential sexual harassment violations against the respondent, the Title IX Coordinator will discuss with the respondent the availability of counseling and may discuss the availability of other supportive measures discussed above, where the Title IX Coordinator deems appropriate.

Throughout any alternate process, formal process, and/or appeals process, the Title IX Coordinator will continually reassess and discuss appropriate supportive measures with the parties.

The Title IX Coordinator will document all discussions and offers of supportive measures to all parties, as well as whether the parties accepted or declined any offers. If a party declines an offer of supportive measures, the Title IX Coordinator will document the party's stated reason for declining the offer.

#### **A. Emergency Removal Process**

After receiving a report, the School can remove a respondent on an emergency or temporary basis from educational programs and from School property. The Title IX Coordinator conducts an individualized safety and risk analysis to determine whether there exists an immediate threat to physical health or safety of any student or other individual arising from the allegations of sexual harassment and/or other allegations of Prohibited Conduct. If so, the Title IX Coordinator may, in consultation with the appropriate School personnel, impose emergency removal of an individual before resolution of a formal complaint of Prohibited Conduct. Emergency removal is a preventative action and will not be considered disciplinary in nature. The Title IX Coordinator will notify both parties in writing of the resulting restrictions and any changes to such restrictions.

All respondents are able to challenge an Emergency Removal. If a respondent wishes to challenge the decision, the respondent must provide written notice of such challenge, including their reasons, to the Title IX Coordinator within 2 business days of receiving notice of the restriction. The Title IX Coordinator, in conjunction with appropriate School personnel, will meet with the respondent and an advisor of the respondent's choice. The purpose of the meeting is to permit the respondent to respond to the removal. The location of the meeting will be determined by the Title IX Coordinator and may occur via telephone or video-conference. Within 1 business day of the meeting, the Title IX Coordinator and appropriate School personnel will consult regarding the Restricted Access and will notify the respondent in writing of the outcome. Any changes to the removal will be provided in writing to all parties.

#### **B. Non-student employees may be placed on administrative leave**

The Title IX Coordinator, in conjunction with other appropriate School personnel, may impose an administrative leave on employee Respondents if the facts and circumstances surrounding the reported

conduct support such leave. Administrative leave is a separate process from an Emergency Removal and is not disciplinary in nature. Employees placed on administrative leave will receive written notice of the conditions of that leave, but will not be able to challenge the administrative leave.

## **VI. Investigation and Adjudication**

### **A. Formal Complaint**

A Formal Complaint is a document filed in writing by a Complainant, or signed by the Title IX Coordinator, that alleges Prohibited Conduct against a Respondent and requests that the School officially investigate and resolve the allegation. The Formal Complaint may be filed with the Title IX Coordinator in person, by mail, by electronic mail, by in-person delivery, and must contain the Complainant's physical or digital signature.

In addition to the Complainant, a Title IX Coordinator can file a Formal Complaint. In the instances when the Title IX Coordinator signs a Formal Complaint, the Title IX Coordinator is not a Complainant or a party during a Formal Resolution, and must comply with requirements for any person involved in the response and/or resolution to be free from conflicts and bias.

A Formal Complaint may be withdrawn if the Complainant informs the Title IX Coordinator in writing that they want to withdraw the complaint or the allegations. The Title IX Coordinator may choose to withdraw a Formal Complaint if a Respondent is no longer participating in or attempting to participate in the School's education or program activity, the Complainant submits a written request to withdraw the complaint, or specific circumstances prevent the School from gathering evidence sufficient to reach a determination. No matter the reason for the withdrawal of a complaint, the parties will be notified in writing of the decision, including the reasoning.

### **B. Initial Review of Formal Complaint**

A Formal Complaint may be resolved through either an Informal Resolution or a Formal Resolution. Informal Resolution for Title IX Sexual Harassment may only be offered after a Formal Complaint has been filed, so that the parties understand what the Formal Resolution entails and can decide whether to voluntarily attempt informal resolution as an alternative. All other forms of Prohibited Conduct can be resolved through Informal Resolution without having a Complainant or Title IX Coordinator file a Formal Complaint. The Informal Resolution process is outlined in Section VII.

#### **1. The Title IX Coordinator may consolidate Formal Complaints**

The Title IX Coordinator may consolidate Formal Complaints as to allegations of Prohibited Conduct against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one party against the other party, where the allegations of Prohibited Conduct arise out of the same facts or circumstances. The same facts and circumstances means that the multiple Complainants' allegations are so intertwined that their allegations directly relate to all parties. Where multiple Complainants or Respondents are involved in the same investigation, the parties will only be provided with the appropriate portion(s) of the investigative documents that relate to the complaint(s) in which they are a party.

### **C. Formal Investigation**

The parties and their advisors will receive written notice that a formal investigation has been initiated. The notice of investigation will include:

- the identities of the parties involved;

- the specific section/s of the Policy allegedly violated;
- the precise conduct alleged to constitute the potential violation/s;
- the approximate date, time, and location of the alleged incident;
- a statement indicating that the Respondent is presumed not responsible for the alleged conduct;
- a statement that the determination of responsibility will be made at the conclusion of a Formal Resolution;
- a notice that parties have the right to an advisor of their choice;
- the result of an initial assessment to determine whether the allegations suggest a potential violation of Title IX Sexual Harassment with an indication that this decision will be reviewed again when the investigators prepare their report;
- the name of the investigators and the ability to challenge their participation for conflict of interest or actual bias;
- the appropriate Policy language prohibiting a party from knowingly making false statements or knowingly submitting false information; and
- a notice that Retaliation is prohibited.

The notice shall be provided reasonably in advance of any interview with the investigators, with sufficient time for meaningful preparation. The Title IX Coordinator, in consultation with the investigators, may amend the charges as part of the investigative process. The Title IX Coordinator will, if appropriate, issue amended charges to both parties.

The Title IX Coordinator will inform the Complainant that it is important to take steps to preserve evidence of the alleged harassment/discrimination, to the extent such evidence exists. Such evidence may be in the form of letters, emails, text messages, social media posts and also evidence of physical contact and violence.

### **1. Investigator roles and participants' responsibilities.**

The Title IX Coordinator will designate one or more investigators to conduct an adequate, reliable and impartial investigation. HEMSPN may engage an external investigator. In complex situations, the Title IX Coordinator may engage additional trained investigators to assist in gathering the information that will be considered by the primary investigator. If a party has concerns that the investigator has a conflict of interest or bias, it should notify the Title IX Coordinator in writing immediately of these concerns. The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rests on the School and not the parties.

The parties will have an equal opportunity to present witnesses, including expert witnesses, and to submit evidence. The investigator will also gather any available physical evidence, including documents, communications between the parties, and other electronic records as appropriate and available. The parties may submit questions to be asked of parties and witnesses. The investigator will review submitted questions and, in their discretion, may choose which questions are necessary and appropriate to the investigation and conduct any follow-up, as they deem relevant. All parties and witnesses are expected to provide truthful information. Knowingly providing false or misleading information is a violation of HEMSPN's policies and can subject a student or employee to disciplinary action. Making a good faith report to the School that is not later substantiated does not constitute false or misleading information.

### **2. Parties are permitted to have advisors of their choice at all meetings, proceedings, and informal resolution sessions.**

Complainants and respondents will have equal opportunities to have an advisor present during meetings, the grievance proceeding, and during the informal resolution process, including the opportunity to be accompanied by the advisor of their choice, who may be, but is not required to be, an attorney. The School will not limit the choice or presence of an advisor for complainant or respondent in any meeting, investigative interview, or grievance proceeding. Advisors are required to abide by School restrictions regarding the extent to which they may participate in proceedings, and any restrictions will apply equally to both parties. If a party's advisor refuses to comply with restrictions set by the School, the School may require the party to use a different advisor.

Should a Formal Complaint be filed and proceed to a live hearing as described in Section VII, a party's advisor will conduct cross examination. If a party does not have an advisor of choice to accompany them to the Pre-Hearing Conference and the Live Hearing, the School will appoint an advisor, free of charge, to perform the cross examination functions for the party. If you have questions about advisors, please contact the Title IX Coordinator.

### **3. Use of treatment records with written permission of the parties.**

A person's medical, counseling/psychological, and similar treatment records are privileged and confidential documents that a party will not be required to disclose. Where a party provides their written permission to share medical, counseling/psychological, and similar treatment records as part of the investigation, only the portion of the records directly related to the allegations raised in the formal complaint will be included in the case file for review by the other party and for use in the investigative process.

### **4. Use of Complainant's prior sexual history and prior conduct of the parties.**

Evidence related to the prior sexual history of the Complainant is generally not relevant to the determination of a Policy violation and will only be considered in very limited circumstances. For example, to prove that someone other than the Respondent committed the alleged conduct, or where the existence of consent is at issue, the sexual history between the parties may be relevant to help understand the manner and nature of communications between the parties and the context of the relationship. However, even in the context of a relationship, consent to one sexual act does not, by itself, constitute consent to another sexual act, and consent on one occasion does not, by itself, constitute consent on a subsequent occasion.

Information regarding other acts by a party will be permitted as relevant where the nature and means of those other acts may affect credibility of the assertions in the current case. It is not required that the party have been found responsible for Policy violations related to those other acts for them to be included in the current case. Any party seeking to introduce information about prior sexual history or other acts of the other party should bring this information to the attention of the investigators at the earliest opportunity.

While the investigators may explore relevant areas of inquiry, the Title IX Coordinator has the discretion to make the final determination whether evidence of prior sexual history or other misconduct is relevant and should be included in the report.

### **5. Anticipated timeframe for completing investigation and process for requesting extension of time.**

The School will seek to complete the formal investigation within 60 business days, which begins upon the filing of the Formal Complaint and concludes upon submittal for a hearing. HEMSPN will communicate the progress of the investigation with both parties on a weekly basis, or as otherwise directed by the parties. This timeframe may be extended for good cause with written notice to the parties of the delay and the reason for the delay. Good cause may be based on delays occasioned by the complexity of the allegations, the

number of witnesses involved, the availability of the parties or witnesses, the effect of a concurrent criminal investigation, any intervening school break or vacation, or other circumstances, all of which will likely extend the length of time it takes to complete the investigation.

**6. Parties' review of evidence collected during investigation and opportunity to provide a written response.**

The evidence obtained as part of the investigation that is directly related to the allegations raised in the formal complaint will be made available to the parties and their advisors, including the evidence upon which the School may not rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence. The parties will have 10 calendar days to review the evidence. The parties will be offered the opportunity to review the evidence and provide a written response that will be submitted to the investigators for the completion of the Investigation Report.

**7. Investigators will complete an investigative report and provide a recommendation for the Title IX Coordinator of whether the reported conduct constituted Title IX Sexual Harassment.**

Once the parties have reviewed the evidence and have submitted responses, or the time period to submit such responses has passed, the investigators will complete any follow up they deem necessary and write the investigation report. The investigators will consider whether the conduct alleged, if demonstrated by a preponderance of the evidence, would constitute Title IX Sexual Harassment, in light of the evidence gathered during the investigation. If the investigators find that Title IX Sexual Harassment is properly alleged, the investigators will further determine whether those allegations meet all three of the following jurisdictional requirements such that it is eligible for a Hearing Process:

- The Formal Complaint was filed while the Complainant was participating in or attempting to participate in the education program or activity of the School;
- The reported Title IX Sexual Harassment occurred against a person in the United States; and
- The reported Title IX Sexual Harassment occurred in the School's education program or activity.

The investigators will then make a recommendation to the Title IX Coordinator regarding whether the conduct outlined in the investigative report meets the requirements above. The Title IX Coordinator will review the recommendation of the investigators and make the final determination as to whether the conduct alleged, if demonstrated by a preponderance of the evidence, would constitute "Title IX Sexual Harassment."

The investigation report will include, but is not limited to, the following sections:

- overview of the complaint made and summary of the investigative methodology;
- summary of relevant information gathered, including:
  - timeline of incident being investigated;
  - Complainant's account of events;
  - Respondent's account of events;
  - witness accounts;
  - evidence gathered;
- areas of agreement;
- areas of disagreement;
- assessment of whether or not the complaint meets one or more of the required elements of the definition of sexual harassment under Title IX, including rationale; and

- an appendix containing all of the collected evidence.

The investigation report will not include:

- Information about the Complainant's sexual predisposition or prior sexual behavior, unless:
  - The information is to prove that someone other than the Respondent committed the alleged conduct; or
  - The information concerns specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent
- Information that is protected by a legally recognized privilege; and
- A party's medical, counseling/psychological, and similar treatment records unless the party has given voluntary, written consent.

**8. Title IX Coordinator issues a final assessment of whether the case meets the definition of Title IX Sexual Harassment and will proceed to a Live Hearing Process or be subject to Title IX Dismissal.**

The Title IX Coordinator will notify the parties, in writing, of the final assessment and whether or not the complaint will proceed to a hearing or be subject to Title IX Dismissal. If the case is dismissed, it will be adjudicated as follows:

- For cases involving student Respondents, the investigative report and materials will be provided to the School Compliance Officer to be adjudicated according to procedures found in the Student Code of Conduct and/or other applicable HEMSPN policies;
- For cases involving employee Respondents, the investigative report and materials will be provided to the Office of Human Resources to be adjudicated according to procedures found in the faculty, administrator, or employee handbooks and/or other applicable HEMSPN policies;

Where a case is not eligible for hearing but involves sexual assault, dating violence, domestic violence, or stalking allegations, the following procedural protections will be available to both parties:

- Continued access to informal resolution procedures until a determination is reached as to whether a Policy violation occurred;
- Continued access to supportive measures;
- Procedures are conducted by officials that receive annual training on issues related to dating violence, domestic violence, sexual assault, and stalking and on how to conduct an investigation and hearing process that protects the safety of the victims and promotes accountability;
- Continued ability to bring an advisor of choice to any related meeting or proceeding;
- Both parties receive simultaneous written notice of the result of the disciplinary proceeding, the procedures for appeal, any changes to the result, and when such results become final.

Cases that do not proceed to a live hearing process will be resolved through the processes identified above. Such process is typically completed within thirty (30) calendar days of referral for decision, except where extensions are appropriate for good cause as determined by the Title IX Coordinator with written notice to both parties of the reason for the extension.

**a. The parties have three business days to appeal this final assessment.**

Parties have 3 business days after receipt of the investigative report to submit in writing an appeal of the final assessment Title IX dismissal (see Section VI).

**b. The parties have 10 days to provide a written response to the investigative report.**

When no appeal of the Title IX decision is filed, the parties have 10 days beginning at the conclusion of the 3-day appeal window to submit their written response to the Investigation Report. The response may include an assertion that evidence not summarized in the report, but present in the case file, should be considered as relevant.

In a case with multiple charges, if any of the charges constitute Title IX Sexual Harassment, all the charges in that case will be handled at the same time through the Hearing Resolution process (Section VII).

**VII. Hearing Resolution Process for Title IX Sexual Harassment**

A Hearing Process will be used to resolve cases that include charges of Title IX Sexual Harassment. If such cases also include other charges, all the charges in that case will be handled at the same time through the Hearing Resolution process. The Hearing Process includes a pre-hearing conference, a live hearing, decisions about responsibility and sanctioning by the Decision-Maker, and an available appeal process.

**A. A Pre-Hearing Conference will be conducted**

Each party will have their own Pre-Hearing Conference. The Title IX Coordinator will communicate to the parties, their advisors, and the decision-maker, the date, time, and format for their Pre-Hearing Conference. The Title IX Coordinator, the Decision-Maker, and the advisor must be in attendance. While the parties are strongly encouraged to attend, they are not required to do so.

During the Pre-Hearing Conference, the advisors must share with the Decision-Maker with their list of witnesses to appear at the hearing, the identity of any requested witnesses that were not questioned during the investigation, the request for any new evidence to be considered that was not submitted previously to the investigators, and the availability of the advisor and the party for hearing dates.

The Decision-Maker will address any requests to present new evidence and new witnesses at the Pre-Hearing Conference.

The advisor is strongly encouraged to discuss lines of questioning with the decision-maker at the Pre-Hearing Conference to obtain guidance from the decision-maker on relevancy prior to the hearing. The Decision-Maker will discuss the expectations and guidelines for appropriate behavior and decorum during the hearing.

After reviewing each party's witness list, the Decision-Maker may, at their discretion, add names of other witnesses contained in the report for the purpose of appearing at the hearing and submitting to cross examination.

After the conclusion of the Pre-Hearing Conferences, the Title IX Coordinator will provide each party and their advisor with written notice of the date, time, and manner for the hearing, which will typically occur no less than 10 business days after the conclusion of the final pre-hearing conference.

**B. Live Hearing for Title IX Sexual Harassment Cases**

The Title IX Regulations require the School conduct a live hearing to address Title IX Sexual Harassment. This hearing may be conducted with all parties physically present in the same geographic location or, at the

School's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually. Regardless of format, the hearing will be recorded, and the recording will be HEMSPN's property, and will be made available to the parties for review and inspection upon their request during the pendency of the process.

Those persons present during the entirety or at designated portions of the hearing include: Complainant, Complainant's advisor; Respondent, Respondent's advisor; Decision-Maker; Title IX Coordinator; witnesses; other appropriate individuals at the discretion of the Title IX Coordinator (for example, an interpreter).

The Decision-Maker will provide an introduction detailing the purpose of the hearing, have those present identify themselves and their role, remind all parties of the expectation to be candid and honest in their response, and provide a brief overview of the procedure and the anticipated order of the hearing.

The advisors will be responsible for orally asking relevant questions, including those questions which challenge credibility, to the other party or parties and any witnesses directly, in real-time and in a manner that, in the Decision-Maker's sole discretion, is not inappropriate, harassing, intimidating, irrelevant, or redundant. Cross-examination will never be conducted by a party personally. Only relevant questions may be asked of a party or witness. Relevant questions are those tending to prove or disprove a fact at issue.

Questions that are not relevant include:

- Repetition of the same question;
- Questions related to information about the Complainant's sexual predisposition or prior sexual behavior, unless:
  - The information is to prove that someone other than the Respondent committed the alleged conduct; or
  - The information concerns specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent;
- Questions related to information that is protected by a legally recognized privilege; and
- Questions related to a party's medical, counseling/psychological, and similar treatment records unless the party has given voluntary, written consent.

The Decision-Maker will objectively evaluate all evidence to determine its relevance, materiality, weight and reliability.

Before a Complainant, Respondent, or witness answers a question by an advisor, the Decision-Maker will first determine whether the question is relevant and briefly explain any decision to exclude a question as not relevant, or request rephrasing of the question. The Decision-Maker is not required to give a lengthy or complicated explanation of a relevancy determination during the hearing. The Decision-maker may later send to the parties any revisions to the explanation of relevance that was provided during the hearing.

If a party or witness does not submit to cross-examination at the live hearing, the Decision-Maker must not rely on any statement of that party or witness in reaching a determination regarding responsibility. The Decision-Maker cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions. However, video evidence showing the conduct alleged within a complaint may be considered, even if the party does not submit to cross-examination. Further, a Respondent's verbal or written conduct that is alleged to constitute the sexual harassment at issue is not considered to be the Respondent's

“statement” and thus, information about or evidence of such conduct may be admitted even if the Respondent does not submit to cross-examination.

**C. The Decision-Maker will issue a written determination of responsibility**

After the hearing, the Decision-Maker will issue a written determination of responsibility. The determination of responsibility will include:

- Identification of the allegations potentially constituting sexual harassment
- A description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- Findings of fact supporting the determination;
- Conclusions regarding the application of the Policy to the facts;
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions HEMSPN imposes on the Respondent, and whether remedies will be provided by HEMSPN to the Complainant, and;
- HEMSPN’s procedures and permissible bases for the Complainant and Respondent to appeal.

The determination will lay out the evidentiary basis for conclusions reached in the case. The determination will be provided to the parties simultaneously. The determination becomes final only after the time period for appeal has expired or, if a party does file an appeal, after the appeal decision has been sent to the parties.

**D. Available remedies and sanctions for violations of the Policy**

Where a determination of responsibility for Title IX Sexual Harassment, and other included conduct, is made, HEMSPN will provide remedies to a Complainant designed to restore or preserve equal access to HEMSPN’s education program or activity. Such remedies may include the same individualized services provided as supportive measures; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the Respondent. The Title IX Coordinator is responsible for effective implementation of remedies. Where the final determination has indicated that remedies will be provided, the Complainant can then communicate separately with the Title IX Coordinator or their designee to discuss what remedies are appropriately designed to preserve or restore the Complainant’s equal access to education. Remedies for a Complainant which do not affect the Respondent must not be disclosed to the Respondent.

The School recognizes that not every case of Prohibited Conduct is alike in severity. Therefore, the School reserves the right to consider a range of reasonable educational outcomes and sanctions. This range includes a formal warning, receiving a reprimand in the course of employment, mandatory training, mandatory counseling, loss of privilege, disciplinary probation, removal from a course, restitution, facility suspension/expulsion, ban from School property, revocation or deferral of admission and or certificate/degree, deferred suspension, disciplinary suspension, disciplinary expulsion, and/or termination of employment.

In determining the sanctions, the following factors will be considered, to the extent the information is available in the case file: (1) the Respondent’s prior conduct history; (2) how the School has sanctioned similar incidents in the past; (3) the nature and violence of the conduct at issue; (4) the impact of the conduct on the Complainant; (5) the impact of the conduct on the community, its members, or its property; (6)

whether the Respondent has accepted responsibility for their actions; (7) any other mitigating or aggravating circumstances, including the School's values.

The imposition of sanctions will typically take effect immediately, but may be stayed at the discretion of the Decision-Maker in consultation with the Title IX Coordinator. A Respondent who separates from the School under any circumstance is not eligible for re-admittance or re-employment until they have successfully completed the terms of any sanctions imposed.

## **VIII. Appeals**

Complainants and Respondents may appeal the decision-maker's determination regarding responsibility, or HEMSPN's dismissal of a Formal Complaint or any allegations therein to the Title IX Coordinator who will initiate the appeal process. HEMSPN will notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties. Both parties will have a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome.

The Appeal Officer, who is the decision-maker for the appeal, will issue a written decision describing the result of the appeal and the rationale for the result and provide the written decision simultaneously to both parties.

A Complainant or Respondent must submit a written appeal to the Title IX Coordinator and within 3 business days of receipt of the Notice of Outcome or 3 business days the Title IX Coordinator's Determination of Eligibility. The written appeal must include the specific basis for the appeal and any information or argument in support of the appeal. Upon receipt of the appeal, the Title IX Coordinator will provide the other party notice of the appeal and the opportunity to respond in writing to the appeal. Any response to the appeal must be submitted to the Title IX Coordinator within 3 business days from the other party's receipt of the appeal. Appeal responses are shared with the other parties but no reply is permitted.

Grounds for appeal include:

- Procedural irregularity that affected the outcome of the matter;
- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter, and;
- The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter;

All grounds for appeal will be available to all parties.

The Title IX Coordinator will select a trained individual to be the Appeal Officer with notice to the parties.

The Appeal Officer must be a neutral and impartial decision maker. The parties will be informed, in writing, of the specific Appeals Officer. Within 1 calendar day of receiving the notice of the designated Appeals Officer, the Complainant and the Respondent may submit a written request to the Title IX Coordinator to replace the named Appeals Officer if there are reasonable articulable grounds to establish bias, conflict of interest or an inability to be fair and impartial.

The designated Appeals Officer will only be replaced if the Title IX Coordinator determines their bias precludes impartiality or constitutes conflict. Additionally, an Appeals Officer who has reason to believe they cannot make an objective determination must recuse themselves from the process.

The Appeals Officer will make a decision regarding the written appeal and, within 10 business days of receipt of all appeal documents, notify the Complainant and the Respondent of the outcome. The Appeal Officer may affirm the finding(s); alter the finding(s); alter the sanctions; or request that additional steps be taken.

Appeal decisions are final. All appeal deadlines may be extended for good cause by the Title IX Coordinator. Any extension will be communicated to the parties.

## **IX. Informal Resolution Process**

Informal Resolution permits the parties to seek resolution of reports of Prohibited Conduct and Formal Complaints of Title IX Sexual Harassment. HEMSPN does not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, the waiver of the right to an investigation and adjudication of Prohibited Conduct under HEMSPN's grievance process. Similarly, HEMSPN will never require the parties in a sexual harassment allegation to participate in an informal resolution process, as described below.

After the report of Prohibited Conduct or after the filing of a Formal Complaint of Title IX Sexual Harassment, if all parties voluntarily consent in writing, HEMSPN will assist the parties in an informal resolution process. An informal resolution process is available at any time prior to reaching a determination regarding responsibility in the grievance process, except in the cases of reports of Title IX Sexual Harassment of a student by a HEMSPN employee.

Before initiating an informal resolution, HEMSPN will: (1) provide the parties a written notice; and (2) obtain the parties' voluntary, written consent to the informal resolution process. The written notice that HEMSPN will provide to the parties will disclose the allegations, the requirements of the informal resolution process, and any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.

HEMSPN's informal resolution enables that, at any time prior to agreeing to a resolution, any party has a right to withdraw from the informal resolution process and resume the grievance process with respect to the report or Formal Complaint.

Upon initiation of the informal resolution as described above, the Title IX Coordinator will appoint an Informal Resolution Officer who will attempt to resolve the dispute through meetings with the parties. Although an in-person or a restorative justice conference may be suggested, parties will never be required to meet directly with one another as part of the informal resolution process.

When sexual harassment allegations can be resolved through informal resolution by mutual consent of the parties and on a basis that is acceptable to the Informal Resolution Officer in consultation with the Title IX Coordinator, the resolution process shall be considered finally decided and there will be no subsequent process or appeal.

## **X. Record Keeping**

HEMSPN will retain all records of each investigation instituted under this policy for seven (7) years. Records will include all documents, recordings, or transcripts from investigations, hearings, appeals, and alternate resolutions. The first date of the first record created by HEMSPN will begin the seven year retention period. Records will be maintained for all investigations including investigations that have been dismissed, completed, or otherwise resolved.

Any request by a student to review the documents, witness statements, evidence, and written submissions associated with their investigation under this policy should be submitted to the School Title IX Coordinator.

HEMSPN will also maintain and publish on HEMSPN's website training materials of employees who serve as Title IX Coordinators, investigators, decision-makers, and persons who facilitate information resolutions.

Complainants, Respondents, and/or anyone acting on their behalf may not record interviews or any other proceeding during an investigation or resolution process. Individuals found to have violated this recording prohibition may face disciplinary action up to and including expulsion or termination.

## **XI. Privacy and Confidentiality**

Privacy and confidentiality have separate and distinct meanings under this Policy:

### **A. Privacy**

HEMSPN strives to respect the privacy of both parties and other participants in the Title IX investigation process. Privacy generally means that information related to the report and investigation of Prohibited Conduct will only be shared with a limited selection of individuals whose knowledge is necessary to respond to claims of Prohibited Conduct. Such response includes the reviewing of reports, investigating claims, participating in investigations, conducting hearings, reviewing appeals, and other related issues. All HEMSPN employees involved in this process receive training on safeguarding private information in accordance with all applicable laws. Student education records are protected in compliance with the Family Educational Rights and Privacy Act (FERPA) and other applicable laws in Ohio. Medical records are generally protected by the Health Insurance Portability and Accountability Act (HIPAA), except for health records protected by FERPA. Access to employee personnel records is restricted in accordance with HEMSPN's policies and Ohio law.

HEMSPN must obtain written consent from a party before HEMSPN may receive any health or other treatment records. If a party provides written consent for medical or other treatment records to become part of an investigation's case file, both parties must be able to review and comment on those records if the investigation moves towards an investigative report and possible hearing.

### **B. Confidentiality**

HEMSPN will keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by the FERPA statutes or regulations, as required by law, or to carry out the purposes of this Policy, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

HEMSPN will not impose prior restraints on students' and employees' ability to discuss the allegations under investigation, including with a parent, friend, other source of emotional support, with an advocacy organization, or with persons who may have information regarding the underlying incident.

Confidentiality applies to certain types of information that cannot be revealed or distributed to other persons without express permission of the individual to whom the information pertains, or as otherwise permitted or required by law. Certain campus and community professionals, such as health care and mental health

professionals, maintain confidential relationships in their professional capacities with patients and clients under the privilege created by Ohio law.

### **1. Mandatory Reporting of Child Abuse**

All HEMSPN employees, including confidential resources are mandatory reporters<sup>2</sup> and are required to immediately report any knowledge or reasonable suspicion that a minor (someone under 18 years old) is experiencing abuse or neglect based on information shared by the minor, from any other individual including one's own observations or knowledge. Any HEMSPN employee suspecting abuse or neglect is required to bring all suspicions to the immediate attention of the Title IX Coordinator. HEMSPN community members who are not employees are strongly encouraged to report any knowledge or reasonable suspicion of child abuse.

### **2. Ohio Felony Reporting Requirement**

Under Ohio law, all individuals, excluding confidential resources, must report felonies, including sexual violence. Under Ohio Revised Code Section 2921.22, medical professionals, mental health professionals and clergy are not required to report felonies. This legal requirement means that the Title IX Coordinator must report any felony to the local police department or local prosecutor's office. To the extent reasonably possible, HEMSPN will communicate with the complainant in advance of any report to law enforcement with jurisdiction. The complainant has the choice whether and how to participate in any subsequent criminal investigation.

### **3. Ohio Medical Professional Reporting Requirements**

In Ohio, medical professionals have distinct legally mandated reporting responsibilities. Where a medical professional knows or has reasonable cause to believe that serious physical harm resulted from an offense of violence, the medical professional is required to make a report to law enforcement. Medical professionals must deem a patient medically stable before reporting and must communicate to the patient that the patient does not have to report and/or speak to the police. If the patient chooses not to speak to police at the time of the medical examination, the medical professional does not need to report the patient's name - only the date, general time, and general location of the incident.

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<sup>2</sup> Some individuals are required by law to report suspicions of abuse or neglect. A mandated reporter is an attorney; physician, including a hospital intern or resident; dentist; podiatrist; practitioner of a limited branch of medicine as specified in section 4731.15 of the Revised Code, registered nurse; licensed practical nurse; visiting nurse; other health care professional; licensed psychologist, licensed school psychologist, independent marriage and family therapist; speech pathologist or audiologist; coroner; administrator or employee of a certified child care agency or other public or private children services agency; school teacher; school employee; school authority; person engaged in social work or the practice of professional counseling; agent of county humane society, or a person rendering spiritual treatment through prayer in accordance with the tenets of a well-recognized religion; superintendent, board member, or employee of a county board of mental retardation; investigative agent contracted with by a county board of mental retardation; or employee of the department mental retardation and developmental disabilities.

#### **4. Risk of Harm to Self or Others**

Mental health professionals are required to disclose information where there is an imminent threat of harm to self (the client) or others.

#### **5. Clery Act Reporting**

Pursuant to the Clery Act, anonymous statistical information for certain offenses that have been reported at campus locations must be shared with Campus Safety. The information does not include the names or any other identifying information about the persons involved in such offenses.

## **XII. Educational Programs**

### **A. Required of those on campus**

All incoming students and new employees will receive training on the prevention of dating violence, domestic violence, sexual assault, and stalking. Training will include:

- Information on HEMSPN's prohibition on dating violence, domestic violence, sexual assault, and stalking, and the definitions of each;
- The definition of consent;
- A description of safe and positive options for bystander intervention;
- Information on risk reduction; and
- Information on HEMSPN's criminal and School-based investigation process.

In addition, HEMSPN will conduct ongoing prevention and awareness campaigns for students and employees, including programming, initiatives, and strategies that are sustained over time and focus on increasing understanding of topics relevant to and skills for addressing dating violence, domestic violence, sexual assault, and stalking, using a range of strategies with audiences throughout the institution and including information described in this section.

### **B. Required of those instituting the Policy**

The Title IX Coordinator, investigators, decision-makers, and any person who facilitates an alternate resolution process, will receive training on the definition of sexual harassment, the scope of HEMSPN's education program or activity, how to conduct an investigation and grievance process including hearings, appeals, and alternate resolution processes, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias. This includes how to apply the definitions with respect to consent (or the absence or negation of consent) consistently, impartially, and in accordance with this policy.

Investigators will receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence.

Decision-makers will receive training on any technology to be used at a live hearing and 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 Title IX Coordinators, investigators, decision-makers, and any person who facilitates an alternate resolution process, must not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment.

Training under this section is required on an as-needed basis. Training materials for training under this section will be made publicly available through HEMSPN's website. Published training materials will be up-to-date and reflect the latest training provided.

The Title IX Coordinator, investigators, decision-makers, and any person who facilitates an alternate resolution process, will receive annual training on issues related to dating violence, domestic violence, sexual assault, and stalking and on how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability.