



New Jersey Institute of Technology

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University Policies

Sponsoring Functional Areas: Senior Vice President for Human Resources and Institutional Access

Title: Sexual Misconduct and Title IX Policy

TABLE OF CONTENTS

I. INTRODUCTION AND PURPOSE	3
II. SCOPE	4
Coordination with Non-Discrimination Policy and Other University Policies	4
III. JURISDICTION	4
A. Online Harassment and Misconduct	5
IV. EMPLOYEE REPORTING REQUIREMENTS	5
A. Mandated Reporters	5
B. Confidential Employees	6
V. REPORTING PROHIBITED CONDUCT	6
A. General Reporting Options	6
B. Reporting Considerations	7
1. Time Limits on Reporting	7
2. Obligation to Provide Truthful Information	8
3. Confidentiality and Privacy	8
4. Reports Involving Minors	8
5. Preservation of Evidence	8
6. Amnesty	9
7. Federal Reporting and Timely Warning Obligations	9
VI. PROHIBITED CONDUCT UNDER TITLE IX	9
VII. PROHIBITED SEXUAL MISCONDUCT	13
VIII. ASSESSMENT OF COMPLAINT(S)	14
A. Intake and Outreach	14
B. Overview of Initial Assessment	15
C. Supportive Measures	15
D. Scope and Manner of Resolution	16
IX. FORMAL COMPLAINT	17
A. Dismissal	17
B. Formal Complaint Filed by the Title IX Coordinator	17
C. Consolidation of Complaints	18
D. Emergency Removal / Leaves	18
E. Advisor of Choice	19
F. Accommodations During the Resolution Process	19
G. Resolution Overview	19
H. Standard of Evidence	20

I. Acceptance of Responsibility	20
J. Withdrawal / Resignation Before Resolution	20
K. Appeals	20
X. ADDITIONAL CONSIDERATIONS	21
A. Barriers to Reporting	21
B. Record Keeping	22
C. Policy Dissemination and Training	22
D. Recording of Interviews	22
APPENDIX A: DEFINITIONS	23
APPENDIX B: INFORMAL RESOLUTION	25
APPENDIX C: TITLE IX FORMAL RESOLUTION PROCEDURES	26
I. APPLICABILITY	26
II. NOTICE OF INVESTIGATION AND ALLEGATION	26
III. INVESTIGATION	26
A. Appointment of Investigator and Hearing Officer	26
B. Information Gathering	27
C. Witness and Party Participation	27
D. Relevance	28
E. Investigation Report	28
IV. LIVE HEARING	28
A. Hearing Requirements	28
B. Hearing Notice	30
C. Pre-Hearing Meetings	30
D. Impact Statements	30
E. Witness Participation at Hearing	31
F. Hearing Procedures	31
V. DELIBERATION AND DETERMINATION	32
VI. NOTICE OF OUTCOME	32
VII. SANCTIONS	33
VIII. APPEALS	34
APPENDIX D: SEXUAL MISCONDUCT FORMAL RESOLUTION PROCEDURES	35
I. APPLICABILITY	35
II. NOTICE OF INVESTIGATION AND ALLEGATIONS	35
III. INVESTIGATION	35
A. Assignment of Investigator	35
B. Evidence Gathering and Review	35
C. Investigative Report	36
IV. DETERMINATION AND NOTICE OF OUTCOME	36
V. SANCTIONS	37
VI. APPEALS	37

This Sexual Misconduct and Title IX Policy (“Policy”) replaces and supersedes the NJIT Title IX Sexual Harassment Policy for reports of Prohibited Conduct (last updated August 25, 2025). On January 31, 2025, and then subsequently on February 4, 2025, the U.S. Department of Education’s Office for Civil Rights issued a Dear Colleague Letter requiring universities to enforce the 2020 Title IX Rule. This Policy reflects New Jersey Institute of Technology’s good faith efforts to implement the regulations, to synthesize those regulations with other Federal law, including the Clery Act, and with state law. NJIT will continue to review this Policy after its effective date, and NJIT may further modify this Policy.

I. INTRODUCTION AND PURPOSE

New Jersey Institute of Technology (“NJIT”) is an institution of higher education and a community dedicated to learning and the advancement of knowledge. NJIT expects and requires the behavior of its students, employees, vendors, volunteers, visitors and anyone else with a direct link to NJIT to comply with its high standards of scholarship and conduct. NJIT is committed to protecting the university community, upholding the rights of its members, and fostering a positive environment free from discrimination and harassment for all members of the NJIT community. Thus, NJIT does not discriminate on the basis of sex in its educational programs and activities and does not tolerate discrimination or harassment on the basis of sex. Discrimination on the basis of sex includes discrimination on the basis of actual or perceived gender expression, gender identity, pregnancy or related conditions¹, sex, or sexual orientation. The prohibition of discrimination on the basis of sex extends to admissions and employment at NJIT.

Title IX of the Education Amendments of 1972 (“Title IX”) and its implementing regulations, prohibit discrimination on the basis of sex in educational programs or activities operated by recipients of federal financial assistance. To ensure compliance with federal, state, and local civil rights laws and regulations, and to affirm its commitment to promoting the goal of fairness in all aspects of the education program or activity, NJIT has developed policies and procedures that provide a prompt, equitable, and impartial resolution of reports of Prohibited Conduct (as defined in Sections VI and VII). Individuals who are found responsible for engaging in Prohibited Conduct in violation of this Policy or other University policies are subject to sanction by NJIT, up to and including expulsion from NJIT or termination of employment.

NJIT has designated a Title IX Coordinator to oversee the implementation of this Policy and to ensure compliance with this Policy and all related federal and state laws and regulations.

Title IX Coordinator

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njit.edu/titleix

(973) 596-3446

Concerns about NJIT’s application of this Policy and compliance with certain federal civil rights laws may also be addressed to:

¹ Additional information on the University’s Pregnancy or Related Conditions Policy can be accessed online at <https://www.njit.edu/titleix/pregnancy>.

Office for Civil Rights (OCR)	Equal Employment Opportunity Commission (EEOC) Newark Office
200 Independence Avenue, S.W. Washington, D.C. 20201 Toll Free Call Center: 1-877-696-6775 Email: ocr@ed.gov Website: www.ed.gov/about/ed-offices/ocr	Two Gateway Center 283-299 Market Street, Suite 1703 Newark, NJ 07102 Phone: (800) 669-4000 Email: info@eeoc.gov Website: https://www.eeoc.gov/

II. SCOPE

This Policy applies to all faculty, staff, students, and other individuals participating in or attempting to participate in NJIT’s program or activities, including education and employment. Third party vendors, volunteers and visitors are subject to this Policy, its jurisdiction and applicable law. A third party may report potential Policy violations committed by a member of the NJIT community. NJIT will take appropriate steps to respond to the report of Prohibited Conduct, consistent with the authority granted by NJIT’s jurisdiction and authority, if any, over the Respondent. A third party who is accused of violating NJIT Policy may be permanently barred from areas and/or activities controlled by NJIT or be subject to other restrictions for failing to comply with this Policy; notwithstanding, a third party may not be granted the full rights and processes afforded to the NJIT community members provided in the provisions of this Policy.

Coordination with Non-Discrimination Policy and Other University Policies

NJIT recognizes this Policy must be coordinated with other relevant policies. When a report includes allegations under multiple NJIT policies, NJIT may, at its discretion, choose to investigate other potential misconduct under the procedures set forth in this Policy so long as doing so would not unduly delay a prompt, equitable resolution of the report.

When a report alleges discrimination based on sex as defined in NJIT’s Policy Prohibiting Discrimination and Harassment and/or discrimination based on other protected classes (race, ethnicity, national origin, religion, age, disability, sexual orientation, gender identity, or other protected classes), the procedures set forth in the Policy Prohibiting Discrimination and Harassment will apply.

III. JURISDICTION

This Policy applies to NJIT’s education program or activity² and to conduct occurring within any building owned or controlled by NJIT or by an NJIT recognized student organization. This Policy may also apply to the effects of off-campus or online conduct when that conduct limits or denies a person’s access to NJIT’s education program or activity.

For disciplinary action to be issued under this Policy, the Respondent must be an NJIT faculty member, staff member, or student, at the time of the alleged incident. If the Respondent is unknown or is not a

² “Education program or activity” is defined as locations, events, or circumstances in which NJIT exercises substantial control over both the Respondent and the context in which the conduct occurred.

member of the NJIT community, the Title IX Coordinator will offer to assist the Complainant in identifying appropriate institutional and local resources and support options, and will implement appropriate supportive measures and/or remedial actions. The Title IX Coordinator can also assist in contacting local or institutional law enforcement if the individual would like to file a police report about criminal conduct.

When the Respondent is enrolled in or employed by another institution, the Title IX Coordinator can assist the Complainant in contacting the appropriate individual at that institution, as it may be possible to pursue action under that institution's policies.

A. Online Harassment and Misconduct

NJIT policies are written and interpreted broadly to include online manifestations of Prohibited Conduct (as defined in Sections VI and VII) when those behaviors occur in or have an effect on NJIT's education programs or activities, or when they involve the use of NJIT networks, technology, or equipment. Although NJIT may not control websites, social media, and other venues through which harassing communications are made, when such communications are reported to NJIT, it will engage in a variety of means to address and mitigate the effects. This may include using the grievance procedures within this Policy to address off-campus conduct whose effects contribute to limiting or denying a person access to a university education program or activity.

Nothing in this Policy is intended to infringe upon or limit a person's free speech rights. Any student's online postings or other electronic communications, including technology-facilitated Bullying, Stalking, Harassment, etc., occurring completely outside of NJIT's control (e.g., not on NJIT networks, websites, or between NJIT email accounts) will only be subject to this Policy when such online conduct can be shown to cause (or will likely cause) a substantial disruption to an NJIT educational program or activity or an infringement on/harm to the rights of others. Otherwise, such communications are considered speech protected by the First Amendment. Employees' off-campus speech, whether online or in person, may be regulated by NJIT when such speech is made in an employee's official or work-related capacity or has an impact on the academic or workplace environment.

IV. EMPLOYEE REPORTING REQUIREMENTS

A. Mandated Reporters

Certain NJIT employees are considered mandated reporters and are required to promptly report all known details of actual or suspected Prohibited Conduct to the Title IX Coordinator. Confidential Employees are not subject to this requirement. The employees required to report to the Title IX Coordinator any Prohibited Conduct that they witness or become aware of are: 1) all supervisory employees and 2) any employee whose position involves regular interactions with students. By way of example only, these student-interacting positions include, but not limited to:

- Academic advisors
- Coaches and other athletic staff who interact directly with students
- Office of the Dean of Students staff
- Graduate research assistants
- Teaching assistants
- Instructional staff (faculty, lecturers, adjuncts, etc.)
- Public Safety
- Residence Life staff
- Resident Assistants

- Student Involvement and Leadership staff
- Educational Opportunity Program staff

When making a report, the information that should be provided includes the names of the individuals involved and any information known about the date, time, location or nature of the Prohibited Conduct. Employees are not obligated to respond to information provided during public events including but not limited to sexual assault awareness events and online educational platforms unless the information reveals an immediate and serious threat to the health or safety of students or other persons at NJIT.

B. Confidential Employees

Confidentiality refers to the statutory protections provided to individuals who disclose information in legally-protected or privileged relationships, including, but not limited to, professional mental health counselors, medical professionals, rape crisis counselors, and ordained clergy. Information shared with designated Confidential Employees cannot be revealed to any other individual without the permission of the individual. Confidential Employees will not breach confidentiality unless special circumstances exist such as an imminent risk of harm to the individual or others or suspected abuse of a minor under the age of 18 or as otherwise permitted or required by law. Individuals who wish to seek confidential assistance may do so by speaking with a Confidential Employee.

Confidential Employees On Campus:

- Counselors in NJIT’s Center for Counseling and Psychological Services (C-CAPS)
- NJIT’s Prevention Specialist and Confidential Advocate

Confidential Employees must provide Parties with the Title IX Coordinator’s contact information and inform the Parties that the Title IX Coordinator can coordinate supportive measures, as well as initiate an Informal or Formal Resolution process. Complainants may also speak with individuals unaffiliated with NJIT without concern that this Policy will require them to disclose information to the institution without permission. These include:

- Licensed professional counselors and other medical providers
- Local rape crisis counselors
- Domestic violence resources
- Local or state assistance agencies
- Clergy or other recognized religious or spiritual advisors
- Attorneys

V. REPORTING PROHIBITED CONDUCT

A. General Reporting Options

NJIT encourages any individual who believes they have experienced Prohibited Conduct to seek resources and support through NJIT or the community by contacting the below identified confidential or emergency resources:

<p>NJIT Center for Counseling and Psychological Services (C-CAPS) Campbell Hall, Room 205 (973) 596-3414</p>	<p>NJIT Prevention Specialist and Confidential Advocate Office of Prevention and Advocacy (OPA) Campus Center, Room 289 (973) 596-2664</p>
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Rutgers University Behavioral Health Care Crisis Services 183 South Orange Avenue Newark, New Jersey, 07103 1-800-969-5300	University Hospital 150 Bergen Street Newark, NJ 07103 (973) 972-4300
SAVE (Sexual Assault and Violence Education) of Essex County 1-877-733-CARE (2273)	Essex County Rape Care Center 60 South Fullerton Ave Suite 109 Montclair, NJ 07042 (973) 746-0800 x310/307
<u>National Sexual Assault Hotline (RAINN):</u> 1-800-656-HOPE (4673)	<u>Domestic Violence Hotline:</u> 1-800-799-SAFE (7233)

The Complainant or any individual, including those who have witnessed Prohibited Conduct may make a report to the Title IX Coordinator or to the NJIT Department of Public Safety.

Title IX Coordinator	NJIT Public Safety
Kristie Damell, Ed.D. Assistant Vice President of Institutional Access and Title IX Coordinator Fenster Hall, Room 581 (973) 596-3446 Online Reporting at: www.njit.edu/titleix	Non-Emergency: 973-596-3116 Emergency: 973-596-3111 154 Summit Street

A Complainant has the option to report or decline to report the incident to the appropriate local law enforcement authorities and NJIT will assist the Complainant in contacting law enforcement if requested. Any person who wishes to report an incident of Prohibited Conduct, whether the incident occurred on or off-campus and regardless of whether they pursue a Formal Complaint with NJIT, has the right to file a criminal complaint, petition for a restraining order, request that law enforcement remain at the scene until safety is secured, request that law enforcement provide transportation to a safe place, and request on-campus police escorts. Additional options are described more fully on the [Title IX website](#).

B. Reporting Considerations

1. Time Limits on Reporting

Complainants and other individuals are encouraged to report Prohibited Conduct as soon as possible in order to maximize NJIT’s ability to respond effectively. Mandated Reporters are required to report actual or suspected Prohibited Conduct within 24 hours, when feasible, of receiving notice. If the Respondent is no longer a student or employee, NJIT will still seek to provide reasonably available supportive measures, assist the Complainant in identifying external reporting options, and take steps to address any ongoing effects of the Prohibited Conduct in a NJIT education program or activity.

2. Obligation to Provide Truthful Information

All NJIT community members are expected to provide truthful information in any report or proceeding under this Policy. Submitting or providing false or misleading information in bad faith or for personal gain or intentional harm to another in connection with an allegation of misconduct is prohibited and subject to disciplinary action. This provision does not apply to reports made or information provided in good faith, even if the facts alleged in the report are not later substantiated.

3. Confidentiality and Privacy

NJIT is committed to protecting the privacy of all individuals involved in a report of Prohibited Conduct under this Policy consistent with the need for a thorough review by NJIT of the allegation. NJIT will not share the identity of any individual who has made a report or filed a Formal Complaint of Prohibited Conduct; any Complainant; any individual who has been reported to be the Respondent; any Respondent; or any witness, except as permitted by, or to fulfill the purposes of, applicable laws and regulations (e.g., Title IX), Family Educational Rights and Privacy Act (FERPA) and its implementing regulations, or as required by law; including any investigation, or resolution proceeding arising under these policies and procedures.

Privacy means that information related to notice or a Formal Complaint will be shared with a limited number of NJIT Employees who “need to know” in order to assist in the assessment, investigation, and resolution of the Formal Complaint. All employees who are involved in the university’s response to notice under this Policy receive specific training and guidance about sharing and safeguarding private information in accordance with state and federal law. The privacy of Student education records will be protected in accordance with FERPA. The privacy of Employee records will be protected in accordance with Human Resources policies. While not bound by legal confidentiality, these individuals will be instructed by NJIT to exercise discretion and respect the privacy of all individuals involved in the process.

Confidentiality exists in the context of laws (including Title IX) that protect certain relationships, including those who provide services related to medical and clinical care, mental health providers, counselors, and ordained clergy. The law creates a privilege between certain health care providers, mental health care providers, attorneys, clergy, spouses, and others, with their patients, clients, parishioners, and spouses. NJIT has designated individuals who can have privileged communications as Confidential Employees (see Section IV of this Policy).

4. Reports Involving Minors

Under New Jersey law, every person is a mandatory reporter of child abuse. Any member of the NJIT community who has reasonable cause to suspect abuse of a minor under the age of 18 should immediately report this information to the State Central Registry (SCR). If the child is in immediate danger, call 911 as well as 1-877 NJ ABUSE (1-877-652-2873). In addition, employees must make a report to the Title IX Coordinator or NJIT Public Safety.

5. Preservation of Evidence

A Complainant is advised to seek immediate medical treatment and preserve physical evidence following an incident of Prohibited Conduct even if they have not decided whether they wish to pursue any campus or criminal action. This will help to ensure that a Complainant receives proper care and preserves their opportunity to support a criminal action or Formal Resolution process at a later time. In addition, evidence in the form of text and voice messages, email and social media correspondence, call logs and

time-stamped photographs should be preserved when possible. All Parties, once aware of a Formal Resolution process, are expected to preserve evidence.

6. Amnesty

NJIT encourages the reporting of misconduct and crimes by Complainants and witnesses. Complainants or witnesses may be hesitant to report alleged misconduct to NJIT officials or participate in resolution processes fearing they may be in violation of certain policies, such as underage drinking or use of illicit drugs at the time of the incident. Respondents may be hesitant to be forthcoming during the process for the same reasons. It is in the best interests of the NJIT community that Complainants choose to report misconduct to NJIT officials, that witnesses come forward to share what they know, and that all Parties be forthcoming during the process. To encourage reporting and participation in the process, NJIT may offer Parties and witnesses amnesty from minor policy violations, such as underage alcohol consumption or the use of illicit drugs, related to the incident. Granting amnesty is a discretionary decision made by the Title IX Coordinator or their designee, and amnesty does not apply to more serious allegations, such as physical abuse of another or illicit drug distribution.

7. Federal Reporting and Timely Warning Obligations

Pursuant to the Clery Act, NJIT includes statistics about Clery Act crimes in its daily crime log and Annual Security Report and provides those statistics to the U.S. Department of Education; in all these instances, the information is reported in a manner that does not include personally identifying information about persons involved in an incident. If a report of misconduct discloses a serious or continuing threat to the campus community, NJIT will issue a timely notification to the community to protect the health and safety of the community as required by the Clery Act. The timely notification will not include any personally identifying information about the Complainant. NJIT may also share non-personally identifying information about reports received in aggregate form, including data about outcomes and sanctions. At no time will NJIT release the name of the Complainant to the general public without the express consent of the Complainant or as otherwise permitted or required by law. All NJIT proceedings are conducted in compliance with the requirements of FERPA, the Clery Act (as amended by VAWA), Title IX, state and local law, and NJIT Policy.

VI. PROHIBITED CONDUCT UNDER TITLE IX³

Prohibited Conduct, for purposes of administering this Policy, includes conduct that the [Title IX Final Rule](#) defines as “**Sexual Harassment**” which is conduct on the basis of sex that satisfies one or more of the following:

A. Quid Pro Quo

An employee conditions the provision of an aid, benefit, or service of NJIT on an individual participating in unwelcome sexual conduct; or

B. 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 a NJIT education program or activity; or

³ Pursuant to the Title IX Final Rule, a Complainant may file a Formal Complaint of Prohibited Conduct under Title IX only if the Complainant is currently participating in, or attempting to participate in, the education programs or activities of the University, including as an employee.

Sexual Assault, Dating Violence, Domestic Violence, Stalking, and Retaliation, as defined below in VI. C-G.

C. Sexual Assault

Having or attempting to have sexual contact with another individual without consent or where the individual cannot consent because of age or temporary or permanent mental or physical incapacity (see below for definition of consent and incapacitation).⁴ Sexual contact includes:

1. Sexual Penetration

Completed or attempted 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 or where the individual cannot consent because of age or temporary or permanent mental or physical incapacity.

2. Fondling:

- The intentional touching of the clothed or unclothed private body parts (genitals, buttocks, groin, breasts) without consent of the Complainant for the purpose of sexual degradation, sexual gratification, or sexual humiliation; or
- The forced touching by the Complainant of the Respondent's clothed or unclothed private body parts, without consent of the Complainant for the purpose of sexual degradation, sexual gratification, or sexual humiliation.
- This offense includes instances where the Complainant is incapable of giving consent because of age or because of a temporary or permanent mental or physical incapacity.⁵

D. Dating Violence

Any act of violence committed by a person:

- who is or has been in a social relationship of a romantic or intimate nature with the victim; and
- where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - The length of the relationship;
 - The type of relationship;
 - The frequency of interaction between the persons involved in the relationship.

E. Domestic Violence

Any act of violence committed by a current or former spouse or intimate partner of the Complainant under the family or domestic violence laws of New Jersey and, in the case of victim services, includes the use or attempted use of physical abuse or sexual abuse, or a pattern of any other coercive behavior committed, enabled, or solicited to gain or maintain power and control over the Complainant, including verbal, psychological, emotional, economic, or technological abuse that may or may not constitute criminal behavior, by a person who (1) is a current or former spouse or intimate partner of the Complainant, or person similarly situated to a spouse of the Complainant; (2) cohabiting with or has

⁴ The statutory definition of sexual assault referenced by the Title IX regulations also includes having or attempting to have sexual contact between persons who are related to each other within the degrees where marriage is prohibited by NJ state law and sexual intercourse with a person who is under the statutory age of consent.

⁵This definition was revised in conformance with the Federal Bureau of Investigation's updated definition of fondling in the National Incident-Based Reporting System in 2025.

cohabitated with the Complainant as a spouse or intimate partner; (3) shares a child in common with the Complainant; or (4) commits acts against an adult or youth victim who is protected from those acts under the family or domestic violence laws of New Jersey.⁶

F. Stalking

Stalking occurs when a person engages in a course of conduct on the basis of sex directed at a specific person under circumstances that would cause a reasonable person⁷ to:

- fear for their own safety or the safety of others; or
- suffer substantial emotional distress.⁸

Course of conduct means two or more instances including, but not limited to, unwelcome acts in which an individual directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property. Substantial emotional distress means significant mental suffering or anguish. Stalking includes the concept of cyber-stalking, a particular form of stalking in which electronic media such as the internet, social networks, blogs, cell phones, texts, or other similar devices or forms of contact are used.

G. Retaliation:

Retaliation is defined as any materially adverse action taken, or attempted, by NJIT, a student, an employee, or a person authorized by NJIT against an individual because of their participation in a protected activity. Adverse actions include but are not limited to: intimidation, threats, interference, penalty, coercion, harassment or discrimination. Protected activity includes any right or privilege secured by law; reporting information in good faith; filing a Formal Complaint; filing an external complaint; testifying, assisting, or participating or refusing to participate in any manner in an investigation or Resolution Process under this Policy's procedures.

H. Related Definitions

1. Consent

Knowing, voluntary, and clear permission by word or action to engage in sexual activity. Consent can also be withdrawn once given, as long as the withdrawal is reasonably and clearly communicated. If consent is withdrawn, sexual activity should cease within a reasonably immediate time. If coercion, intimidation, threats and/or physical force are used, there is no consent. If an individual is mentally or physically incapacitated or impaired such that the individual cannot understand the fact, nature, or extent of the sexual situation, there is no consent; this standard applies whether the incapacity is due to alcohol or drug ingestion, sleep, unconsciousness, or because of an intellectual or other disability that prevents the individual from having the capacity to give consent.

Silence or the absence of resistance alone should not be interpreted as consent. Consent is not demonstrated by the absence of resistance. While resistance is not required or necessary, it is a clear demonstration of non-consent. Consent to some sexual activity (such as kissing or fondling) cannot be

⁶ This definition was revised in conformance with Violence Against Women Act Reauthorization Act of 2022 (VAWA).

⁷ Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.

⁸ Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

assumed to be consent for other sexual activity (such as intercourse). A current or previous intimate relationship is not sufficient to constitute consent. If an individual expresses conditions on their willingness to consent (e.g., use of a condom) or limitations on the scope of their consent, those conditions and limitations must be respected. Consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another person.

For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual activity. Consent is evaluated from the perspective of what a reasonable person would conclude are mutually understandable words or actions. Reasonable reciprocation can establish consent. It is the responsibility of each Party to determine that the other has consented before engaging in the activity.

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

2. Force

Force is the use of physical violence and/or physical imposition to gain sexual access. Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Force is conduct that, if sufficiently severe, can negate consent. Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent.

3. Coercion

Coercion is unreasonable pressure for sexual activity. Coercive conduct, if sufficiently severe, can render a person's consent ineffective, because it is not voluntary. When someone makes clear that they do not want to engage in sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive. Coercion is evaluated based on the frequency, intensity, isolation, and duration of the pressure involved.

4. Incapacitation

Incapacitation is the inability, temporarily or permanently, to give consent because the individual is physically and/or mentally unable to give consent, either voluntarily or involuntarily, or the individual is unconscious, asleep, or otherwise unaware that the sexual activity is occurring. An individual may be incapacitated as a result of the consumption of alcohol or drugs. When alcohol or drugs are involved, incapacitation is a state of intoxication or impairment that is so severe that it interferes with an individual's capacity to make informed and knowing decisions. The impairment must be significant enough to render an individual unable to understand the fact, nature, or extent of the sexual activity.

Consent cannot be obtained by taking advantage of an individual's incapacitation. An individual who is incapacitated is not capable of giving valid, effective consent as the individual cannot understand the fact, nature, or extent of the sexual activity. An incapacitated individual lacks the physical and mental capacity to make informed, reasonable judgements about whether or not to engage in sexual activity.

Incapacitation is determined through consideration of all relevant indicators of a person's state and is not synonymous with intoxication, impairment, blackout, and/or being drunk. If the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated, the Respondent is not

in violation of this Policy. “Should have known” is an objective, reasonable person standard that assumes that a reasonable person is both sober and exercising sound judgment.

VII. PROHIBITED SEXUAL MISCONDUCT

Prohibited Sexual Misconduct that falls outside the narrow scope of Title IX will be adjudicated under this Policy. Sexual Misconduct includes, but is not limited to:

A. Sexual Assault, Domestic Violence, Dating Violence and Stalking that occurs outside the United States but still within a NJIT education program or activity.

B. Sexual Assault, Domestic Violence, Dating Violence and Stalking that occurs outside of a NJIT education program or activity but have continuing effects in the education program or activity.

C. Sexual Harassment

Unwelcome conduct of a sexual nature determined by a reasonable person to be so severe, pervasive *or* objectively offensive that it effectively denies a person equal access to NJIT’s education programs or activities consistent with other laws such as Title VII of the Civil Rights Act of 1964 and the New Jersey Law Against Discrimination.

Sexual Harassment may be committed by anyone regardless of sex or gender identity and may occur between members of the same or different sexes or gender identities. The Complainant does not have to be the person harassed but could be anyone affected by the conduct. Examples of behavior that could constitute Sexual Harassment may include but are not limited to the following:

- Unwelcome sexual advances or inappropriate touching;
- Requests for sexual favors;
- Calling someone by a sexually-oriented or demeaning name;
- Sexually suggestive comments;
- Displaying sexually suggestive materials or sending notes, email, or jokes to a person that are sexually explicit;
- Public display of pornographic or suggestive materials where such images are not connected to any legitimate academic or workplace purpose;
- Touching someone sexually without their consent;
- Continuing to ask out a person who already has said they are not interested.

D. Sexual Exploitation

A person taking non-consensual or abusive sexual advantage of another, that does not constitute Sexual Harassment, for their own benefit or for the benefit of anyone other than the person being exploited. Examples include, but are not limited to:

- Capturing, listening to, watching and/or distributing by any means images, audio or visual recordings of another in a state of undress or during sexual activity;
- Exposing one’s genitals or inducing others to expose their genitals or intimate parts;

- Knowingly exposing another to a sexually transmitted infection, disease or virus;
- Prostituting another person;
- “Stealthing,” where an individual intentionally removes, damages or lies about the use of a condom when consent was given for protected sexual activity only;
- Misappropriation of another person’s identity on apps, websites, or other venues designed for dating or sexual connections (e.g., spoofing);
- Forcing a person to take an action against that person’s will by threatening to show, post, or share information, video, audio, or an image that depicts the person’s nudity or sexual activity;
- Knowingly soliciting a minor for sexual activity;
- Knowingly creating, possessing, or disseminating child sexual abuse images or recordings;
- “Image based sexual abuse (IBSA),” an umbrella category of sexually explicit or intimate images, audio or videos of an individual that are created, manipulated, distributed, and/or threatened to be distributed without consent; or
- “Deepfakes,” creating or disseminating synthetic media, including images, videos, or audio representations of individuals doing or saying sexually-related things that never happened, or placing identifiable real people in fictitious pornographic or nude situations without their consent.

As used in this Section, the terms “Sexual Assault,” “Domestic Violence,” “Dating Violence” and “Stalking” will have the same definition as found in Section VI because the Title IX Final Rule defined these terms by reference to the Clery Act as amended by VAWA, both of which NJIT must comply with. The definition of “Sexual Assault” incorporates the defined terms of “Consent,” “Coercion,” “Force,” and “Incapacitation.” Accordingly, when adjudicating claims of prohibited Sexual Misconduct, these definitions will also be applied.

VIII. ASSESSMENT OF COMPLAINT(S)

The Title IX Coordinator or designee will commence an initial assessment promptly upon receiving notice, knowledge, or a complaint of Prohibited Conduct. The initial assessment includes assessing whether the reported conduct may reasonably constitute a violation of this Policy; determining whether NJIT has jurisdiction over the reported conduct, as defined in this Policy; offering and coordinating supportive measures; and notifying the Complainant of the available resolution options for consideration.

A. Intake and Outreach

Following outreach to the Complainant or person making the report, an intake meeting typically takes place to understand the nature and circumstances of the report and to provide information about resources, procedural options, jurisdiction, supportive measures and an opportunity to discuss this Policy.

Specifically, the Title IX Coordinator or designee will:

- Provide the Complainant with information about on- and off-campus resources;
- Provide the Complainant with a copy of this Policy and an explanation of the procedural options, including seeking supportive measures and the process for filing a Formal Complaint;
- Inform the Complainant that they may seek an Advisor of their choosing to assist them throughout the resolution of the report and that the Advisor may accompany them to any meeting or proceeding under this process;
- Notify the Complainant of the right to contact or decline to contact law enforcement and, if requested, assist them with notifying law enforcement;

- Notify the Complainant of the availability of medical and counseling resources to address physical and mental health concerns and to preserve evidence;
- Notify the Complainant of the importance of preservation of evidence;
- Explain NJIT's Policy prohibiting retaliation.

In addition to the intake meeting, NJIT will provide the Complainant with written information about resources, procedural options, and reasonably available supportive measures. This written information shall include a notification about the process for seeking disability-based accommodations, academic or workplace adjustments, and/or auxiliary aids under Section 504 of the Rehabilitation Act and/or the Americans with Disabilities Act.

B. Overview of Initial Assessment

As part of the initial assessment of the facts, NJIT will:

- Consider the Complainant's wishes with respect to supportive measures and expressed preference for manner of resolution;
- Assess the nature and circumstances of the report;
- Address immediate safety & emotional well-being of the Complainant or other campus community members;
- Assess potential barriers to proceeding;
- Assess whether the reported conduct may reasonably constitute a violation of this Policy. If the conduct may not reasonably constitute a violation of this Policy, the matter is typically dismissed from this process, consistent with the dismissal provision in these procedures. It may then be referred to another process, if applicable;
- Assess the reported conduct for the need for a timely warning under the Clery Act;
- Assess for evidence of a pattern or other similar conduct by the Respondent.

The Title IX Coordinator or designee will conduct the initial assessment. They have the authority to include additional individuals or, based on considerations such as privacy, health, safety, and timeliness, to conduct an initial assessment independently or with a smaller group.⁹

C. Supportive Measures

NJIT will offer and implement appropriate and reasonable supportive measures to the Complainant upon notice of Prohibited Conduct and to the Respondent upon notice of allegations. Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate and reasonably available. They are offered, without fee or charge to the Parties, to restore or preserve access to NJIT's education program or activity, including measures designed to protect the safety of all Parties and/or NJIT's educational environment and/or to deter Prohibited Conduct.

At the time that supportive measures are offered, if a Formal Complaint has not been filed, the Title IX Coordinator or designee will inform the Complainant that they may file a Formal Complaint with NJIT either at that time or in the future. NJIT will maintain the confidentiality of the supportive measures to the greatest extent possible and implement measures in a way that does not unreasonably burden any Party.

Supportive measures may include, but are not limited to:

⁹ In the event any individual with a responsibility identified in this Policy is a witness or has a conflict of interest that would compromise that individual's objectivity in discharging that responsibility, NJIT will appoint a designee.

- Referral to counseling
- Course-related or scheduling adjustments
- Altering campus housing assignment(s)
- Leaves of absence
- Mutual restrictions on contact (No-Contact Directive)
- Altering work arrangements for employees or student-employees
- Assistance seeking medical treatment
- Safety planning

The Title IX Coordinator will consider a number of factors in determining which supportive measures to implement, including the needs of the individual seeking supportive measures; the severity or pervasiveness of the alleged conduct; any continuing effects on the Complainant; whether the Complainant and the Respondent share the same residence hall, academic course(s), or job location(s); and whether judicial measures have been taken to protect the Complainant (e.g., protective orders). Violations of No-Contact Directives or other restrictions may be referred to appropriate student or employee conduct processes for enforcement or added as collateral misconduct allegations to an ongoing Complaint under this Policy.

D. Scope and Manner of Resolution

The Title IX Coordinator will consider the nature of the report, the safety of the individual and the campus community, and the Complainant's expressed preference for the manner of resolution in determining the appropriate course of action to achieve the goals of Title IX and this Policy. During the initial assessment, a Complainant may request supportive measures only, or may file a Formal Complaint. Alternatively, as described below, the Title IX Coordinator may determine that it is appropriate to file a Formal Complaint even in the absence of a Formal Complaint filed by a Complainant. A Complainant is always entitled to reasonably available supportive measures, regardless of whether a Formal or Informal Resolution process is initiated. As part of the initial assessment, the Title IX Coordinator will be responsible for determining whether the reported conduct falls within the scope of this Policy. If it does, NJIT may move forward with a Resolution process as described below. If it does not, NJIT may be required to proceed with a dismissal.

The initial assessment will proceed to the point where a reasonable assessment of the safety of the individual and of the campus community can be made, and NJIT has sufficient information to determine the appropriate course of action. NJIT will seek to complete the initial assessment as promptly as possible, typically within ten (10) days. There may be circumstances, however, where the initial assessment takes longer based on the availability of the Complainant or other necessary information, the need to gather additional information, or other factors outside of NJIT's control. NJIT also understands that a Complainant may engage in delayed decision-making, which may impact the timing of the conclusion of the initial assessment.

At the conclusion of the initial assessment, the Complainant will receive a written notice of the determination about how NJIT will proceed. The Title IX Coordinator will document each report or request for assistance, including requests for supportive measures, as well as the response to any such report or request; and will review and retain copies of all reports generated as a result of any investigation. NJIT will maintain the records for a period of seven years. The records will be kept private to the extent required or permitted by law.

IX. FORMAL COMPLAINT

The Complainant may file a Formal Complaint with the Title IX Coordinator in person, online, e-mail, or other electronic means designated by the Title IX Coordinator. Alternatively, the Title IX Coordinator may file a Formal Complaint on behalf of a Complainant. Upon receipt of a Formal Complaint, the Title IX Coordinator will evaluate the available information in the Formal Complaint and initial assessment to determine whether:

1. the conduct could, if proved, constitute Prohibited Conduct as defined in this Policy and
2. the conduct occurred within NJIT's education program or activity, *or* the conduct occurred outside NJIT's education program or activity whose effects contribute to limiting or denying a person access to NJIT's education program or activity.

If both conditions above are met, the Formal Complaint will proceed under the applicable Resolution Process described in the Appendix.

A. Dismissal

If any of the conditions above are not met, the Title IX Coordinator may dismiss the Formal Complaint and allow the Parties to appeal the decision to dismiss the Formal Complaint. Where the conduct may not be considered Prohibited Conduct under this Policy, the conduct may be considered misconduct for purposes of administering the Code of Student Conduct, Policy Prohibiting Discrimination and Harassment or other NJIT Policy or expectation and, accordingly, may be adjudicated thereunder.

In addition to the required dismissal, certain circumstances may occur that allow NJIT the discretion to dismiss a Complaint, including:

1. Written notification to the Title IX Coordinator that the Formal Complainant voluntarily wishes to withdraw the Formal Complaint;
2. The Respondent is no longer enrolled in or employed at NJIT; or
3. The Respondent cannot be identified, or specific circumstances prevent NJIT from gathering evidence sufficient to make a determination of responsibility for the disclosed conduct.

The Title IX Coordinator will notify the Parties simultaneously in writing when a Formal Complaint is dismissed, the basis for the dismissal, and options for supportive measures. Any decisions regarding dismissal of a Formal Complaint under this section may be appealed to the Senior Vice President for Student Affairs and Dean of Students (or their designee) or the Senior Vice President for Human Resources and Institutional Access (or their designee) as outlined in Section IX (I) of this Policy.

B. Formal Complaint Filed by the Title IX Coordinator

The Title IX Coordinator also has the discretion to file a Formal Complaint. In evaluating the appropriate manner of resolution, including whether the Title IX Coordinator will file a Formal Complaint in the absence of a Formal Complaint filed by the Complainant, the Title IX Coordinator will consider the following factors:

- The Complainant's request not to proceed with initiation of a Complaint;
- The Complainant's reasonable safety concerns regarding initiation of a Complaint;
- The severity and impact of the alleged misconduct;
- Whether the misconduct was committed with a weapon;
- The respective ages of the Parties;
- Whether the Complainant is a minor under the age of 18;

- Whether the Respondent has a history of committing such misconduct;
- Whether there have been other complaints about the same Respondent;
- Whether the Respondent is alleged to have threatened further misconduct;
- Whether the misconduct was committed by multiple Respondents;
- Whether the report reveals a pattern of misconduct (e.g., at a given location or by a particular group);
- The existence of independent evidence that may be available without the participation of the Complainant;
- The extent of prior remedial methods taken with the Respondent.

NJIT will take all reasonable steps to respond to the report consistent with a Complainant's requested course of action, but its ability to do so may be limited based on the nature of the reported information. Where the Title IX Coordinator files a Formal Complaint on behalf of the Complainant, the Title IX Coordinator will inform the Complainant about the chosen course of action and appropriately address reasonable concerns about the Complainant's safety or safety of others, including providing supportive measures. When the Title IX Coordinator initiates a Formal Complaint, they do not become the Complainant.

C. Consolidation of Complaints

NJIT may consolidate Complaints of 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.

D. Emergency Removal / Leaves

NJIT may remove a student Respondent on an emergency basis from NJIT's property or employment, education programs or activities. Before imposing an emergency removal, NJIT will undertake an individualized analysis of safety and risk for the campus community to determine whether the Respondent's presence in the program or activity poses an immediate threat to the physical health or safety of any student or other individual arising from the allegations of Prohibited Conduct and justifies removal of the Respondent from the NJIT program or activity.

The Title IX Coordinator will promptly provide the Respondent with written notice of the removal and an opportunity to challenge the removal. That notice shall include a statement that the use of any information the Respondent chooses to provide may subsequently be used in implementation of any aspect of this Policy or the resolution process, including the investigation and adjudication. The Respondent will have three (3) days to submit a written challenge to the safety and risk analysis to the Title IX Coordinator who will immediately review. The Title IX Coordinator will assign the matter to be reviewed by the Senior Vice President for Student Affairs and Dean of Students (or their designee) or Senior Vice President for Human Resources and Institutional Access (or their designee) to evaluate the information in support of the individualized safety and risk analysis. The Respondent will have an opportunity to present relevant evidence challenging the safety and risk analysis. The Senior Vice President for Student Affairs and Dean of Students (or their designee) or Senior Vice President for Human Resources and Institutional Access (or their designee) will submit a final decision in writing to the Respondent within five (5) days. The Title IX Coordinator will notify the Complainant and Respondent in writing of the outcome of the challenge.

When the Respondent is an employee accused of misconduct in the course of their employment, existing provisions for interim action are typically applicable instead of the above emergency removal process.

E. Advisor of Choice

Parties may each elect to have one Advisor of their choosing present during any stage of the formal or informal resolution process under this Policy.¹⁰ In the absence of an Advisor, the Title IX Coordinator will offer to assign a trained Advisor to any Party if the Party chooses. A Party may elect to change Advisors anytime during the process but are expected to provide the Title IX Coordinator with timely notification. If a Party changes Advisors, consent to share information with the previous Advisor is assumed to be terminated, and a release for the new Advisor must be submitted.

An Advisor may be, but is not required to be an attorney. NJIT cannot guarantee equal advisory rights, meaning that if one Party selects an Advisor who is an attorney, but the other Party does not, or cannot afford an attorney, NJIT is not obligated to provide an attorney to advise that Party. Witnesses are not permitted to have Advisors in Resolution Process interviews or meetings unless explicitly approved by the Title IX Coordinator.

Advisors should help the Parties to prepare for each meeting and are expected to advise ethically, with integrity, and in good faith. Advisors may not provide testimony or speak on behalf of their advisee unless given specific permission to do so. NJIT may remove or dismiss Advisors who do not abide by the restrictions on their participation or who are otherwise disruptive. The Advisor may meet with the Title IX Coordinator or designee in advance of any participation in any meeting or proceedings to understand the expectations of the role, privacy, and appropriate decorum. Advisors are expected to maintain the confidentiality of the records NJIT shares with them. NJIT may restrict the role of any Advisor who does not respect the sensitive nature of the process or who fails to abide by NJIT's confidentiality expectations.

F. Accommodations During the Resolution Process

NJIT is committed to providing reasonable accommodations and support to students, employees, or others with disabilities to ensure equal access to NJIT's Resolution Process. Anyone needing such accommodations or support should contact the Title IX Coordinator who will work with the Office of Accessibility Resources and Services (OARS) to review the request and, in consultation with the person requesting the accommodation, determine which accommodations are appropriate and necessary for full process participation.

G. Resolution Overview

NJIT will promptly act on any notice, complaint, or knowledge of a potential violation of this Policy. NJIT will never condition enrollment or continuing enrollment, employment or continuing employment, or enjoyment of any other right, on the waiver of a Party's right to the resolution of a Formal Complaint. As NJIT is committed to a prompt adjudication process, this Policy specifies expected time frames for resolution. These time frames may be delayed or extended for good cause with written notice to the Parties explaining the reason for the delay or extension.

Resolution procedures for Prohibited Conduct can be found in the Appendix of this Policy and may include [Informal Resolution](#), [Title IX Formal Resolution](#), and [Sexual Misconduct Formal Resolution](#).

¹⁰The Advisor cannot have institutionally conflicting roles, such as serving as an administrator with an active role in the matter or as a supervisor responsible for monitoring and implementing sanctions. An Advisor who is also a witness in the process may present a risk of bias or conflict of interest. A Party who chooses an Advisor who is also a witness can anticipate that issues of potential bias may be explored by the Hearing Officer(s).

H. Standard of Evidence

NJIT uses the preponderance of the evidence standard of proof when determining whether a Policy violation occurred. This means that NJIT will decide whether it is more likely than not, based upon the available information at the time of the decision, that the Respondent is in violation of this Policy.

I. Acceptance of Responsibility

At any point during the Formal Resolution process, the Respondent may elect to accept responsibility for some or all of the Policy violations at issue. Where there is an acceptance of responsibility as to some but not all of the charges, the investigation will continue to conclusion. Where there is an acceptance of responsibility as to all of the potential Policy violations, the Investigator will complete an investigation report of all information gathered to date and refer the matter to the decision-maker for sanctioning. In this circumstance, the Respondent waives their right to appeal a Final Determination.

J. Withdrawal / Resignation Before Resolution

Students: Should a student Respondent decide not to participate in the Resolution Process, the process proceeds absent their participation to a reasonable resolution. If a student Respondent withdraws from NJIT, the Formal Resolution process may continue, or the Title IX Coordinator may exercise their discretion to dismiss the Complaint. If the Complaint is dismissed, NJIT will still provide reasonable supportive or remedial measures as deemed necessary to address safety and/or remedy any ongoing effects of the Prohibited Conduct. When a student withdraws or leaves while the process is pending, the student may not return to NJIT in any capacity until the Complaint is resolved and any sanctions imposed are satisfied. If the student indicates they will not return, the Title IX Coordinator has discretion to dismiss the Complaint. The Registrar and Office of Admissions will be notified, accordingly.

Employees: Should an employee Respondent decide not to participate in the Resolution Process, the process proceeds absent their participation to a reasonable resolution. If an employee Respondent separates from NJIT with unresolved allegations pending, the Formal Resolution process may continue, or the Title IX Coordinator may exercise their discretion to dismiss the Complaint. If the Complaint is dismissed, NJIT may still provide reasonable supportive or remedial measures as deemed necessary to address safety and/or remedy any ongoing effects of the alleged Prohibited Conduct. When an employee separates from NJIT and the Complaint is dismissed, the employee may not return to NJIT in any capacity until the Complaint is resolved and any sanctions imposed are satisfied. Human Resources, the Registrar, and Office of Admissions will be notified, accordingly, and a note will be placed in the employee's file that they resigned with allegations pending and are not eligible for academic admission or rehire with NJIT. The records retained by the Title IX Coordinator will reflect that status.

K. Appeals

The Title IX Coordinator will designate an Appeal Officer - either the Senior Vice President for Student Affairs and Dean of Students (or designee), Senior Vice President of Human Resources and Institutional Access (or designee), or other trained internal or external individuals to hear the appeal. In most cases, appeals are confined to a review of the written documentation or record of the original determination and pertinent documentation regarding the specific appeal grounds. The Appeal Officer will deliberate as soon as is practicable and discuss the merits of the appeal.

Appeal decisions are to be deferential to the original determination, making changes to the finding only when there is clear error and to the sanction(s)/responsive action(s) only if there is a compelling justification to do so. All decisions apply the preponderance of the evidence standard of proof. An appeal

is not an opportunity for the Appeal Officer to substitute their judgment for that of the original Hearing Officer merely because they disagree with the finding and/or sanction(s). The Appeal Officer may consult with the Title IX Coordinator and/or legal counsel on questions of procedure or rationale, for clarification, if needed. The Title IX Coordinator will maintain documentation of all such consultation.

Parties may appeal (1) the determination regarding responsibility, (2) the dismissal of a Complaint and/or (3) the determination of supportive measures by filing their full and complete written appeal with the Title IX Coordinator within five (5) days of the date of the letter of notification of the decision being appealed, unless that time is extended in writing by the Title IX Coordinator. The Request for Appeal will be forwarded to the Appeal Officer for consideration to determine if the request meets the grounds for appeal (a Review for Standing).

Appeals may be based only on the following reasons:

1. A procedural irregularity that affected the outcome of the matter;
2. New evidence, which was not reasonably available at the time of the decision regarding responsibility, that could affect the outcome of the matter; or
3. A conflict of interest or bias for or against the individual Complainant or Respondents or more generally against Complainants and Respondents by the Title IX Coordinator, Investigator(s), or Hearing Officer(s) that affected the outcome of the matter.

All materials supporting any appeal must be submitted at the time the appeal is filed. The Title IX Coordinator will advise the non-appealing Party in writing of the receipt of an appeal and will provide a copy of the appeal to the non-appealing Party. The non-appealing Party will have five (5) days from the date of their receipt of the appeal to respond in writing to the appeal. A copy of the response will be issued to the appealing Party. No additional review or response to submissions related to the appeal may be made by either Party after this point, unless requested by the Appeal Officer.

After receipt of the non-appealing Party's response, the Appeal Officer will determine the disposition of the appeal. It is expected that a decision will be rendered within five (5) days but may be extended for good cause and written notification will be provided to the Parties simultaneously.

Subject to prevailing federal¹¹ and state law, a unionized employee may utilize the applicable grievance process set forth in their Collective Bargaining Agreement (CBA) to challenge disciplinary action or violation of the terms of the CBA.

X. ADDITIONAL CONSIDERATIONS

A. Barriers to Reporting

The Title IX Coordinator monitors NJIT's education program and activities for barriers to reporting information about conduct that may constitute sex discrimination under Title IX and take reasonable steps to address such barriers.

¹¹ *Rutgers, the State University of New Jersey, v. AFSCME Local 888, American Federation of State, County and Municipal Employees, AFL-CIO* (2026) (holding that Title IX federal regulations preempt the Collective Negotiation Agreement's arbitration process).

B. Record Keeping

In response to every complaint received by the Title IX Coordinator, NJIT will maintain for a period of at least seven (7) years records of:

- Each investigation under this Policy including any determination regarding responsibility and any audio or audiovisual recording or transcript created, any disciplinary sanctions imposed on the Respondent, and any remedies provided to the Complainant or Respondent;
- Any appeal and the result therefrom;
- Any Informal Resolution and the result therefrom;
- Any supportive measures provided to the Parties; and
- All materials used to train Title IX Coordinators, Investigators, Hearing Officers, Appeals Officers, and any person who facilitates an Informal Resolution process. NJIT will make these training materials available upon request.

C. Policy Dissemination and Training

A copy of this Policy will be made available to faculty and employees in annually required announcements and posted on the NJIT website. All new employees will receive Title IX information during onboarding. NJIT will educate all new students about this Policy and the location of this Policy as part of orientation. Educational materials will be made available online and during training to all members of the NJIT community to promote compliance with this Policy and familiarity with its procedures.

The Title IX Coordinator identifies and oversees the implementation of mandatory training for students, faculty, staff, and administrators that focuses on Title IX and corresponding legislation. These programs will be offered continuously throughout the year, and will include awareness education, prevention and risk reduction techniques, bystander intervention information, and recognition of warning signals. All employees must receive training promptly upon hiring or change of position that alters their duties.

D. Recording of Interviews

NJIT may audio record interviews conducted as part of the investigative process, including interviews of Complainants, Respondents, and witnesses. Audio recordings are made solely for the purpose of ensuring an accurate record of the information provided and to assist in the preparation of the Investigation Report. The recording and/or transcript of those meetings will be provided to the Parties for their review.

Recordings will be maintained by the University in accordance with NJIT's record retention practices and applicable policies. Unauthorized recording of investigative interviews by any Party, Advisor, or witness is prohibited.

APPENDIX A: DEFINITIONS

- A. Advisor:** Any person chosen by a Party, or appointed by the institution, who may accompany the Party to all meetings related to the Resolution Process and advise the Party on that process.
- B. Appeals Officer:** The person who accepts or rejects a submitted appeal request, determines whether any of the appeal grounds are met, and directs responsive action(s) accordingly.
- C. Complainant:** An individual who has allegedly been subjected to conduct that could constitute Prohibited Conduct under this Policy.
- D. Confidential Employee:**
- An employee whose communications are privileged or confidential under federal or state law. The employee's confidential status, for purposes of this definition, is only with respect to information received while the employee is functioning within the scope of their duties to which privilege or confidentiality applies; or
 - An employee whom NJIT has designated as confidential under this Policy for the purpose of providing services to persons related to Prohibited Conduct; or
 - An employee who is conducting an Institutional Review Board-approved human-subjects research study designed to gather information about Prohibited Conduct. The employee's confidential status only applies with respect to information received while conducting the study.
- E. Day:** All references in this Policy to days refer to business days unless specifically noted as calendar days.
- F. Education Program or Activity:** Locations, events, or circumstances in which NJIT exercises substantial control over both the Respondent and the context in which the conduct occurred, and to conduct occurring within any building owned or controlled by an NJIT recognized student organization.
- G. Employee:** A person employed by NJIT either full- or part-time, including student employees when acting within the scope of their employment.
- H. Final Determination:** A conclusion by the standard of proof that the alleged conduct did or did not violate this Policy.
- I. Finding:** A conclusion by the standard of proof that the conduct did or did not occur as alleged (as in a "finding of fact").
- J. Formal Complaint:** a document filed by a Complainant(s) or signed by the Title IX Coordinator alleging Prohibited Conduct by a Respondent(s) and requesting that the allegation of Prohibited Conduct be investigated.
- K. Hearing Officer/Decision-Maker:** The person who reviews evidence, determines relevance, and makes the final determination of whether this Policy has been violated and/or assigns sanctions.
- L. Informal Resolution:** A resolution agreed to by the Parties and approved by the Title IX Coordinator that occurs prior to a final determination in the Resolution Process.

- M. Investigation Report:** The Investigator's summary of all relevant evidence gathered during the investigation which includes the Draft Investigation Report and the Final Investigation Report.
- N. Investigator:** The person(s) authorized by NJIT to gather facts about an alleged violation of this Policy, assess relevance and credibility, synthesize the evidence, and compile this information into an Investigation Report.
- O. Mandated Reporter:** An NJIT employee who is obligated by this Policy to share knowledge, notice, and/or reports of Prohibited Conduct with the Title IX Coordinator.
- P. Parties:** The Complainant(s) and Respondent(s), collectively.
- Q. Respondent:** An individual who is alleged to have engaged in Prohibited Conduct.
- R. Sanction:** A consequence imposed on a Respondent who is found to have violated this Policy.
- S. Sexual Misconduct:** For purposes of implementing this Policy, an umbrella term that identifies forms of harassment based on sex including sexual harassment, sexual assault, dating violence, domestic violence, stalking and sexual exploitation that fall outside the scope of Title IX.
- T. Student:** Any person who has gained admission into NJIT.
- U. Title IX Coordinator:**
At least one official designated by NJIT who is responsible for the implementation of the Title IX program and for coordinating compliance with Title IX and this Policy. The Title IX Coordinator is responsible for receiving and reviewing reports and Formal Complaints under this Policy, implementing supportive measures, overseeing the resolution process (investigations, adjudications, and sanctioning); and ensuring appropriate education and training for students and employees.

APPENDIX B: INFORMAL RESOLUTION

After a Formal Complaint is filed, but before a determination regarding responsibility is made through the Formal Resolution process, the Parties may participate in an Informal Resolution process. Informal Resolution is a voluntary process that may result in the Parties and NJIT agreeing on a resolution of the allegations of a Complaint in lieu of an investigation and/or adjudication under the Formal Resolution process. NJIT will not require the Parties to participate in an Informal Resolution process or waive the rights to an adjudication process. Either Party can decide to terminate the Informal Resolution process at any time before it is completed. Informal Resolution cannot be available in the following circumstances:

- If NJIT determines that the alleged conduct could present a future risk of harm to others.
- If an employee is alleged to have engaged in Title IX Prohibited Conduct with an NJIT student.

In order to conduct the Informal Resolution process, NJIT will first:

- Provide to the Parties each a written notice detailing the allegations, right to withdraw from the Informal Resolution process and to initiate or resume NJIT's Formal Resolution process, the requirements associated with the process including the circumstances under which the Parties cannot revert back to the adjudication process and the possible consequences that could occur by participating in the Informal Resolution process; and
- If the Parties voluntarily agree to participate in the Informal Resolution process, obtain the Parties' written consent that they each voluntarily agree to participate.

Informal Resolution mechanisms can include, but are not limited to:

- mediation
- shuttle negotiation
- restorative practices
- educational conversations
- facilitated dialogue

Some mechanisms will result in an agreed-upon outcome, while others are resolved through dialogue. The Informal Resolution process does not conclude with a finding and the Respondent is not charged with a Policy violation. Further, if the parties agree to an Informal Resolution process, sanctions will not be imposed on either Party; rather, the parties may agree to appropriate remedies.

The Title IX Coordinator, or designee, has the authority to determine whether Informal Resolution is available, to facilitate a resolution that is acceptable to all Parties, and/or to accept the Parties' proposed resolution, often including terms of confidentiality, release, and non-disparagement. The Title IX Coordinator maintains records of any resolution that is reached for seven (7) years and will provide notification to the Parties of what information is maintained.

If the Informal Resolution process is successful, the Parties will be provided with a written Resolution Agreement, the Resolution Agreement will be implemented, and the matter will be considered closed. If a mutually acceptable resolution cannot be reached during a period of up to sixty (60) days, which may be extended for good cause, the Formal Resolution process may resume. Failure to abide by the Informal Resolution Agreement may result in appropriate responsive/disciplinary actions (e.g., dissolution of the Agreement and resumption of the Resolution Process, referral to the conduct process for failure to comply, application of the enforcement terms of the Agreement, etc.).

APPENDIX C: TITLE IX FORMAL RESOLUTION PROCEDURES

I. APPLICABILITY

These procedures apply to allegations of Title IX Prohibited Conduct as defined in this Policy.

II. NOTICE OF INVESTIGATION AND ALLEGATION

Upon receipt of a Formal Complaint and a Complainant's request for a Formal Resolution or Title IX Coordinator's decision to proceed with Formal Resolution absent a Complainant's request, the Title IX Coordinator shall provide a written Notice of Investigation and Allegation (NOIA) to all known Parties involved in the matter. The NOIA will include the following:

- a description of the resolution process, including Formal and Informal Resolution options, and a link to the applicable procedures;
- the allegations of Prohibited Conduct, including sufficient details known at the time such as the identities of the Parties, the conduct involved, and the date(s) and location(s) at which the conduct occurred;
- the potential policy violation(s) at issue;
- a statement that the Respondent is presumed not responsible for the disclosed conduct and that a determination regarding responsibility is made at the conclusion of the Formal Resolution process;
- the name of the assigned Investigator(s) and an opportunity to object to the Investigator(s) on the basis of bias or conflict of interest;
- a statement that the Parties may have an Advisor of their choice, or be appointed an advisor by the institution, who may accompany them through all steps of the Formal Resolution process;
- a statement that the Parties and Advisors may inspect and review evidence directly related to the allegations at the conclusion of the investigation phase;
- a statement about preservation of evidence;
- details on how a Party may request disability accommodations during the Formal Resolution process;
- campus resources available to a Party; and
- the prohibition against retaliation.

This initial NOIA will be sent to the Parties with sufficient time to prepare a response before any initial interviews are conducted as part of the investigation process. The NOIA will be updated and recirculated if additional allegations that were not included in the initial notice are now being investigated.

III. INVESTIGATION

A. Appointment of Investigator and Hearing Officer

The Title IX Coordinator or designee will appoint one or more trained Investigators to conduct a prompt, thorough, equitable and impartial investigation and a Hearing Officer upon completion of an investigation to determine responsibility. Investigators and Hearing Officers may be trained NJIT employees or external professionals.

If a Complainant or Respondent believes that the assigned Investigator(s) and/or the Hearing Officer may have a conflict of interest or bias which could result in their inability to provide a fair investigation or provide a fair determination regarding responsibility and/or sanctions to the Complainant or Respondent,

the Complainant or Respondent should notify the Title IX Coordinator or designee within three (3) days, in writing, of this concern, including an explanation or reason for the claim of conflict of interest or inappropriate bias. If the Title IX Coordinator determines there is a substantial and legitimate basis of a claim of an actual conflict of interest and/or inappropriate bias exists, the Title IX Coordinator will assign a new Investigator(s) and/or Hearing Officer.

B. Information Gathering

The role of the Investigator will be to gather information through interviews with the Parties and relevant or fact witnesses, as well as collect available evidence, including electronic and social media communications, documents, photographs, and communications between the Parties. The Investigator may visit relevant sites or locations and record observations through written, photographic, or other means. The Investigator will not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege. If a person voluntarily chooses to share medical or counseling records with the Investigator, they must sign a written consent that acknowledges that relevant information from the medical or counseling records must be shared with the other Party to ensure the other Party has notice of that information and an opportunity to respond. In some cases, the Investigator may consult medical, forensic, technological, or other experts when expertise on a topic is needed in order to achieve a fuller understanding of the issues under investigation.

The investigation is designed to provide both Parties a full, equal, and fair opportunity to be heard, to submit relevant inculpatory or exculpatory information, and to identify fact or expert witnesses. Neither the Complainant nor the Respondent is restricted from discussing the allegations made in the Formal Complaint and under investigation or gathering and presenting relevant evidence. All evidence—both inculpatory and exculpatory—will be considered throughout the adjudicatory process. NJIT, not the Parties, has the burden of gathering relevant evidence to the extent reasonably possible. The Parties will be asked to identify witnesses and provide other relevant information, such as documents, communications, photographs, and other evidence. The Parties are encouraged to provide all relevant information in a timely manner to facilitate prompt resolution.

It is expected that the investigation phase will take up to sixty (60) days but such period may be extended for good cause with notice to the Parties. Examples include but are not limited to a request from law enforcement to delay the investigation temporarily, the need for language assistance, the absence of Parties and/or witnesses, and/or health conditions.

C. Witness and Party Participation

Any individual whose participation is invited or expected will receive written notice of the date, time, location, participants, and purpose of their participation with sufficient time to prepare to participate. If a Party or witness chooses not to participate in the Formal Resolution process or becomes unresponsive, NJIT reserves the right to continue it without their participation to ensure a prompt resolution. Non-participatory or unresponsive Parties retain the rights outlined in this Policy and the opportunity to participate in the Formal Resolution process.

University employees have an obligation to cooperate with the Title IX process. Employees are expected to provide truthful, accurate, and complete information during investigations, interviews, and hearings. Failure to comply with requests for information or to participate in an investigation, without a valid reason, may result in disciplinary action up to and including termination of employment.

D. Relevance

The Investigator will review all information identified or provided by the Parties and will determine the relevance of the information developed or received during the investigation. Relevant information is information that tends to make a material fact at issue more or less probable and the fact is of consequence in determining the action. The following forms of evidence are considered impermissible:

- **Privileged Information:** NJIT cannot access, consider, disclose, or otherwise use a Party's records that are protected under a privilege as recognized by federal or state law or made or maintained by a confidential employee, physician, psychiatrist, psychologist, attorney, clergy member, or other recognized professional or paraprofessional acting or assisting in that capacity, and which are maintained in connection with the provision of services to the Party, unless that Party gives their voluntary, written consent to do so. In those instances, the relevant information from the records must be shared with the other Party.
- **Prior Sexual History of the Complainant:** The sexual history or sexual predisposition¹² of the Complainant is not relevant, except in two circumstances: (1) to show that someone other than the Respondent committed the reported conduct; and, (2) where the Respondent alleges the sexual contact was consensual, evidence of the manner and nature of how the Parties communicated consent in the past may be relevant in assessing whether consent was communicated in the reported conduct. As set forth in the definition of consent, the mere fact of a current or previous dating or sexual relationship, by itself, is not sufficient to constitute consent and, even in the context of a relationship, consent to one sexual act does not constitute consent to another sexual act, and consent on one occasion does not constitute consent on a subsequent occasion.

Previous disciplinary action of any kind involving the Respondent may not be considered unless there is an allegation of a pattern of misconduct. Such information may also be considered in determining an appropriate sanction upon a determination of responsibility. Barring a pattern allegation, this information is only considered at the sanction stage of the process and is not shared until then.

E. Investigation Report

The Parties will each have an equal opportunity to inspect and review any evidence collected that is relevant and not otherwise impermissible to the allegations raised in the Formal Complaint within a preliminary investigation report. Each Party will be provided ten (10) days to respond to the preliminary investigation report. A Party's response will be considered prior to finalizing the investigative report. The response period may be extended for good cause with notice to all Parties.

The Investigator will provide a final investigation report that fairly summarizes the evidence, both inculpatory and exculpatory, to the Title IX Coordinator to distribute to the Parties for review and written response no less than ten (10) days prior to the live hearing or other time a determination regarding responsibility is made.

IV. LIVE HEARING

A. Hearing Requirements

The following provisions apply to a live hearing for Prohibited Conduct under Title IX:

¹² The term "predisposition" is defined as being inclined toward a thing, action, or person.

- **Hearing Venue Options and Recordings.** The live hearing will occur via video technology. The Hearing Officer and Parties must be able to simultaneously see and hear a Party or witness while that person is speaking.
 - All hearings will be recorded.
 - The Hearing Officer, Parties, Advisors, Appeal Officers, and other appropriate NJIT officials will be permitted to review the recording or review a transcript of the recording upon request to the Title IX Coordinator.
 - No unauthorized audio or video recording of any kind is permitted during the hearing.
 - No unauthorized disclosure, including sharing, copying, or distribution of the recording or transcript, is permitted.

- **Hearing Participants.** Persons who may be present for a hearing include the Hearing Officer, hearing facilitator, Investigator(s), the Parties and their Advisors, anyone providing authorized accommodations, interpretation, and/or assistive services, and anyone else deemed necessary by the Hearing Officer. Witnesses are present only during their portion of the testimony.

- **Advisors.** The Parties may have the assistance of an Advisor of their choosing at the hearing or can request that the Title IX Coordinator appoint a trained Advisor for them. Appointed Advisors are not attorneys. If a Party wishes to have an attorney as their Advisor, they must locate and pay for that attorney themselves. If a Party does not have an Advisor present at the live hearing, NJIT will provide an Advisor, free of charge, for questioning on behalf of that Party.
 - During the pre-hearing meeting and live hearing, Parties may only be accompanied by their Advisor. No other persons (e.g., additional support persons, friends, family) may accompany, attend, or listen in on the hearing unless explicitly authorized by the Title IX Coordinator with each Party being provided the same opportunity.
 - All questions during the hearing will be asked by the Hearing Officer and Advisors.

- **Disability Accommodations and Other Assistance.** Parties should contact the Title IX Coordinator at least three (3) business days prior to the hearing to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing, if possible.

- **Conflicts of Interest or Bias.** The Hearing Officer must not have a bias for or against Complainants or Respondents generally or the individual Complainant or Respondent in particular.
 - The Hearing Officer must recuse themselves if such bias or conflict of interest exists.
 - If the Hearing Officer believes there is possible conflict of interest or bias, they will consult with the Title IX Coordinator about possible recusal or removal.
 - The Parties may raise challenges that the Hearing Officer is biased or has a conflict of interest. The Parties must raise challenges with the Title IX Coordinator within three (3) days of receiving the hearing notice.
 - The Title IX Coordinator will only remove and replace a Hearing Officer in situations of demonstrated bias or conflicts of interest. Perceptions of bias or conflict are not sufficient to cause removal.
 - If a Hearing Officer recuses themselves as the result of a conflict of interest or bias, or is removed, the Title IX Coordinator will promptly appoint a new Hearing Officer who does not have a conflict of interest or bias and notify the Parties accordingly.

- **Evidence Provided to Hearing Officer and Parties.**
 - The Hearing Officer will be provided electronic copies of the Final Investigation Report and all relevant but not impermissible evidence, including the names of all Parties, witnesses, and Advisors, at least ten (10) business days in advance of the hearing.
 - The Parties will be provided with electronic copies of all the materials provided to the Hearing Officer as part of the hearing notice, unless those materials have already been provided.¹³

B. Hearing Notice

The Title IX Coordinator will send the Parties a Notice of Hearing with sufficient time for the Parties to prepare for the hearing, typically at least five (5) days prior to the hearing. The hearing notice includes:

- A description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable hearing procedures, and a statement of the potential sanctions/responsive actions that could result.
- The time, date, and location of the hearing.
- A description of any technology that will be used to facilitate the hearing.
- Relevant information regarding hearing logistics, pre-hearing meetings, the Parties and witnesses participating in the hearing, the identity of the Hearing Officer, details related to questioning, the role of Advisors, impact/mitigation statements, and how to request disability accommodations or other assistance.

C. Pre-Hearing Meetings

The Hearing Officer will offer to convene a pre-hearing meeting(s) with the Parties and their Advisors and invite them to submit the questions or topics they wish to ask or discuss at the hearing. This allows the Hearing Officer to consider their relevance prior to the hearing to avoid any improper evidentiary introduction in the hearing or to provide recommendations for more appropriate phrasing. However, this advance review opportunity does not preclude the Parties from submitting a question at the hearing for the first time or asking for a reconsideration on a Hearing Officer's pre-hearing decision based on any new information or testimony offered at the hearing. The Hearing Officer will document and share their rationale for any evidence or question exclusion or inclusion, if any, at a pre-hearing meeting with each Party.

The Hearing Officer will work with the Parties to finalize a witness list for the hearing, and the Title IX Coordinator will notify any witnesses of the hearing's logistics. The Hearing Officer, only with the agreement of all Parties, may decide in advance of the hearing that certain witnesses do not need to be present if their testimony can be adequately summarized by the Investigator(s) in the Final Investigation Report or during the hearing, and their presence is not essential to assess their credibility.

D. Impact Statements

Each Party may submit an impact and/or mitigation statement to the Title IX Coordinator that the Hearing Officer will review during any sanction determination. Upon receipt of an impact and/or mitigation statement, the Title IX Coordinator will review the impact/mitigation statement to determine whether any immediate needs exist. The Title IX Coordinator will only provide the impact statements to the Hearing Officer if the Hearing Officer determines that a Policy violation has occurred. When the Title IX

¹³ The Final Investigation Report and directly related evidence will be shared using electronic means that preclude downloading, forwarding, or otherwise sharing.

Coordinator shares the impact statements with the Hearing Officer, they will also be shared with the Parties.

E. Witness Participation at Hearing

Student witnesses are encouraged to participate in, and make themselves reasonably available for, the hearing. Employee witnesses are expected to participate in, and make themselves reasonably available for, the hearing. Witnesses are not permitted to be accompanied by an advisor without express permission of the Title IX Coordinator. If any Party or witness does not appear at the scheduled hearing, the hearing may be held in their absence. The Title IX Coordinator will notify all witnesses of their requested participation in the hearing at least five (5) days prior to the hearing. Witnesses will be present for the hearing only during their testimony.

F. Hearing Procedures

1. Evidentiary Considerations

The Parties must provide all evidence to the Investigator(s) prior to completing the Final Investigation Report. Evidence offered after that time will be evaluated by the Hearing Officer for relevance. If deemed relevant and not impermissible, the Parties and Hearing Officer must agree to admit it into the record. If the evidence is deemed not relevant or impermissible, the Hearing Officer may proceed with the hearing absent the new evidence.

2. Joint Hearings

In Formal Complaints involving more than one Respondent and/or involving more than one Complainant accusing the same person of substantially similar conduct, the default procedure will be to hear the allegations jointly. However, the Title IX Coordinator may permit the investigation and/or hearings pertinent to each Respondent or Complaint 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 and/or for each Complaint with respect to each alleged Policy violation.

3. Hearing Format

The Hearing Officer will explain the hearing procedures and introduce the participants. The Hearing Officer will answer any procedural questions prior to and as they arise throughout the hearing. The Hearing Officer has the discretion to determine the format of the hearing. The procedure will generally be as follows:

- The Hearing Officer will open and establish rules and expectations for the hearing.
- Presentation of the investigation report by the Investigator, followed by questions to the Investigator by the Hearing Officer and then Advisors.
- Complainant opening statement followed by questions to the Complainant by the Hearing Officer, followed by cross examination by the Respondent's Advisor.
- Respondent opening statement followed by questions to the Respondent by the Hearing Officer, followed by cross examination by the Complainant's Advisor.
- Witness testimony and questioning by the Hearing Officer. Advisors for the Complainant and Respondent will be given the opportunity for live cross-examination after the Hearing Officer conducts an initial round of witness questioning.
- Closing statement by Complainant.
- Closing statement by Respondent.

- Conclusion of the Hearing

All questions must be directed toward and asked through the Hearing Officer and are subject to a relevance determination before they are asked. The Hearing Officer will explain any decision to exclude a question as not relevant, or to reframe it for relevance. The Hearing Officer will limit or disallow questions they deem not appropriate on the basis that they are irrelevant, unduly repetitious, seek or pertain to impermissible evidence, or are abusive. The Hearing Officer has final say on all questions and determinations of relevance and appropriateness. The Hearing Officer may consult with legal counsel on any questions of admissibility. The Hearing Officer then poses the questions deemed relevant, not impermissible, and appropriate to the Party and/or witness.

4. Refusal to Submit to Questioning and Inferences

Any Party or student witness may choose not to offer evidence and/or answer questions at the hearing, either because they do not attend the hearing, or because they attend but refuse to participate in some or all questioning. Employee witnesses are required to participate in the hearing if they are reasonably available. The Hearing Officer can only rely on the available relevant and not impermissible evidence in making the ultimate determination of responsibility.

An Advisor may not be called as a witness at a hearing to testify to what their advisee has told them during their role as an Advisor unless the Party being advised consents to that information being shared.

V. DELIBERATION AND DETERMINATION

The Hearing Officer will deliberate to determine whether the Respondent is responsible for the alleged Policy violation(s) based on the standard of proof. Deliberations are not recorded. When there is a finding of responsibility for one or more of the allegations, the Hearing Officer may then consider any previously submitted impact and/or mitigation statement(s) provided by the Parties in determining appropriate sanction(s). The Title IX Coordinator will ensure that any submitted statements are exchanged between the Parties if they are viewed by the Hearing Officer. The Hearing Officer will then prepare a written outcome to be provided to the Parties.

VI. NOTICE OF OUTCOME

Within ten (10) days of the conclusion of the Formal Resolution process, unless such time is extended for good cause, the Hearing Officer will issue a written outcome notification to include the following:

- A description of the allegations of Prohibited Conduct;
- The procedural steps taken during the course of the adjudication process;
- Information about NJIT's policies, procedures and/or expectations used to evaluate the allegations;
- The determination made regarding responsibility as to each allegation;
- A detailed rationale, including the findings of fact supporting the determination, the Hearing Officer's evaluation of the relevant evidence and the conclusions drawn;
- Any sanctions being imposed on the Respondent or remedies being provided to the Complainant and/or other students identified that have experienced the effects of the Prohibited Conduct; and
- The bases and procedures for the Complainant or Respondent to appeal.

The Parties will be notified simultaneously of the outcome. The determination regarding responsibility becomes final: (1) if a Party appeals, when the written determination of the result of the appeal is provided, or (2) if a Party does not appeal, the date on which an appeal is no longer to be considered

timely. The Title IX Coordinator will coordinate the provision and implementation of remedies to the Complainant(s) and imposition of any sanctions and/or responsive or corrective actions for the Respondent.

VII. SANCTIONS

NJIT will impose sanctions designed to end the Prohibited Conduct, prevent its recurrence, and remedy its effects on the Complainant and the university community. Factors considered by the Hearing Officer when determining sanctions and responsive actions may include, but are not limited to:

- The nature, severity of, and circumstances surrounding the violation(s)
- The Respondent's disciplinary history
- The need for sanctions/responsive actions to bring an end to the Prohibited Conduct
- The need for sanctions/responsive actions to prevent the future recurrence of the Prohibited Conduct
- The need to remedy the effects of the Prohibited Conduct on the Complainant and the community
- The impact on the Parties
- Any other information deemed relevant by the Hearing Officer

The sanctions will be implemented as soon as it is feasible once a determination is final, either upon the outcome of any appeal or the expiration of the window to appeal, without an appeal being requested. The sanctions described in this Policy are not exclusive of, and may be in addition to, other actions taken, or sanctions imposed, by external authorities.

For **students**, these sanctions could include:

- Warning
- Educational Sanctions
- Reprimand
- Disciplinary Probation
- Loss of Privileges
- Discretionary Sanctions
- University Status At Risk
- Suspension from NJIT
- Expulsion from NJIT
- Reassignment of Housing
- Suspension from Housing
- Expulsion from Housing
- Other actions as deemed relevant

For **student organizations**, these sanctions could include:

- Warning
- Educational Sanctions
- Reprimand
- Disciplinary Probation
- Loss of Privileges
- Suspension of Official University Recognition
- Permanent Revocation
- Other actions as deemed relevant

For **employees**, all sanctions/responsive/corrective actions imposed will be in accordance with any applicable collective bargaining agreement and/or due process rights. Sanctions could include:

- Verbal or Written Warning
- Enhanced Supervision, Observation, or Review
- Required Counseling
- Required Training or Education
- Probation
- Denial of Pay Increase/Pay Grade
- Loss of Oversight or Supervisory Responsibility
- Demotion
- Transfer
- Shift or schedule adjustments
- Reassignment
- Delay of (or referral for delay of) Tenure Track Progress
- Assignment to a New Supervisor
- Restriction of Stipends, Research, and/or Professional Development Resources
- Suspension
- Suspension without pay
- Termination
- Other actions as deemed relevant

NJIT is committed to the fair and equitable treatment of the Parties by providing remedies to a Complainant where a determination of responsibility for Prohibited Conduct has been made against the Respondent and by following the resolution process described in this Policy before imposing any disciplinary actions against a Respondent. All remedies are intended to restore or preserve equal access by the Complainant to a NJIT education program or activity.

VIII. APPEALS

Any decisions regarding the outcome of the Formal Resolution process under this section may be appealed to the Senior Vice President for Student Affairs and Dean of Students (or their designee) or the Senior Vice President for Human Resources and Institutional Access (or their designee) as outlined in Section IX (I) of this Policy.

APPENDIX D: SEXUAL MISCONDUCT FORMAL RESOLUTION PROCEDURES

I. APPLICABILITY

These procedures apply to allegations of Sexual Misconduct or Prohibited Conduct that do not fall within the jurisdictional definition of Title IX but are otherwise prohibited by this Policy.

II. NOTICE OF INVESTIGATION AND ALLEGATIONS

Upon receipt of a Formal Complaint or a determination to proceed with an investigation, the Title IX Coordinator, or their designee, will provide notice to the Parties that include the identification of the Parties (if known); the alleged conduct and applicable Policy provisions; the date and location of the alleged incident(s); a statement that Respondent is presumed not responsible unless and until a determination has been made; the applicable standard of evidence (preponderance of the evidence); information regarding the right to an Advisor; details on how a Party may request disability accommodations; campus resources available to a Party; and a statement prohibiting retaliation and false statements.

The Title IX Coordinator, or their designee, may amend and issue a revised notice if additional allegations arise during the investigation.

III. INVESTIGATION

A. Assignment of Investigator

The Title IX Coordinator, or their designee, will assign a trained, impartial investigator. The investigator will not have a conflict of interest or bias for or against either Party. A Party who believes the investigator has a conflict of interest or bias must raise the concern in writing within three (3) days to the Title IX Coordinator who will determine whether reassignment is warranted.

B. Evidence Gathering and Review

The investigator will interview the Complainant, Respondent, and relevant witnesses; collect relevant evidence, including documents, electronic communications, photographs, or other materials. Relevant evidence assists in proving and/or disproving the allegations, including both inculpatory and exculpatory evidence. NJIT, not the Parties, has the burden of gathering relevant evidence to the extent reasonably possible.

The following forms of evidence are considered impermissible:

1. **Privileged Information:** NJIT cannot access, consider, disclose, or otherwise use a Party's records that are protected under a privilege as recognized by federal or state law or made or maintained by a confidential employee, physician, psychiatrist, psychologist, attorney, clergy member, or other recognized professional or paraprofessional acting or assisting in that capacity, and which are maintained in connection with the provision of services to the Party, unless that Party gives their voluntary, written consent to do so. In those instances, the relevant information from the records must be shared with the other Party.

2. **Prior Sexual History of the Complainant:** The sexual history or sexual predisposition of the Complainant is not relevant, except in the following circumstances: (1) to show that someone other than Respondent committed the reported conduct; (2) where the Respondent alleges the sexual contact was consensual, evidence of the manner and nature of how the Parties communicated consent in the past may be relevant in assessing whether consent was communicated in the reported conduct; and (3) where the evidence is directly relevant to determining whether the reported conduct may constitute sexual misconduct under other federal or state laws. As set forth in the definition of consent, the mere fact of a current or previous dating or sexual relationship, by itself, is not sufficient to constitute consent and, even in the context of a relationship, consent to one sexual act does not constitute consent to another sexual act, and consent on one occasion does not constitute consent on a subsequent occasion.

Before the investigation is finalized, the investigator will provide the Parties with an opportunity to review and respond to evidence directly related to the allegations. The investigator will consider timely responses received before completing the Investigative Report.

C. Investigative Report

The investigator will prepare a written report that includes a summary of the allegations; a summary of relevant evidence; credibility assessments (where appropriate); findings of fact; and application of the relevant Policy provisions to the facts. The report will be provided to the Parties and each Party will be provided ten (10) days to respond to the report. A Party's response will be considered prior to finalizing the investigative report.

IV. DETERMINATION AND NOTICE OF OUTCOME

At the conclusion of the investigation, the Title IX Coordinator, or their designee, will serve as the decision-maker and be provided the final investigative report to determine whether Prohibited Conduct occurred. In reaching a determination, the decision-maker will evaluate the totality of the evidence in the investigative report. The decision-maker may consider the reliability, consistency, and relevance of the information provided by the Parties and witnesses, as well as any corroborating, conflicting, documentary, digital, or physical evidence.

If the decision-maker determines that a Policy violation occurred, the University will determine appropriate sanctions and corrective actions based on the nature and severity of the conduct, the impact of the conduct, and any other relevant considerations. The determination with the substantiating basis will be provided in writing to the Senior Vice President for Human Resources and Institutional Access and the Vice President(s) of Complainant and Respondent. The Title IX Coordinator, or their designee, will notify Complainant, Respondent, and the Union representatives (if any) of the determination in writing.

Within ten (10) days of the conclusion of the Formal Resolution process, unless such time is extended for good cause, the decision-maker will issue a written outcome notification to include the following:

- A description of the allegations of Prohibited Conduct;
- The procedural steps taken during the course of the adjudication process;
- Information about NJIT's policies, procedures and/or expectations used to evaluate the allegations;
- The determination made regarding responsibility as to each allegation;
- A detailed rationale, including the findings of fact supporting the determination, the decision-maker's evaluation of the relevant evidence and the conclusions drawn; and

- The bases and procedures for the Complainant or Respondent to appeal.

V. SANCTIONS

Students: Should a student be found responsible for engaging in Prohibited Conduct, the decision-maker may consult with the Office of the Dean of Students for sanction consideration, including but not limited to disciplinary record review. Sanctions may include, but are not limited to, expulsion, suspension, university standing at risk (USAR), loss of privileges, restitution, disciplinary probation, disciplinary warning, and/or educational or restorative sanctions.

Employees: Should an employee be found responsible for engaging in Prohibited Conduct, the matter will be referred to the Senior Vice President of Human Resources and Institutional Access following consultation with the appropriate University officers who will provide counsel as to appropriate sanction(s). Sanctions may include, but are not limited to, termination, suspension, probation, reprimand, warning, directed counseling and/or mandatory education and training.

Once sanctions have been determined, the Parties will be provided notice of the disciplinary measures being imposed on the Respondent or remedies being provided to the Complainant and/or other students identified that have experienced the effects of the Prohibited Conduct.

VI. APPEALS

Any decisions regarding the outcome of the Formal Resolution process under this section may be appealed to the Senior Vice President for Student Affairs and Dean of Students (or their designee) or the Senior Vice President for Human Resources and Institutional Access (or their designee) as outlined in Section IX (I) of this Policy.