

**The Lutheran University Association, Inc.,
d/b/a Valparaiso University**

**Harassment and Sexual Misconduct Policy: Notice of Nondiscrimination, Reporting
Procedures, and Complaint Process**

I. NONDISCRIMINATION AND HARASSMENT POLICY STATEMENT

It is the policy of Valparaiso University that no person shall on the grounds of sex, gender identity, pregnancy, or sexual orientation be excluded from participation in, be denied the benefits of, or be subjected to discrimination in employment or in any educational program or activity of the University. To that end, and in compliance with federal and state laws, the University prohibits any member of the faculty, staff, administration, student body, or visitors to campus, whether they are guests, patrons, independent contractors, or clients, from discriminating against any other such person or member of the University community in violation of this Policy. Both men and women can be perpetrators of sexual harassment. A person may also file a complaint of discrimination with the United States Department of Education's Office for Civil Rights regarding an alleged violation of Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Age Discrimination Act of 1975, or Title IX of the Higher Education Amendments of 1972 by visiting www2.ed.gov/about/offices/list/ocr/complaintintro.html, or calling 1-800-421-3481. The U.S. Department of Education Office of Civil Rights is also located at: Lyndon Baines Johnson Department of Education Bldg., 400 Maryland Avenue, SW Washington, DC 20202-1100.

Valparaiso University also prohibits harassment, and may consider it a form of discrimination, as set forth above, if it is unwelcome and sufficiently severe or pervasive so as to substantially interfere with a person's work, education, participation in a University activity, or purpose for being on campus, or is otherwise considered discrimination in violation of the law. Harassment prohibited by this Policy may include, but is not limited to, threats, physical contact, violence, pranks, jokes, slurs, epithets, derogatory comments, vandalism, or verbal, graphic, or written conduct directed at an individual or individuals. Even if actions are not directed at specific persons, a hostile environment may be created when the conduct is sufficiently severe, pervasive or persistent so as to unreasonably interfere with or limit the ability of an individual to work, study, participate in activities of the university, or achieve their purpose for being on campus. Furthermore, off campus incidents or incidents at non-University activities may be considered when determining the severity, pervasiveness, or persistence of the conduct that gives rise to hostility or harassment.

This Policy, and its procedures and processes, are administered by numerous University employees as mentioned throughout. All involved employees are to recuse themselves from a matter when there is a conflict of interest. Any involved employee may raise the issue of a potential conflict of interest to the University's General Counsel to determine whether an employee has a conflict of interest in any particular case, and the General Counsel may then replace that person or take other action to the extent necessary to abate the conflict and preserve impartiality.

II. PROHIBITED HARASSMENT AND SEXUAL MISCONDUCT POLICY STATEMENT

Harassment on the basis of sex, as later defined under this Policy, is a violation of federal and state law. Valparaiso University strives to create a safe and nondiscriminatory environment where individuals treat one another with respect and, therefore, does not tolerate sexual harassment on campus or within the scope of its educational programs or activities¹. Individuals who believe they are victims of sexual harassment are strongly urged to promptly report such incidents as set forth under the reporting procedures below. Valparaiso University will promptly investigate every formal sexual harassment complaint in a timely manner and, when there is a finding of sexual harassment, take corrective action to stop the harassment and prevent the misconduct from recurring, and correct any discriminatory effects of such harassment. The severity of the corrective action will depend on the circumstances of the particular case.

The determination of what constitutes sexual harassment will vary with the facts and circumstances of a particular case but generally involves unwanted sexual attention. Any person may be subject to sexual harassment, and one can be sexually harassed by a member of any gender. Sexual harassment is defined as conduct on the basis of sex that satisfies one or more of the following:²

- (1) conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
- (2) unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity; or
- (3) Sexual assault,³ dating violence,⁴ domestic violence,⁵ or stalking.⁶

¹ Education program or activity includes locations, events, or circumstances over which the recipient exercised substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution (34 CFR 106.44(a)) and off-campus activities that substantially affect on-campus access to educational programs or activities, such as the off-campus sexual assault of a student in the same class as the respondent.

²34 CFR 160.30

³ An offense classified as forcible or nonforcible sex offense under the uniform crime reporting system of the FBI (20 USC 1092(f)(6)(A)(v) including rape, fondling, incest, or statutory rape. In the State of Indiana, sexual assault is captured in Sexual Battery laws under IC 35-42-4-8. Statutory rape is defined at IC 35-42-4-3, and rape is defined in IC 35-42-4-1.

⁴ 34 USC 12291(a)(10) Dating violence means violence committed by a person—(A)who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B)where the existence of such a relationship shall be determined based on a consideration of the following factors: (i)The length of the relationship (ii)The type of relationship. (iii)The frequency of interaction between the persons involved in the relationship.

⁵ 34 USC 12291(a)(8) The term "domestic violence" includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

⁶ 34 USC 12291(a)(30) The term "stalking" means engaging in a course of conduct directed at a specific person that would cause a reasonable person to—(A)fear for his or her safety or the safety of others; or (B)suffer substantial emotional distress.

Sexual harassment prohibited by this Policy may take different forms. Examples might include:

- (1) Direct or implied threats that submission to sexual advances will be a condition of advancement or promotion in any endeavor, including but not limited to employment, work status, promotion, or academic grades;
- (2) Direct propositions of a sexual nature;
- (3) Unnecessary touching, hugging, or brushing against another person's body;
- (4) Sexually explicit statements, questions, or jokes; that a reasonable person ;
- (5) Remarks of a sexual nature about a person's clothing or body, sexual activity, sexual orientation, gender identity, failure to conform to stereotypical notions of masculinity or femininity, or previous sexual experience;
- (6) Physical assault or violence.

Sexual violence is a form of prohibited sexual harassment. Sexual violence includes physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent because of his or her drug or alcohol use, because of his or her temporary or permanent mental or physical incapacity, or because of his or her youth. Consent is informed, freely given, and mutually understood. Consent requires an affirmative act or statement by each participant. Consent is not passive.

There is no consent if:

- coercion, intimidation, threats, and/or physical force are used.
- a person is mentally or physically incapacitated or impaired by alcohol or drugs such that the person cannot understand the fact, nature, or extent of the sexual situation.
- a person is asleep or unconscious.

Consent to one form of sexual activity does not imply consent to other forms of sexual activity. Consent can be withdrawn. A person who initially consents to sexual activity is deemed not to have consented to any sexual activity that occurs after he or she withdraws consent. Finally, consent to previous sexual activity does not imply consent to future sexual activity.

Sexual violence includes sexual assault, rape, sexual battery, sexual abuse, and sexual coercion. Some examples of sexual violence include:

- Rape or sexual assault: sexual intercourse of any type with a person that has not consented to the intercourse.
- Sexual touching of any type with a person that has not consented to the touching.
- Sexual touching or intercourse of any type committed by force, threat, coercion or intimidation.
- Sexual touching or sexual intercourse of any type with a person who is asleep or unconscious for any reason including, but not limited to, drug or alcohol use.
- Exceeding the scope of consent by engaging in a different form of sexual activity than a person has consented to.
- Knowingly transmitting a sexually transmitted disease such as HIV to another person through sexual activity.
- Secretly videotaping sexual activity.

- Participating in any activity that will likely result in any type of sexual touching or intercourse with a person by force, without the person’s consent, or when the person is asleep or unconscious because of drug or alcohol use.

Sexual harassment does not include:

- (1) Discussions, communications, or actions that are sexual in nature but part of a legitimate academic exchange of ideas or artistic performance. As a University that values academic freedom and expression, there may be times when debates or performances of this type are acceptable and even encouraged; or
- (2) Any other harassment not based on sex, sexual orientation, or gender identity; but may still be subject to discipline under another Valparaiso University policy.

The University does not support any incidents of harassment even though the incident may not constitute sexual harassment. As such, it reserves the right to punish the instigator of such an incident under a different theory, for example, lacking collegiality. If there is any question whatsoever, the incident should be reported and the grievance process should be followed.

V. SEXUAL MISCONDUCT RESOURCES AND REPORTING OPTIONS

CONFIDENTIAL RESOURCES⁷	NON-CONFIDENTIAL RESOURCES
<p>On Campus:</p> <p>(1) Sexual Assault Awareness & Facilitative Education Office (SAAFE) (students only)</p> <ul style="list-style-type: none"> ▪ Crisis Line: 219.386.3128 ▪ Office: 219.464.6860 ▪ SAAFE.office@valpo.edu <p>(2) Counseling Center (students only)</p> <ul style="list-style-type: none"> ▪ 219. 464.5002 <p>(3) University Pastors (students and employees)</p> <ul style="list-style-type: none"> ▪ 219.464.5093 <p>(4) Student Health Center (students only)</p> <ul style="list-style-type: none"> ▪ 219.464.5060 <p>(5) Employee Assistance Program (employees only)</p> <ul style="list-style-type: none"> • 800.538.3543 <p>Off Campus: Students and Employees</p> <p>(6) The Caring Place</p> <ul style="list-style-type: none"> ▪ 219.464.2128 <p>(7) National Sexual Assault Hotline</p>	<p>On Campus: Students and Employees</p> <p>(1) Title IX Coordinator</p> <ul style="list-style-type: none"> ▪ Title9@valpo.edu ▪ 219.464.6370 ▪ https://goo.gl/forms/U0AwS2FJj64MpKYI3 <p>(2) Valparaiso University Police Department</p> <ul style="list-style-type: none"> ▪ 219.464.5430 <p>(3) Responsible Employees</p> <p>(4) Discrimination Complaint Advisors</p> <p>Off Campus: Students and Employees</p> <p>(5) Porter County Prosecutor’s Office</p> <ul style="list-style-type: none"> • 219.465.3415

⁷ Confidential Resources will report crimes to appropriate University personnel for inclusion in the annual crime statistics disclosure, though the victim’s name will be withheld from the report. Further, all University publicly-available recordkeeping excludes personally-identifiable information to the extent permitted by law.

<ul style="list-style-type: none"> ▪ 800.656.HOPE <p>(8) RAINN (Rape Abuse Incest Nat'l Network)</p> <ul style="list-style-type: none"> ▪ 800.799.7233 <p>(9) Porter Hospital Emergency Room</p> <ul style="list-style-type: none"> • 219.983.8300 	
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Confidential vs. Non-Confidential Resources

Confidential resources do not share information about your report with anyone else without your permission or unless required by law (e.g., if there is an imminent threat to yourself or others, or abuse of a child.) A student or employee who has been a target or has been accused of discrimination, harassment, or sexual misconduct, and wishes to keep his or her identity and information private and confidential, should seek a confidential resource listed above. Non-confidential resources are resources that are engaged to take administrative action on the complaint. The only way to impose a sanction is by making a non-confidential report. A student or employee who has been a target or has been accused of discrimination, harassment, or sexual misconduct, and wishes to report an incident to the University or Police for the purpose of filing a complaint, beginning an investigation, or receiving disciplinary sanctions should seek a non-confidential resource listed above. The non-confidential resources will protect a student or employee’s privacy by limiting the people with whom they share the reported information; however, non-confidential resources cannot guarantee complete confidentiality, as they must notify and report to the Title IX Coordinator.

Non-Confidential Reporting Options

Title IX Coordinator. The Title IX Coordinator coordinates the University’s compliance with Title IX of the Higher Education Amendments of 1972, Title VI of the Civil Rights Act of 1964, Title VII of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, and most applicable civil rights laws.⁸ The Title IX Coordinator is appointed by the President and has four primary duties:

- (1) Assures that the proper University processes, related to a potential claim of discrimination, harassment, or sexual misconduct are followed so that an accurate determination and proper sanctions can be made;
- (2) Serves as a neutral fact finder, treating the alleged victim and accused in a fair and respectful manner, upon notice of a potential claim of discrimination or harassment;
- (3) Provides advice, consultation, and the results of any fact finding endeavor to University personnel responsible for determining if this Policy has been violated and sanctions as the result of such violation; and
- (4) Educates and trains the University community on this Policy.

In the execution of these duties, the Title IX Coordinator is responsible for monitoring, advising, and overseeing all complaints involving discrimination harassment, and sexual misconduct, and identifying

⁸ The Title IX Coordinator does not serve as the disability rights or ADA/Section 504 Coordinator for the University. The Director of Access and Accommodations Resource Center serves as the University’s ADA/Section 504 Coordinator and can be contacted at 219-464-6496 or aarc@valpo.edu. The Executive Director & Chief Human Resources Officer handles those aspects of ADA/Section 504 compliance involving employees of the University.

and addressing any patterns or systemic problems that arise during the review or administration of any aforementioned complaints.

The Title IX Coordinator is not a victim's advocate, administers his/her duties in a neutral unbiased manner, and makes no determination as to whether there has been a violation of this Policy and or what sanctions should be implemented. The Title IX Coordinator is also responsible for assessing the campus climate, implementing and coordinating any remedial or interim measures with the proper University administrator, and providing training to campus community members. The Title IX Coordinator will be available to meet and provide assistance to individuals, who believe they have been a target or victim of discrimination, harassment, or sexual misconduct, *but the Title IX Coordinator is not an emergency contact person that provides immediate assistance for anyone who has been sexually assaulted or is a victim of a crime*. Emergency care concerns should be directed to the Valparaiso University Police or Porter Hospital. The Title IX Coordinator is adequately trained to deal with issues arising from discrimination, harassment, or sexual misconduct on campus, has a thorough understanding of the grievance processes, and is available as a general resource in addition to overseeing the administration of a discrimination, harassment, and sexual misconduct complaint processes.

The Title IX Coordinator is located at 134 Kretzmann Hall, and can be contacted at 219-464-6370 (office), Title9@valpo.edu, or by completing an intake form at <https://goo.gl/forms/U0AwS2Fj64MpKYI3>.

Valparaiso University Police. Valparaiso University does not tolerate violence and strongly encourages all persons who feel they may have been a victim of violence while on campus or participating in a University endeavor to report the incident to the Valparaiso University Police Department. Victims may notify proper law enforcement authorities, including Valparaiso University Police Department and local police; be assisted by Valparaiso University Police Department in notifying law enforcement authorities if the victim so chooses; and decline to notify such authorities. Discrimination Complaint Advisors (as defined below) and the Title IX Coordinator will assist a victim in notifying the Valparaiso University Police Department and/or local police if requested by the victim.

An individual who believes they have been a victim of sexual violence is encouraged to immediately contact the Valparaiso University Police Department at 219.464.5430. An officer will:

- Provide for the person's immediate need for safety;
- Call a counselor/advocate to come on campus to speak with the person;
- Provide transportation to the emergency room if requested;
- Gather information pertaining to the incident;
- Advise the person on obtaining a restraining order, and by request, notify someone with authority over the assailant so contact between the two parties can be limited; and
- Call the Title IX Coordinator to assist in the matter.

An individual is not required to report the Valparaiso University Police Department immediately;

however, it is important to preserve any evidence of the incident as it may be necessary to prosecute a crime or obtain an order of protection. An individual is strongly encouraged not to shower, douche, brush teeth, eat, or change clothing in an effort to preserve physical evidence. If a victim changes clothes, a victim is encouraged to put all clothing wearing at the time of the incident into a paper bag.

Responsible Employees. Certain “Responsible Employees” have a duty to promptly report when the responsible employee knows or reasonably should know of a possible discrimination, harassment, or sexual misconduct. Responsible Employees are those;

- (1) who have the authority to take action to redress discrimination, harassment or sexual misconduct;
- (2) who have been given the duty of reporting incidents of discrimination, harassment or sexual misconduct such as sexual violence, sexual harassment, domestic violence, dating violence, stalking, or any other misconduct to the Title IX Coordinator or other appropriate school designee.

Responsible Employees include the following: faculty, adjunct faculty, administrators, department chairs, Discrimination Complaint Advisors (DCAs), resident assistants (RAs), and resident life and student affairs staff. Responsible Employees must promptly report incidents of discrimination, harassment, and sexual misconduct to the Title IX Coordinator in the Valparaiso University Office for Civil Rights. Failure to report constitutes a violation of this Policy and may subject the violator to sanctions.

Responsible Employees may report incidents by completing the Valparaiso University Office for Civil Rights Intake Form available at: <https://goo.gl/forms/U0AwS2FJj64MpKYI3>. Furthermore, Indiana law requires that anyone who has reason to believe a minor (under 18 years of age) has been sexually assaulted immediately report the matter to the Valparaiso University Police Department or other local law enforcement.

Discrimination Complaint Advisors (DCAs). DCAs are appointed by the Title IX Coordinator. A list of current DCAs can be obtained from the Title IX website at valpo.edu/titleix. If invoked, the role of the DCA is to stay in close contact with the individual and serve as a resource for information about procedures, services, and techniques for resolving the situation. The DCA is responsible for providing impartial assistance, identifying, and discussing the options an individual who feels he or she has been discriminated against, harassed, or a target of sexual misconduct or an individual who has been accused of discrimination, harassment, or sexual misconduct might wish to follow. These options include both an Informal and Formal Complaint/Resolution Process. The DCA will report complaints to the Title IX Coordinator, who will provide further assistance and oversight into procedures as required.

Porter County Prosecutor’s Office. If you have been assaulted, you can also contact the Porter County Prosecutor’s office at 219.465.3415. The Prosecutor’s office does not report to Valparaiso University. If you would like to make a report at Valparaiso University, you will need to file separately from your call to the Prosecutor’s office.

Confidential Resources.

Sexual Assault Awareness and Facilitative Education (SAAFE) Office (Students Only). SAAFE is an on-campus crisis center that provides advocacy services for those who have been affected by sexual harassment. For emergencies, call the crisis line at 219.386.3128. For non-emergencies during business hours, call 219.464.6860 or email the office at SAAFE.office@valpo.edu.

University Pastors (Students and Employees). Valparaiso University pastoral counselors are individuals associated with the Lutheran religious denomination and is functioning within the scope of that recognition as a pastoral counselor. To contact the University Pastors for confidential counseling, call 219.464.5093.

Counseling Center (Students Only).

The Counseling Center provides counseling and psychotherapy services to full-time undergraduate and graduate students with personal, interpersonal, family, and academic performance issues. In addition to individual counseling and consultation, Counseling Center staff offer numerous educational presentations through outreach services; psychiatric availability for students in counseling who require medications; and psychological crisis coverage for the University community. The Counseling Center hours are 8 a.m.- noon and 1 - 5 p.m. Monday through Friday. Their office is located in Alumni Hall at 1602 LaPorte Avenue (across from Lankenau Hall). They can be reached by email at Counseling.Center@valpo.edu by phone at 219.464.5002, or on their website at valpo.edu/counseling-services/.

Porter Emergency Room (Students and Employees). Porter Hospital is the local city hospital. Porter may charge for services. Medical personnel will call the VUPD. A person choosing this option for requesting assistance may expect appropriate professionals to fill the following roles:

- Emergency Room personnel will conduct a physical examination, treat any injuries, gather physical evidence of the assault and supply aftercare instructions;
- VUPD officer will interview relevant parties, including the victim, to initiate an official investigation; and
- For students, the SAAFE and/or Counseling Center advocate will provide emotional support, safeguard the student's right to make choices, assist the person in examining alternatives and begin the recovery and re-empowerment process.

Employee Assistance Program (EAP) (Employees Only). EAP is short-term counseling available for employees. Services are provided as a benefit with no charge to employees. Call the Employee Assistance Program at 800.538.3543 to develop a solution to help resolve your concerns in up to three sessions.

Off-campus services available to assault victims. (Students and Employees). If you have been assaulted, you may also contact any of the following off-campus services and hotlines which will not report back to Valparaiso University.

- National Sexual Assault Hotline 1.800.656.HOPE

- Sexual Assault Recovery Project 219.465.3408
- Victim’s Assistance Unit 219.465.3433
- Porter Starke Services 219.531.3500

Available Reporting Options

Employees and students can file an Informal or Formal Complaint anytime. Employees and students may file an Informal or Formal complaint pursuant to the Informal and Formal Complaint/Resolution Processes as proscribed below. Only formal complaints may be filed in the case of a student complainant against an employee respondent. Employees and students may also file a criminal complaint with the Valparaiso University Police Department.

The Title IX Coordinator may take all reasonable steps and the University may have a legal obligation to investigate a potential violation of this Policy in the absence of an Informal or Formal Complaint or known alleged victim. The Title IX Coordinator may determine there is a pattern of discrimination, harassment, or sexual misconduct, or an immediate, continuing or broader threat/danger to the campus community. In such a case, the Title IX Coordinator may file a Formal Complaint on behalf of the University, against an accused employee or student. All reporting mechanisms may also apply to any student or employee who has been discriminated, harassed, or a target of sexual misconduct by another student or employee off campus or during a non-University activity. Finally, the University has the authority to take interim action against any alleged violator while the applicable complaint processes is pending. The purpose of any interim action is to separate the complainant from the alleged violator or alleviate any potential danger while the applicable process is pending. Failure to comply with an interim action shall constitute a violation of this Policy, subjecting the violator to sanctions.

Supportive Measures

Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint, or where no formal complaint has been filed.

With the advice and consultation of the Title IX Coordinator, and where appropriate, the SAAFE Office, the Office of Student Affairs, or Human Resource Services, assists students or employees with interim measures such as academic, housing, and transportation accommodations, in addition to no contact directives, that are reasonably available. Regardless of whether a student or employee decides to report an incident of sexual misconduct, supportive measures and accommodations are available upon the victim’s request and will be implemented when they are reasonably available.

At any time, a student or employee may seek a court-issued protective order at the Porter County Clerk’s Office located at 16 East Lincolnway, Suite 209, Valparaiso, Indiana 46383. If an order of protection, no contact order, restraining order, or another similar lawful order issued by a criminal, civil, or tribal court is obtained, a copy should be provided to Valparaiso University Police Department or the Title IX Coordinator. The University and Valparaiso University Police Department will take all legal and reasonable steps to implement such an order.

In cases where University officials have reasonable fears about campus safety due to a Respondent's continued presence on campus following a complaint under this policy, the University reserves the right to implement an interim separation or suspension pending the case investigation, hearing, and appeal. In cases against students, the Vice President of Student Life or their designee can enact an interim suspension following the procedures in the "Interim Suspension" portion of the Student Judicial System Policy located in the *Student Handbook*. In cases against employees, the Vice President or Provost over the Respondent may postpone the sanctions or suspend the violator, with pay, until the time to appeal the determination has expired or the appeal process has been exhausted.

III. RETALIATION, MALICIOUS COMPLAINTS, FALSE INFORMATION

It is a violation of this Policy to retaliate against an individual who makes a good faith report or files a complaint pursuant to this Policy. Retaliation includes intimidation, threats, coercion, or discrimination against any individual for the purpose of interfering with any right or privilege secured by title IX, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing. A retaliation complaint will be considered a separate claim from the original complaint, with separate proceedings and subjecting the alleged violator to separate disciplinary action.

However, any individual who knowingly or recklessly files a false complaint claiming a violation of this Policy, or who knowingly or recklessly provides false information in the implementation of the process to enforce this Policy, may be subject to disciplinary action.

IV. INVOLUNTARY WITHDRAWAL/DISMISSAL OF COMPLAINTS

The Title IX Coordinator may unilaterally withdraw or dismiss any complaint or filing in the following circumstances by providing written notice of the dismissal and reasons therefore simultaneously to the parties:

1. The complaint or filing's allegations would not constitute a violation of this Policy;
2. The complaint or filing is used to raise matters that exceed the scope or purpose of this Policy, or that are otherwise irrelevant, unresponsive, or unrelated to the administration of the complaint resolution process under this Policy;
3. The complaint or filing is frivolous or otherwise arises (in whole or in part) out of bad faith, retaliation, speculation, or abuse of the complaint resolution process;
4. The complaint or filing is redundant or unnecessarily duplicative;
5. The complaint was previously resolved;
6. The complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein;
7. The Respondent is no longer enrolled or employed by the University;
8. Specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein; and/or
9. For purposes of consolidation of formal complaints 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 sexual harassment arise out of the same facts or circumstances.

The Title IX Coordinator may unilaterally reinstate any complaint or filing that is withdrawn or dismissed.

V. SANCTIONS/DISCIPLINE

Violations of this Policy can be very serious matters having far-reaching effects on the lives and careers of individuals or success of students. Employees, students, and guests who violate this Policy are subject to disciplinary action. Possible sanctions for a person found to be in violation of this Policy include, but are not limited to, the following:

- (1) Oral or written reprimand;
- (2) Required attendance at a harassment/discrimination sensitivity program;
- (3) Oral or written warning;
- (4) Loss of salary or benefits or demotion;
- (5) Transfer or change of job, class, residential assignment, or location, including removing the person from being in a position to retaliate or further harass or discriminate against the complainant;
- (6) Suspension, probation, termination, dismissal, expulsion, or removal from campus; or
- (7) Other action Valparaiso University deems appropriate under the circumstances including termination of contractual arrangements with the University.

While counseling is not considered a sanction, it may be offered or required in combination with sanctions. If a student or student groups are found to be in violation of this Policy, any of the sanctions set forth in the *Student Handbook* may also be involved. Failure to comply with sanctions shall constitute a violation of this Policy and will ordinarily result in further disciplinary action.

For sanctions following formal complaints against students. The Committee will recommend sanctions after the hearing. The Dean of Students will review sanction(s) recommended and may modify the sanction(s) if so inclined.

For sanctions following formal complaints against faculty or staff. The Committee will recommend sanctions after the hearing. The employee's respective Vice President or Provost will review sanction(s) recommended and may modify the sanction(s) if so inclined. However, should the Provost seek to impose suspension or expulsion of a tenure or tenure-track faculty member, additional process may be due pursuant to the *Faculty Handbook*.⁹

VI. INFORMAL HARASSMENT, AND SEXUAL MISCONDUCT COMPLAINT/RESOLUTION PROCESS

Purpose

⁹ To the extent there are any inconsistencies between the *Harassment and Sexual Misconduct Policy* and other University grievance, complaint, or discipline procedures, the *Harassment and Sexual Misconduct Policy* will control.

Using the Informal Complaint/Resolution Process for a discrimination, harassment, or sexual misconduct complaint is not required or necessarily encouraged, but the alleging individual may prefer to attempt to resolve the matter utilizing this Process. The purpose of this Process is to expeditiously resolve the matter to the satisfaction of the complainant without having to undergo a Formal Complaint/Resolution Process. Students must use the formal complaint process, not an informal complaint, to resolve allegations that an employee sexually harassed a student.¹⁰

Process

To invoke this Process, the complainant must file an Informal Complaint Form at: <https://goo.gl/forms/cZZ9yNM30tCb4RqC2>. However, the complainant may also contact the Title IX Coordinator, an advisor, or the SAAFE office (students only), to assist in filing an Informal Complaint Form. For complaints against students, the Dean of Students or their designee, will facilitate the process. For complaints against employees, the Executive Director of Human Resource Services, or their designee, will facilitate the process. In all cases, the complaint will be forwarded to the Respondent.

If the matter does not result in the Complainant's desired outcome, he or she may agree to a different outcome, or reject the resolution and file a Formal Complaint. If the alleging individual is satisfied with the outcome or it results in his/her desired outcome, the results will be documented and shared with the Title IX Coordinator and the matter will be resolved.

VII. FORMAL HARASSMENT, AND SEXUAL MISCONDUCT COMPLAINT/RESOLUTION PROCESS

Purpose

The purpose of this Process is to provide avenues for formally addressing and resolving claims of harassment, or sexual misconduct, and taking action against a student or employee who has violated the University's policy that prohibits harassment, or sexual misconduct. This Process applies to any student, employee, visitor or guest wanting to make a complaint against a student or employee, but this Process does not apply to any tenure-track faculty member claiming that he/she was denied tenure or not renewed as the result of prohibited harassment. Such complaints are made pursuant to procedures set forth in the *Faculty Handbook*.

Confidentiality

The Title IX Coordinator is in the best position to evaluate confidentiality requests, though the University may reasonably determine that another employee would be more appropriate. In the event a complainant requests confidentiality or asks that a complaint not be investigated, the University will take all reasonable steps to investigate and respond to the complaint consistent with a request for confidentiality or a request not to pursue an investigation. If a complainant insists that his or her name not be disclosed to the alleged perpetrator, the University's ability to respond may be limited. The University reserves the right to initiate an investigation despite a complainant's request for confidentiality in limited circumstances involving serious or repeated conduct or where the alleged

¹⁰ 34 CFR 106.45

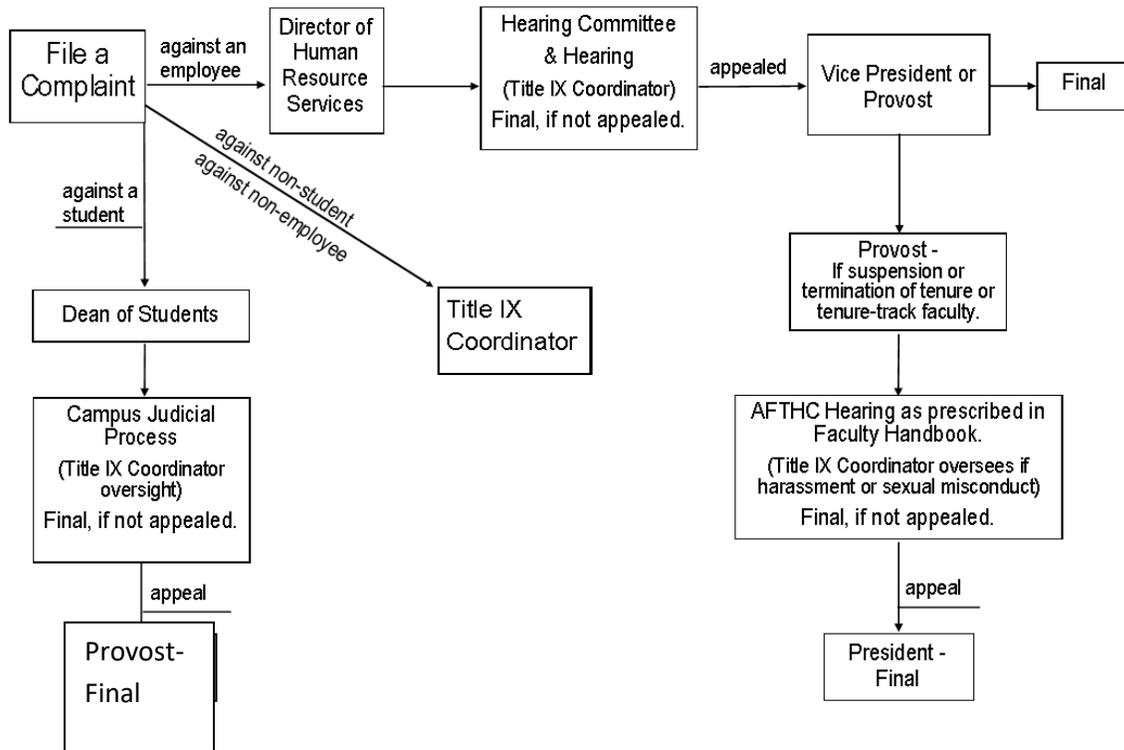
perpetrator may pose a threat to the campus community, as determined by the Title IX Coordinator and appropriate University administrator.

Starting the Process

A Formal Complaint Form can be obtained online at: <https://goo.gl/forms/1PSiicvfsHsGENkh2>. The Form will require the complainant to set forth sufficient details of the incident(s), along with alleged violators, witnesses, expert witnesses, evidence (included or attached), and relief sought. Complainants are encouraged to file their complaint in a timely manner to preserve evidence. The Executive Director & Chief Human Resources Officer or designee will investigate the claims and meet with the Complainant. Assuming all facts as alleged are true, if the complaint does not meet the thresholds under Section IV of this Policy, the complaint may be involuntarily dismissed. The alleged violator(s) may submit a written response to the Executive Director & Chief Human Resources Officer, attach additional evidence to the response, and name any additional witnesses. Any written response must be submitted to the Executive Director & Chief Human Resources Officer within ten (10) calendar days after the alleged violator received a copy of the Form. The Executive Director & Chief Human Resources Officer will immediately forward a copy of the written response to the Complainant. All members of the Valpo community should understand that this Policy is not intended to keep them from filing a criminal complaint if they so choose. The University's process is separate from a criminal investigation or other criminal proceedings. The University's responsibilities under this Policy are not relieved if a criminal complaint is filed in court or if there is an outside law enforcement agency investigating the matter. Further, the University can find a violation of this Policy even if the criminal standard for a conviction cannot be met.

Discrimination, Harassment, Sexual Misconduct

Formal Complaint/Resolution Process at a Glance



Investigation and Procedures

The University investigation and resolution proceedings shall be prompt, fair, and impartial. During the investigation and resolution of a complaint, the complainant and respondent shall have equal rights. They include:

- (1) equal opportunity to identify and have considered witnesses, expert witnesses, and other relevant evidence;
- (2) similar and timely access to all information considered by the Committee;
- (3) equal opportunity to review any statements or evidence provided by the other party; and
- (4) equal access to review and comment upon any information independently developed by an investigator or the Committee.

The University will strive to resolve a complaint within sixty (60) calendar days of receiving it, though certain resolutions may take longer depending on the circumstances. If resolution will take longer than sixty (60) calendar days, the parties will be given notice and an explanation in writing. The University's internal investigation is separate from the investigation of outside law enforcement agencies, and the University will only delay its investigation due to an outside investigation if particular circumstances warrant such a delay. Delays for this reason will typically not exceed 3–10 calendar days.

Preceding the interview for allegations potentially constituting sexual harassment, the parties will receive notice of the allegations including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting sexual harassment, and the date and location of the alleged incident, if known.¹¹ The Respondent is presumed not responsible for the alleged conduct unless or until a determination regarding responsibility is made at the conclusion of the grievance process.¹²

Investigations will be completed by the Valparaiso University Police Department for complaints against students, and by the Human Resource Services for complaints against employees. In all cases, the Title IX Coordinator will provide consultation and oversight of the investigation.

Both parties will have an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which the University does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, hereinafter called the Investigative Report. Prior to the hearing, the University through either the Dean of Students or their designee or Human Resource Services or their designee will send to each party and the party's advisor the Investigative Report. The parties will have at least ten (10) days to submit a written response to the Dean of Students, Human Resource Services, or their designee. The party's submissions shall be added to the Investigative Report. The Investigative Report will be made available to all parties at least ten (10) days prior to a hearing.

Hearing

The Campus Judicial Board procedures for complaints against students is convened by the Dean of Students or their designee and are captured in the *Student Guide to University Life*. The Employee Discrimination Hearing Committee shall consist of three (3) employees randomly chosen by the Title IX Coordinator from a pool of at least 10 (10) employees appointed by the Title IX Coordinator. The pool of employees receives annual training on issues related to sexual misconduct, investigation, and the hearing process. The pool shall consist of at least five (5) employees, and five (5) tenured or tenure-track faculty members. If the alleged violator is a faculty member, the Employee Discrimination Hearing Committee shall consist of all faculty. For other employees, it shall consist of at least one (1) faculty member and one (1) employee. Hereinafter, the decision-making body, whether it is the Campus Judicial Board for students or the Employee Discrimination Hearing Committee for employees, shall be referred to as "the Committee."

The Committee may dismiss any complaint by majority vote if, assuming the allegations were true, it would not constitute a violation of the University's Policy against discrimination, harassment, or sexual misconduct. The President of the University may appoint outside legal counsel or a consultant to guide or direct the Committee. The Title IX Coordinator shall oversee the process, may provide the

¹¹ 34 CFR 106.45

¹² 34 CFR 106.45

Committee advice and consultation on the process, but shall have no authority over the Committee. The Title IX Coordinator or designee in the Dean of Students or Human Resource Services shall choose the chair of the Committee.

Should a Committee member have a conflict of interest in hearing the matter, he or she must withdraw from the matter. In such a case, the withdrawing Committee member will be replaced by a non-conflicted similarly situated person.

The Committee will facilitate a hearing to determine, by a preponderance of the evidence, whether the complainant was discriminated against, harassed, or a target of sexual misconduct in violation of University policy.

At the hearing, standard courtroom procedures and rules of evidence will not apply, except all evidence must be relevant. Before a complainant, respondent, or witness answers a cross-examination or other question, the decision-maker must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.¹³ In cases of alleged sexual misconduct, questioning about the complainant's sexual predisposition or prior sexual behavior are not relevant and will not typically be permitted, especially when the purpose is purely to show the complainant's sexual predisposition. However, in certain circumstances it may be permissible, such as if offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent. If a complainant or a respondent fails to appear at a scheduled hearing, the Committee may proceed with the case, unless the Chair excuses the absence.

At the Hearing, the Committee must review the Investigative Report; separately interview and question the complainant and alleged violator(s); and call to attendance available witnesses and expert witnesses they determine might have relevant information. The complainant and the respondent(s) may have advisors of their choice at the hearing or any related meeting. The advisor may be, but is not required to be, an attorney. If a party does not obtain their own advisor, the University will appoint one for them from the Discrimination Complaint Advisors. Advisors are required to cross-examine all parties and witnesses, but may not answer questions on behalf of their party or otherwise participate in the hearing. Members of the Committee may not make negative inferences regarding responsibility from any alleged violator's refusal to participate in the process or refusal to submit to cross-examination, or answer questions from the Committee members.

When requested, the University will make arrangements so that the complainant and the alleged violator(s) do not have to be present in the same room at the same time, but hearings must be live either in person or with audio-visual technology. The University will create either an audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection or review at their request.

¹³ 34 CFR 106.45

Determination

Immediately following the hearing, the Committee shall meet and render a determination by a majority vote. Within five (5) calendar days after the hearing, the Committee's determination shall be written by the Chair, identify the allegations potentially constituting sexual harassment, a description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held, findings of fact supporting the determination, conclusions regarding the application of the recipient's code of conduct to the facts, a statement of, and rationale for, the results as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the recipient imposes on the respondent, and whether remedies designed to restore or preserve equal access to the University's education program or activity will be provided by the recipient to the complainant, and the University's procedures and permissible bases of the complainant and respondent to appeal. If the Committee finds that the Respondent's conduct violates other university policies, the Committee may recommend sanctions to the Respondent's immediate supervisor or the Dean of Students or designee. The matter shall be final and binding unless appealed.

In cases against employees, the Vice President or Provost over the Respondent may postpone the sanctions or suspend Respondent, with pay, until the time to appeal the determination has expired or the appeal process has been exhausted. The Chair may attach any relevant documents to the written determination. Both the complainant and the respondent shall be simultaneously notified. In cases against students, the Vice President for Student Life or designee may execute an interim suspension pending appeal under the Policies Regarding Psychological Issues of the *Student Handbook*.

A copy of the Committee's written determination shall be provided to the Title IX Coordinator and either the Dean of Students or the immediate supervisor, depending on the Respondent's relationship with the University.

When an individual admits violating this Policy, the Committee will not hold a hearing. However, the Committee will convene to determine appropriate sanctions. Meeting in this manner is not a hearing and, therefore, is not bound by hearing procedures. The procedures to be used by the Committee for determining a sanction are informal and determined by the Chair with approval of the Title IX Coordinator.

Appeals Process

The complainant or respondent can appeal the Committee's determination by submitting a written appeal to the respondent's respective Vice President or Provost within five (5) calendar days from the date of receipt of the Committee's determination. The appeal must be dated, signed by the party appealing, set forth reasons why the Committee's determination is unjustified, and include a copy of the determination. The Vice President or Provost will immediately forward a copy of the appeal to the Chair of the Committee, the Title IX Coordinator, the Dean of Students or Human Resource Services as appropriate, and the non-appealing party. The Chair will provide the Vice President or Provost a written response within five (5) calendar days from the date of his/her receipt of the appeal, and the

non-appealing party may provide a written response within five (5) calendar days from the date of his/her receipt of the appeal.

The respective Vice President or Provost has the discretion to review the determination of the Committee limited to the following circumstances:

1. Procedural irregularity that affected the outcome of the matter
2. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made that could affect the outcome of the matter; and
3. The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondent that affected the outcome of the matter.

The Title IX Coordinator will be available to provide the Vice President, Provost, or COO advice. The Vice President, Provost, or COO shall issue a written determination within fifteen (15) days of his/her receipt of the appeal. A copy of the written decision shall be provided to the appealing party, the non-appealing party, the Title IX Coordinator, and the parties' personnel or student files. All decisions of the Vice President or Provost are final and binding. However, the decisions of a Provost that support a determination that a faculty member violated the University's policy against discrimination, harassment, or sexual misconduct may be subject to additional process pursuant to the *Faculty Handbook*.