



POLICIES AND PROCEDURES

Sex Discrimination, Sex-Based Harassment and Sexual Misconduct Policy (for conduct that occurred after August 1, 2024)

POLICY:

Utica University is committed to providing a learning and working environment in which all interpersonal relationships are based upon respect and dignity. Therefore, in accordance with Title IX of the Education Amendments of 1972 (Title IX), the Clery Act, the Violence Against Women Act, and New York Education Law Article 129-B, Utica University will not tolerate sex-based harassment or sexual misconduct, which are forms of discrimination on the basis of sex, that include any of the following when they impact or have the potential to impact the educational or employment environment of any members of the University community: sex discrimination, sex-based harassment (including harassment based on gender identity, gender expression, or transgender status); sexual assault; domestic or dating violence; stalking; sexual exploitation; or other behavior prohibited by this policy.

Utica University endeavors to provide a fair, impartial, and prompt response when sex discrimination (including sex-based harassment) or other forms of sexual misconduct is/are alleged to have occurred within the University community. Reports of such conduct will be promptly and thoroughly investigated either through a process based on Title IX regulations, if applicable, or through an alternative investigative process.

Individuals who are found to have been engaged in sex discrimination (including sex-based harassment) or other forms of sexual misconduct will be sanctioned following guidelines established in the applicable handbook, contract, or policy. More specifically, any individual who engaged in such behavior will be subject to disciplinary action through the appropriate disciplinary process.

The University encourages any individuals covered by this policy who believe they are the victim of sex discrimination (including sex-based harassment) or other forms of sexual misconduct to report it and to take steps to preserve evidence, as it may be helpful in criminal and/or University disciplinary proceedings. Individuals who believe they are a victim of such conduct have the option of filing a report with the University, with local law enforcement, or with both. Those wishing to notify local law enforcement authorities will be assisted in doing so. Because the standards for finding a violation of criminal law are different from the standards in this policy, criminal investigations or reports will not determine whether or not a violation of this University policy has occurred.

For the purposes of this policy, the word “campus” refers to any property leased or owned by Utica University.

SCOPE:

This policy and its procedures apply to all Utica University students, faculty, and staff members. In addition, independent contractors, vendors, visitors, volunteers, alumni, and other guests of the University are expected to comply with this policy. This policy covers all academic, educational, co-curricular, athletic, and other University programs, including those that may take place off campus. Conduct that occurs off campus and not

in connection with University programs may violate this policy if the conduct creates a threatening or hostile environment on campus or within a University program, or if the incident causes concern for the safety or security of the University's campus or otherwise impacts the campus community and/or the operation of University programs or activities. This policy also applies regardless of the reporting party's or responding party's race, creed, color, sex, pregnancy, ethnic or national origin, religion, marital status, age, sexual orientation, gender identity, gender expression, veteran status, disability, citizenship status, genetic predisposition, domestic violence victim status, or other protected status under applicable local, state, or federal law.

One or more of the University's personnel policies or faculty and staff handbook policies may overlap with this policy in a particular situation. The processes described in this policy apply to any situation where a student is the reporting party or responding party (as defined below). In all other situations, the University reserves the right to apply this process or another applicable University policy or process. The University will apply this process to any situation where the University determines that Title IX requires the application of this process.

This policy is effective on August 1, 2024, and will only apply to Prohibited Conduct that allegedly occurred on or after August 1, 2024. For Prohibited Conduct allegedly occurring prior to August 1, 2024, please see the previous policy located here:

www.utica.edu/policies/media/sexual_harassment_and_sexual_misconduct.pdf?r=8F2DB617-FD16-4966-8A8C4ABA3DBA4C55

REASON FOR POLICY:

Utica University has an ethical and legal obligation to create a working and learning environment free from all forms of discrimination and harassment, including sexual assault, dating violence, domestic violence, stalking, or any other form of sexual misconduct, and is committed to fostering a healthy and safe environment in which every member of the University community can realize their fullest potential. This policy has been developed to reaffirm these principles, to define community expectations, to establish a mechanism for determining when those expectations have been violated, and to provide recourse for those individuals whose rights have been violated.

The cost of sex discrimination (including sex-based harassment) or other forms of sexual misconduct to individuals is high and can include, but is not limited to, physical injury or illness, depression, feelings of helplessness, headaches, substance abuse, anxiety, sleep disturbances, and disordered eating. The cost of such misconduct to the University can include, but is not limited to, decreased productivity, absenteeism, increased demand for services needed to address issues raised for the targets of harassing behavior, and eroded trust in the institution. Sex discrimination (including sex-based harassment) or other forms of sexual misconduct may also result in a decrease in morale, reduce participation in life-enriching student activities, and lower student success, and may interfere with an employee's ability to perform their job duties and a student's ability to fully participate in the educational process.

All members of the Utica University community have a responsibility to cooperate in creating a climate where sex discrimination (including sex-based harassment) or other forms of sexual misconduct do not occur. In addition to ensuring legal compliance, this policy is designed to prepare members of the University community for that responsibility by creating an awareness of behavior that is considered to be sex discrimination (including sex-based harassment) or other forms of sexual misconduct, as well as fostering an understanding of the procedures Utica University will use to address such behavior in a way that protects reporting parties, witnesses, and responding parties.

Academic Freedom

Utica University is an academic institution at which academic freedom is necessary and valued. The University will not construe this policy to prevent or penalize a statement, opinion, theory, or idea offered within the bounds of legitimate, relevant, and responsible teaching, learning, working, or discussion.

ROLES AND RESPONSIBILITIES:

There are a number of individuals who have key roles and responsibilities throughout the reporting, investigatory and adjudication processes. These individuals are required to be free from conflicts of interest or bias for, or against, reporting parties and responding parties.

Title IX Coordinator

Utica University’s Title IX Coordinator is responsible for receiving reports of sex discrimination, including sex-based harassment, and other forms of sexual misconduct. Reports to the Title IX Coordinator may be made at any time (including non-business hours) by phone, e-mail, or regular mail. If a report is determined to meet the definition of a potential violation of this policy, the Title IX Coordinator will be responsible for overseeing the resulting processes and for providing all required disclosures and notifications to the reporting and responding parties. The Title IX Coordinator will also communicate any supportive measures to reporting and responding parties. All of this will be done in a prompt and fair manner. The Title IX Coordinator is also responsible for monitoring the University’s education programs and activities for barriers to reporting information about conduct that reasonably may constitute a violation of this policy, and taking steps reasonably calculated to address such barriers.

The Title IX Coordinator works with others at Utica University to make sure policies and procedures are updated and communicated as needed.

Utica University’s Title IX Coordinator is:

Nina Gray
Human Resources Generalist/Title IX Coordinator
Phone Number: 315-792-3012
Email address: nnggray@utica.edu
Office Location: 124 Addison Miller White Hall (Utica University Main Campus – 1600 Burrstone Road, Utica, NY 13502)

Utica University also has Deputy Title IX Coordinators who can coordinate investigations in the absence of the Title IX Coordinator, or who is available to coordinate cases that involve employees. The Deputy Title IX Coordinators are:

Dave Fontaine, Director of Athletics and Physical Education
Phone Number: (315) 792-3050
Email Address: dsfontai@utica.edu
Office Location: Clark Athletic Center (Utica University Main Campus – 1600 Burrstone Road, Utica, NY 13502)

Marissa Hall, Executive Director of Student Living
Phone Number: (315) 792-3285
Email Address: mmhall1@utica.edu
Office Location: 206 Ralph F. Strelbel Student Center (Utica University Main Campus – 1600 Burrstone Road, Utica, NY 13502)

Lauryn Moore, Associate Dean of Students & Campus Engagement
Phone Number: (315) 223-2598

Email Address: lamoore@utica.edu

Office Location: 206 Ralph F. Strebel Student Center (Utica University Main Campus – 1600 Burrstone Road, Utica, NY 13502)

Title IX Investigators

Title IX investigators are Utica University employees who are trained to conduct fair and comprehensive investigations into complaints of sex discrimination (including sex-based harassment) or other forms of sexual misconduct. These individuals receive training specific to conducting impartial investigations with fairness to both parties and are also trained in trauma informed practices. Title IX investigators are assigned to relevant evidence and prepare a report of that evidence to the Title IX Coordinator, who then provides it to the decision-maker (see below).

Decision-Maker

The decision-maker is a Utica University employee who is responsible for reading investigative reports provided by the Title IX Coordinator, convening a live hearing when necessary, managing the live hearing process, and determining whether the responding party is responsible for alleged violations and, if applicable, appropriate sanctions, based on all of the information provided. Decision-makers receive specific training to prepare them for this responsibility.

For cases in which the responding party is a student, the decision-maker is the Director of Student Conduct and Community Standards, or another party designated by the University (such as another trained member of the Student Affairs team). For cases in which the responding party is an employee, the decision-maker is a staff member in the Office of Human Resources.

Advisor

The reporting party and responding party have the opportunity to select someone to be with them throughout the investigatory and hearing processes. This individual, called the “advisor of choice” or “advisor”, may, but is not required to, be an attorney. In cases where a student does not have access to an advisor, the University will provide an advisor of the University’s choice. The advisor will be copied on correspondence that is presented throughout the investigatory process, as well as communications related to determination of the hearing process, and any associated disciplinary action.

Appeals Board

After a determination is made, or if a complaint or specific allegations in a complaint is/are dismissed as described below, the reporting party and responding party both have the right to appeal the outcome and/or associated disciplinary sanctions (or the dismissal). The appeals board of Utica University is comprised of three individuals who are trained in this responsibility, who will hear appeals and determine whether or not the matter needs to be reviewed as a result of one or more of the grounds set forth in this policy.

RESOURCES:

Confidential Resources

All members of the Utica University community have a number of resources available to discuss concerns or questions about sex discrimination (including sex-based harassment) or other forms of sexual misconduct. Individuals who have experienced such conduct are encouraged to seek support for their physical and emotional needs.

A student seeking confidential emotional or medical care may contact the following:

Utica University Health & Wellness Center
Medical & Counseling Services

Student Wellness Center, Room 204 Strebel Student Center
(315) 792-3094
HWC@utica.edu
UWill Virtual Counseling (University partnership for free teletherapy)
Register/Login: <http://app.uwill.com/register>
support@uwill.com

Bethany VanBenschoten*
Program Manager, Institute for the Study of Integrative Healthcare/Campus Victims Advocate
407 Clark City Center
(315) 792-5294
bavanben@utica.edu

YWCA Mohawk Valley Hotline - Sexual Assault, Domestic Violence, Stalking*
Oneida County (315) 797-7740
Herkimer County (315) 866-4120
YWCAMV.org/chat (Use chat for help after-hours or on weekends)

**Note – these confidential sources are responsible for reporting non-identifiable statistics as required by the Clery Act*

The health and counseling services noted above are available to Utica University students free of charge.

An employee seeking confidential emotional support may contact the University's employee assistance program:
1-800-EAP-CALL (1-800-327-2255)
www.nexgeneap.com
Company ID: 9000 (Needed only to create an account on website)

These resources afford students and employees the opportunity to discuss a concern or situation and the available options. These resources also offer the opportunity to gain information about the University's formal complaint procedures under this policy. These resources must share the following information:

- That they are confidential, including when they are not required to notify the Title IX Coordinator about conduct that reasonably may constitute sex discrimination (including sex-based harassment) or other forms of sexual misconduct;
- How to contact the University's Title IX Coordinator and how to make a complaint of sex discrimination (including sex-based harassment) or other forms of sexual misconduct; and
- That the Title IX Coordinator may be able to offer and coordinate supportive measures, as well as initiate an informal resolution process or an investigation under the grievance procedures.

Reports made to these resources will **not** be reported to other University officials in any personally identifiable manner (reports made to some of these individuals may result in a report to University officials that an incident occurred, but will not result in the reporting of any personally identifiable information), and, as a result, any individual making a report solely to such confidential resources should not expect action to be taken by the University against any alleged perpetrator. Similarly, if a victim discloses actions constituting a violation of this policy through public awareness events, such as "Take Back the Night" or another similar event or forum, Utica University is not obligated to begin an investigation. Utica University may, however, use the information to inform the need for additional education and prevention efforts.

Confidential reports of any form of sexual misconduct can also be made to off-campus resources, including:

YWCA Mohawk Valley Hotline - Sexual Assault, Domestic Violence, Stalking*

Oneida County (315) 797-7740

Herkimer County (315) 866-4120

YWCAMV.org/chat (Use chat for help after-hours or on weekends)

**Note – this confidential source is responsible for reporting non-identifiable statistics as required by the Clery Act*

Suicide/Crisis Services - Mobile Crisis Assessment Team (MCAT)

24 Hour Hotline

(315) 732-6228

NYS Office of Victim Services

Hotline

1-800-247-8035

National Domestic Violence Hotline

1-800-799-7233 (or if you are unable to speak safely, log onto thehotline.org or text LOVIES to 1-866-3319474)

RAINN Hotline (National Sexual Assault Hotline)

1-800-656-HOPE (or 1-800-656-4673)

Crisis Services for Students, Faculty, Staff, and Contract Staff at Liverpool, NY site:

Vera House

723 James St.

Syracuse, NY 13203

Phone: (315) 425-0818

24-Hour Hotline: (315) 468-3260

Sexual Assault Nurse Examination (SANE) services are provided to all area emergency rooms through Vera House.

Crisis Services for Students, Faculty, Staff, and Contract Staff at Latham, NY site:

New York State Coalition Against Sexual Assault

30 N. Greenbush Rd. Suite 3

Troy, NY 12180

Phone: (518) 482-4222

Crisis Services for Students, Faculty, Staff, and Contract Staff at St. Petersburg, FL site: Suncoast Center, Inc.

PO Box 10970

St. Petersburg, FL 33733

Phone (appointments): (727) 388-1220

Hotline: (727) 530-7273

In addition to the resources listed above, Utica University shares a Memorandum of Understanding (MOU) with Mohawk Valley Health System, located in Utica, NY. This MOU ensures that any member of the University community who is a victim of sexual assault will have access to a sexual assault examination by a sexual assault nurse examiner or through a physician referral to a sexual assault nurse examiner.

When an individual shares information with a confidential resource (on or off campus) as a confidential communication in the course of a protected relationship, the confidential resource cannot disclose the information (including information about whether an individual has received services) to any third party without the individual's written permission or unless permitted or required consistent with ethical or legal obligations.

Accordingly, a report to a confidential resource is not a report to the University and will not result in an investigation or disciplinary action.

Non-Confidential Resources/Mandatory Reporters: University Personnel

All other University personnel are considered non-confidential. When they observe or learn about conduct potentially constituting sex discrimination (including sex-based harassment) or other forms of sexual misconduct, they must respond as follows:

- Custodial, Facilities, Bookstore and Dining Services personnel, other than those in administrative leadership positions, must either (a) report such information to the Title IX Coordinator, or (b) provide to any person who discloses information about such conduct the Title IX Coordinator's contact information and information about how to make a complaint.
- All other University personnel must report such information to the Title IX Coordinator.

If you are unsure of an individual's reporting obligations, please ask before disclosing any information you wish to remain confidential.

Even University offices and employees who cannot guarantee confidentiality will maintain your privacy to the greatest extent possible. The information you provide to a non-confidential resource will be relayed only as necessary for the Title IX Coordinator to investigate and/or seek a resolution. Non-personally identifiable information may also be provided to the Vice President for Emergency Management to report statistical information about Clery reportable crimes.

Non-Confidential External Resources: Law Enforcement

All persons covered by this policy have the right to involve state and/or local law enforcement in matters of sex discrimination (including sex-based harassment) or other forms of sexual misconduct. Following is contact information for those resources:

New York State Campus Sexual Assault Victim's Unit (NYSCSAVU)
New York State Police
1-844-845-7269

Utica Police Department (local police)
413 Oriskany Street West
Utica, New York 13502
Phone: (315) 735-3301

New Hartford Police Department (local police)
8635 Clinton St., New Hartford, NY 13413
Phone: (315) 724-7111

For Students, Faculty, Staff, and Contract Staff at Liverpool, NY site:
Liverpool Police number
Phone: (315) 457-0722
Onondaga County Sheriff (located in Liverpool, NY)
Phone: (315) 435-0722

For Students, Faculty, Staff, and Contract Staff at Latham, NY site:
Colonie Town Police Department
(518) 783-2744

For Students, Faculty, Staff, and Contract Staff at St. Petersburg, FL site:
Pinellas County Police
Phone: (727) 582-6200

A reporting party who is not satisfied with the attempts to resolve the misconduct may seek resolution through other sources, such as the New York State Division of Human Rights, the Equal Employment Opportunity Commission, the Office for Civil Rights, or the U.S. Department of Education.

Third Party Reports

In cases where sex discrimination (including sex-based harassment) or other sexual misconduct is reported by a third party (e.g. a faculty member, Residence Life staff member, student organization advisor, etc.), the person identified as the target of the behavior will be notified by the Title IX Coordinator or, if appropriate, by one of the Deputy Title IX Coordinators, that a report has been received. Every effort will be made to meet with the individual to discuss her/his/their options and resources at the University and in the community.

DEFINITIONS OF SPECIFIC VIOLATIONS:

This policy applies to alleged conduct in violation of Title IX of the Education Amendments of 1972, and also applies to a broader range of contexts and behaviors inconsistent with the University's commitment to equal opportunity and, in some cases, the University's obligations under other applicable laws such as New York Education Law Article 129-B.

The University recognizes the following as conduct violations under this policy ("Prohibited Conduct"):

- A. **Sex Discrimination**. Sex discrimination is different treatment with respect to an individual's employment or participation in a University education program or activity based, in whole or in part, on sex, sex stereotypes, gender, sexual orientation, sex characteristics, pregnancy or pregnancy-related conditions or gender identity. Sex Discrimination includes, but is not limited to, Sex-Based Harassment, Sexual Assault, Domestic Violence and Dating Violence, and Stalking on the basis of sex.
- B. **Sex-Based Harassment**. "Sex-based harassment" means unwelcome conduct which is either of a sexual nature, or which is directed at an individual because of that individual's sex, sex stereotypes, gender, sexual orientation, sex characteristics, pregnancy or pregnancy-related conditions or gender identity, that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the University's education program or activity, or otherwise has the purpose or effect of unreasonably interfering with an individual's work, academic, or extracurricular performance, or creating an intimidating, hostile, or offensive work or learning environment, even if the reporting individual is not the intended target of the sex-based harassment.

Harassing conduct can occur in various forms, including:

- Verbal – Conduct such as unwelcome sexually suggestive, demeaning, or graphic comments; unwelcome verbal sexual advances; using slurs to refer to a person; bullying, yelling or name-calling; refusing to use a person's preferred pronouns or name; or jokes or comments that demean a person on the basis of gender, sexual orientation, gender identity or gender expression.
- Physical – Conduct such as unwanted sexual contact or physical sexual advances (e.g., unwanted touching, pinching, patting, kissing, hugging, grabbing, brushing against another person's body or poking another person's body); sexual intimidation through physical threats; or physical threats toward or intimidation of another on the basis of gender, sexual orientation, gender identity or gender expression.

- Visual – Conduct such as exposing another person to unwanted pornographic images; creating or displaying pictures, symbols, flags, cartoons, or graffiti that is/are sexually offensive or disparage(s) another person or group based on gender, sexual orientation, gender identity or gender expression.
- Communication-based – Conduct such as phone calls, e-mails, text messages, chats, blogs or online communications that offend, demean, or intimidate another on the basis of gender, sexual orientation, gender identity or gender expression. Members of the community are expected to be good digital citizens and to refrain from online misconduct, such as feeding anonymous gossip sites, sharing inappropriate content via social media, unwelcome sexual or sex-based messaging, distributing or threatening to distribute revenge pornography, breaches of privacy, or otherwise using the ease of transmission and/or anonymity of the Internet or other technology to harm another member of, or group within, the University community.
- Sex stereotyping – Conduct in which another person’s or group’s conduct or personality traits are considered inappropriate simply because they may not conform to other people’s ideas or perceptions about how individuals of a particular sex should act or look.

A determination as to whether sex-based harassment occurred depends on the totality of the circumstances, including the context of a communication or incident, the relationship of the individuals involved in the communication or incident, whether an incident was an isolated incident or part of a broader pattern or course of offensive conduct, the seriousness or severity of the incident, the intent of the individual who engaged in the allegedly offensive conduct, and its effect or impact on the individual or group and the learning community.

A “hostile environment” is created when the offensive behavior interferes with an individual’s ability to participate in the University’s programs (i.e., to work and to learn) when judged against a reasonable person standard. However, the University encourages individuals experiencing or witnessing offensive behavior to make a report as early as possible so as to have the situation corrected before it reaches the level of a hostile environment. Individuals with a concern need not worry about whether the behavior is sufficiently serious to constitute a hostile environment. The University reserves the right to remedy sex-based harassment pursuant to this policy even if the behavior in question does not rise to the level of legally recognized or actionable harassment.

The fact that a person was personally offended by a statement or incident does not alone constitute a violation of this policy. The determination as to whether this policy has been violated takes into account the totality of the circumstances as described above. In all instances, a key factor is whether the complained-of behavior occurred based on sex, sex stereotypes, gender, sexual orientation, sex characteristics, pregnancy or pregnancy-related conditions or gender identity, or was sexual in nature. If it did not or was not, the behavior is not regulated by this policy. However, even if the conduct does not constitute Prohibited Conduct under this policy, the University may respond by providing individual and community support and resources to those who have been impacted.

The University also prohibits “quid pro quo” sex-based harassment, which means “this for that” harassment. It is a violation of this policy for any employee, agent, or other person authorized by the University to provide an aid, benefit, or service under the University’s education program or activity to explicitly or impliedly condition the provision of such an aid, benefit, or service on a person’s participation in unwelcome sexual conduct.

A. Sexual Assault. Consistent with federal law, the University defines sexual assault as including:

- Non-Consensual Sexual Intercourse. Sexual assault of this type includes the 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 other person (including where the victim is incapable of affirmative consent due to temporary or permanent mental or physical incapacity).

- Non-Consensual Sexual Contact. This form of sexual assault includes any intentional touching, however slight, for purposes of sexual gratification, of the private body parts (including genitalia, anus, groin, breast, inner thigh, or buttocks) of another person, without the consent of the other person (including where the victim is incapable of giving consent due to temporary or permanent mental or physical incapacity). This may include non-penetrative acts, touching directly or with an object, and/or touching the private body parts of another over clothing. This may also include forcing or causing another without affirmative consent to touch one's own private body parts.
 - Incest. Non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
 - Statutory Rape. Non-forcible sexual intercourse with a person who is under the statutory age of consent. The statutory age of consent in New York is 17.
- B. Dating Violence. Dating violence refers to violence (including but not limited to sexual or physical abuse or the threat of such abuse) committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim, where the existence of such a relationship shall be determined based on the statement of the reporting party with consideration of the following factors: (i) the length of the relationship; (ii) the type of relationship; and (iii) the frequency of interaction between the persons involved in the relationship. Dating violence can include behavior such as coercion, isolation or other forms of emotional, verbal or economic abuse if it reflects a threat of sexual or physical abuse as described above. Dating violence does not include acts covered under the definition of domestic violence.
- C. Domestic Violence. Domestic violence refers to 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 where the University is located, 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. To categorize an incident as Domestic Violence, the relationship between the responding party and the reporting party/complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship as described above.
- D. Stalking. Stalking is engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others; or suffer substantial emotional distress. For the purposes of this definition, (i) a "course of conduct" means two or more acts, including, but not limited to, acts in which the 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; (ii) "reasonable person" means a reasonable person under similar circumstances and with similar identities to the reporting party/complainant; and (iii) "substantial emotional distress" means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling. Examples of behavior that may constitute stalking include repeated, intentional following, observing or lying in wait for another; using "spyware" or other electronic means to gain impermissible access to a person's private information; repeated, unwanted, intrusive, and frightening communications by phone, mail, email, text, etc.; making direct or indirect threats to harm an individual or the individual's relatives, friends, or pets; or damaging or threatening to damage the property of the targeted individual.
- E. Sexual Exploitation. Taking nonconsensual or abusive sexual advantage of another for one's own benefit or for the benefit of anyone other than the person being exploited, if the conduct does not otherwise constitute another offense under this policy. Examples of sexual exploitation include (a) sexual voyeurism (such as observing or allowing others to observe a person undressing or using the bathroom or engaging in sexual acts, without the consent of the person being observed); (b) taking pictures, video, or audio recording of another in a sexual act, or in any other sexually-related activity when there is a reasonable expectation of privacy during the activity,

without the consent of all involved in the activity, or exceeding the boundaries of consent (such as allowing another person to hide in a closet and observe sexual activity, or disseminating sexual pictures without the photographed person's consent or beyond the parameters of consent), including the making or posting of revenge pornography; (c) exposing one's genitals in non-consensual circumstances or nonconsensual disrobing of another person so as to expose the other person's private body parts; (d) prostituting another person; (e) engaging in sexual activity with another person while knowingly infected with a sexually-transmitted disease (STD) or infection (STI), without informing the other person of the STD or STI; (f) causing or attempting to cause the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give consent to sexual activity, or for the purpose of making that person vulnerable to non-consensual sexual activity; (g) misappropriation of another person's identity on apps, websites, or other venues designed for dating or sexual connections; (h) 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; or (i) knowingly soliciting a minor for sexual activity.

- F. **Retaliation.** Intimidation, threats, coercion, or discrimination against any person by for the purpose of interfering with any right or privilege secured by Title IX, its implementing regulations or this policy, or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner (as a reporting party, responding party, witness or otherwise) in an investigation, proceeding, or hearing under this policy, including in an informal resolution process.

RELATED DEFINITIONS

1. **Affirmative Consent** - In order for individuals to engage in sexual activity of any type with each other, there must be clear affirmative consent. Whenever the term consent is used in this policy, it should be understood to mean affirmative consent as defined here. Affirmative consent is a knowing, voluntary and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent. The definition of affirmative consent does not vary based on a participant's sex, sexual orientation, gender identity, or gender expression. Under this policy, "No" always means "No." At the same time, silence, or the absence of an explicit "no", cannot be assumed to indicate consent.

Other considerations with respect to affirmative consent include the following:

- i. Consent to some form of sexual activity between or with any party cannot be automatically taken as consent to any other sexual activity.
- ii. Past consent to sexual activity cannot be presumed to be consent to engage in the same sexual activity in the future.
- iii. Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.
- iv. Consent can be withdrawn at any time by expressing in words or actions that the individual no longer wants the sexual activity to continue and, if that happens, the other person must stop immediately.
- v. Affirmative consent cannot be obtained by use of force, compelling threats, intimidating behavior, or coercion. Consent cannot be given when a person is incapacitated, as defined below. Depending on the degree of intoxication, someone who is under the influence of alcohol, drugs, or other intoxicants may be incapacitated and therefore unable to consent.

2. **Incapacitation-** This occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation may be caused by the lack of consciousness, mental disability, being asleep, being involuntarily restrained, or if an individual otherwise cannot consent. In order to give affirmative consent, one must be of legal age, which is 17 in the state of New York. Use of alcohol or other drugs does not, in and of itself, negate a person's ability to give affirmative consent. However, depending on the degree of intoxication, someone who is

under the influence of alcohol or drugs or other intoxicants may be incapacitated and therefore unable to consent. A person who has been drinking or using drugs is still responsible for ensuring that the other person provides affirmative consent to engage in sexual activity. An individual's incapacity may also be caused by consuming "date rape" drugs. Possession, use, and/or distribution of any of these substances (including Rohypnol, Ketamine, GHB, Burundanga, and others) is prohibited, and administering any of these drugs to another person for the purpose of inducing one to consent to sexual activity is a violation of this policy.

3. **Coercion** - Coercion is a threat, undue pressure, or intimidation to engage in sexual activity. Coercion is more than an effort to persuade, seduce, entice, or attract another person to engage in sexual activity. A person's words or conduct are sufficient to constitute coercion if they deprive another individual of the ability to freely choose whether or not to engage in sexual activity.
4. **Force** - Force is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that overcome resistance or produce consent.
5. **Reporting Party or Complainant** - The reporting party or complainant is the person who is alleged to be the victim of Prohibited Conduct. A person who files a report on behalf of another person is referred to more specifically as a third-party reporter. The person who is directly affected by the reported behavior, whether reported by them or a third party, will be referred to as the reporting party or complainant.
6. **Responding Party** - The responding party is the person who is alleged to have engaged in Prohibited Conduct and, if a process is commenced, is responding to the allegations. The responding party may also be referred to as the respondent.
7. **Supportive Measures** - Non-disciplinary, non-punitive individualized services offered, as appropriate and as available, and without fee or charge to the reporting party or responding party, before or after the filing of a complaint or where no complaint has been filed. These measures are designed to restore or preserve equal access and ensure the safety of all involved parties. Examples of supportive measures include, but are not limited to:
 - counseling services;
 - extensions of deadlines or other course-related adjustments;
 - modification of work or class schedules;
 - safety escorts;
 - mutual no-contact restrictions and, in certain cases, one-way no contact orders,
 - changes in work or housing locations;
 - leaves of absence;
 - increased security and monitoring of certain areas of the campus; and other similar measures.
8. **Preponderance of Evidence Standard** - This is the standard of evidence that is used to determine whether or not a violation of this Utica University policy has occurred. This standard states that based on the collected evidence, it is "more likely than not" that a violation occurred. The burden of proof lies with the institution, and it applies to students, faculty and staff.
9. **Inculpatory Evidence** - This is evidence that tends to reflect a responding party's responsibility for an alleged violation.
10. **Exculpatory Evidence** - This is evidence that tends to reflect that a responding party is not responsible for an alleged violation.

INFORMAL RESOLUTION

Informal resolutions may occur in the place of a formal grievance process only with voluntary, informed and written consent by both parties and approval by the Title IX Coordinator. Examples of informal resolution include mediation or restorative justice. Informal resolution may occur prior to, after, or without the filing of a complaint.

In cases where the Title IX Coordinator determines that informal resolution may be appropriate, the Title IX Coordinator will first consult with the reporting party/complainant about the option to pursue informal resolution. If the reporting party/complainant is agreeable, then the Title IX Coordinator will consult with the responding party to discuss the process. If both parties are agreeable, the informal resolution process will be coordinated by the Title IX Coordinator. Informal resolutions should only be handled by an individual who is trained in facilitation. Either party who enters into an informal resolution process may decide to withdraw from the process prior to agreeing to a resolution. There may be instances when, for the safety of others who may be affected by the alleged action, an investigation will still be conducted despite the willingness of the parties to engage in an informal resolution process. Should this type of situation arise, the University will communicate the need to investigate to the reporting party and responding party.

All parties must agree to enter the informal resolution process through an informed written consent. Prior to the initiation of the informal resolution process, the Title IX Coordinator will provide to the parties a written notice that explains:

- The allegations;
- The requirements of the informal resolution process;
- That, prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and to initiate or resume the University's formal grievance process;
- That the parties' agreement to a resolution at the conclusion of the informal resolution process would preclude the parties from initiating or resuming the formal grievance process arising from the same allegations;
- The potential terms that may be requested or offered in an informal resolution agreement, including notice that an informal resolution agreement is binding only on the parties; and
- What information the University will maintain and whether and how the University could disclose such information for use in its formal grievance process if it is initiated or resumed.

FORMAL GRIEVANCE PROCESS:

Any Utica University community member who has been the victim of Prohibited Conduct has the right to make a report to the University, local law enforcement, and/or the state police, or choose not to report. If reported to the University under this policy, a reporting individual will be protected from retaliation and will receive appropriate assistance and resources from Utica University. Please see the Students' Bill of Rights ([https://www.utica.edu/hr/titleiv/Student_Bill_Of_Rights-2016_R2%20\(1\).pdf](https://www.utica.edu/hr/titleiv/Student_Bill_Of_Rights-2016_R2%20(1).pdf)) for cases involving sexual assault, domestic violence, dating violence, or stalking.

The grievance process treats all reporting parties and responding parties equitably and is designed to preserve or restore equal access to all of the University's education programs and activities (including the workplace/work environment).

Making a report: Those who wish to file a report of Prohibited Conduct may do so by submitting a complaint to the Title IX Coordinator by using the contact information provided in this policy. A complaint can be written or verbal, so long as it is objectively understood that a request has been made for the University to investigate and make a determination about an incident. The person making the report, or the reporting party, may also make a report to the Title IX Coordinator without submitting a complaint.

Reporting Party Request for Confidentiality: In circumstances where a reporting party does not make a complaint, the reporting party may request that the University maintain the report as confidential. This type of request may be made if the reporting party does not want their identity known to the responding party and/or witnesses, or wishes that the University not conduct an investigation or that action not be taken against an alleged perpetrator.

In situations where a reporting party makes such a request, the University's ability to investigate and respond to the allegations may be limited. If at any point the reporting party requests confidentiality and/or that action not be taken, the University will make reasonable attempts to comply with this request, but it is not required to honor these requests. The University may, in appropriate circumstances, decide it must move forward with an investigation and/or disciplinary process.

The University is required by Title IX and New York State law to weigh the reporting party's request for confidentiality and/or that no action be taken against the University's commitment to provide a reasonably safe and non-discriminatory environment. In evaluating such a request, the Title IX Coordinator will consider a range of factors, including, but not limited to:

- Whether the reporting party wants to participate in a formal process;
- The reporting party's reasonable safety concerns regarding initiation of a complaint;
- The risk that additional acts of Prohibited Conduct would occur if a complaint is not initiated;
- The severity and impact of the alleged Prohibited Conduct, including whether the Prohibited Conduct, if established, would require the removal of a responding party from campus or imposition of another disciplinary sanction to end the discrimination and prevent its recurrence;
- Whether the responding party has a history of violent behavior or is a repeat offender;
- The respective ages and relationship of the parties, including whether the respondent is an employee of the University;
- Whether the reporting party is a minor under the age of 18;
- Whether the responding party has admitted to the Prohibited Conduct;
- Whether there have been other Prohibited Conduct complaints about the responding party;
- Whether the reported incident represents escalation in unlawful conduct on behalf of the responding party from previously noted behavior;
- Whether the responding party has a history of arrests or records from a prior school indicating a history of violence;
- Whether the responding party allegedly threatened further Prohibited Conduct against the victim or others;
- The scope of the alleged Prohibited Conduct, including information suggesting a pattern, ongoing Prohibited Conduct, or Prohibited Conduct alleged to have impacted multiple individuals;
- Whether the Prohibited Conduct was allegedly committed by multiple individuals;
- Whether the Prohibited Conduct was allegedly perpetrated with a weapon or force;
- Whether the information provided suggests that the act is part of a larger pattern at a specific location or by a particular group;
- Whether information can be obtained by means other than from the impacted individual (e.g., by personnel or security cameras, witnesses, or through physical evidence);
- Whether the University could end the alleged Prohibited Conduct and prevent its recurrence without initiating a grievance procedure under this policy and/or
- The overall safety of the campus community (including the reporting party).

If, after considering these and other relevant factors, the Title IX Coordinator determines that the conduct as alleged presents an imminent and serious threat to the health or safety of the reporting party/complainant or other person, or that the conduct as alleged prevents the University from ensuring equal access on the basis of sex to its education program or activity, the Title IX Coordinator may initiate a complaint.

The Title IX Coordinator will notify the reporting party if the University cannot honor the reporting party's request for confidentiality and/or that no action be taken. As noted above, even University offices and employees who cannot guarantee confidentiality will maintain privacy to the greatest extent possible. Information provided to a non-confidential resource will be relayed only as necessary for the Title IX Coordinator to investigate and/or seek a resolution. Individuals participating in an investigation, proceeding, or hearing will be encouraged to maintain the privacy of the process in order to assist the University in conducting a thorough, fair, and accurate investigation. The University will take reasonable steps to prevent and address the parties' and their advisors' unauthorized disclosure of information and evidence obtained solely through the processes contemplated by this policy; provided that such steps do not restrict the ability of the parties to obtain and present evidence, to speak to witnesses, to consult with their family members, Confidential Resources, or advisors, or otherwise prepare for or participate in a process. Disclosures of such information and evidence for purposes of administrative proceedings or litigation related to the complaint of Prohibited Conduct are also authorized.

Consolidation: The Title IX Coordinator may determine that cases where the allegations arise out the same set of facts should be consolidated for purposes of the investigation and/or adjudication. Instances where consolidation of complaints may occur include but are not limited to cross-complaints filed by the parties against each other, multiple complaints by a single reporting party against a responding party, or multiple complaints by a single reporting party against multiple responding parties.

Grievance Process Time Frames: The timeframe for the grievance process under this policy begins when a complaint is made. The grievance process will be concluded within a reasonably prompt manner, typically within no longer than 120 days after a complaint is made, provided that the process may be extended with notification to the parties for good reason, including but not limited to the absence of party, a party's advisor, or a witness; concurrent law enforcement activity; breaks in the academic schedule; or approved extensions. The timeframes of the major stages of the grievance process are estimated as follows: Intake: 10 days; Investigation: 30 days; Evidence Review and Investigative Report Review /Response: 25 days; Adjudication (including pre-hearing meetings and issuance of Notice of Outcome): 40 days; and Appeal Process: 15 days. Both parties will be notified simultaneously if the University determines the grievance process cannot be concluded within 7 days. The notification will outline the reasons for extension.

Notifications to Reporting Party; Formal Complaint Process: Once a report is received, the Title IX Coordinator will promptly contact the reporting party confidentially to discuss any available supportive measures. If a complaint has not yet been received, the Title IX Coordinator will contact the potential reporting party, inform them of the process for making a complaint, and engage in a discussion about supportive measures (with or without a complaint). The reporting party will be informed that although emergency removal may be an option (only if a threat of immediate safety is present), no disciplinary sanctions against the responding party will occur until the grievance process is completed and a determination is reached. The reporting party will also be informed that the University will make reasonable efforts to honor their wishes with regard to whether or not an investigation takes place, but that if the Title IX Coordinator decides to submit the complaint because of known circumstances, an investigation may still occur.

A complaint submitted by the reporting party or the Title IX Coordinator is necessary to initiate a disciplinary resolution under this policy. A third party or anyone other than the victim of the misconduct may report an incident as described above, but may not make a complaint. However, a complaint may be made by a parent or guardian on behalf of a minor person.

A complaint may be made to the Title IX Coordinator in person, by telephone, by mail, or by electronic mail to:

Nina N. Gray
Human Resources Generalist/Title IX Coordinator
1600 Burrstone Rd.
Utica, NY 13502

315-792-3012
nnggray@utica.edu

If a reporting party/complainant declines to submit a complaint or does not wish to participate in the complaint and adjudication process, or the reporting party/complainant's identity is unknown, and the Title IX Coordinator determines there is sufficient cause to submit a complaint, the Title IX Coordinator may submit a complaint. In such cases, the Title IX Coordinator is not considered to be a reporting party/complainant or other party under this policy; the reporting party/complainant remains the person who allegedly experienced the Prohibited Conduct.

Dismissal of Complaint/Allegations:

The University may dismiss a complaint, or specific allegations within the complaint, under the following circumstances:

- the University is unable to identify the responding party after taking reasonable steps to do so;
- the responding party is not participating in the University's education program or activity and is not employed by the University;
- the reporting party/complainant voluntarily withdraws any or all of the allegations in the complaint in writing, the Title IX Coordinator declines to initiate a complaint, and the Title IX Coordinator determines that, without the Complainant's withdrawn allegations, the conduct that remains alleged in the complaint, if any, would not be covered by this policy; or
- The Title IX Coordinator determines that the conduct alleged in the complaint, even if proven, would not constitute a violation of this policy.

If the University dismisses the complaint in whole or in part, the University will inform both parties (except if the dismissal occurs before the responding party has been notified of the allegations, in which case the Title IX Coordinator will provide notice only to the reporting party/complainant) of the decision, the reason for the action, and whether the University intends to proceed under this policy or another University policy. Any decision to dismiss a complaint or allegation pursuant to this section is immediately appealable pursuant to the appeal procedures set forth in this policy.

Supportive Measures: Once a report is made under this policy, the reporting party will be contacted by the Title IX Coordinator and offered supportive measures, as defined above. A report that triggers supportive measures need not be a complaint, and it may be made by a third party (i.e., someone other than the person allegedly subjected to misconduct). Once the responding party is informed of a report or a complaint, the responding party will be contacted by the Title IX Coordinator and offered supportive measures. Supportive measures are intended to restore or preserve, to the extent practicable, equal access to the University's educational programs and activities and protect the safety of all parties without unreasonably burdening any other party or parties. As required by federal regulation, these supportive measures must not be imposed for punitive or disciplinary reasons, and are offered without fee or charge. The Title IX Coordinator is responsible for coordinating the implementation of supportive measures, including coordinating with the various University departments and offices that may be involved.

If a party's request for a supportive measure is denied, the party will be afforded an opportunity to have the denial promptly reviewed to assess whether the supportive measure is reasonable under the circumstances. In addition, each party will, upon request, be afforded the opportunity for a prompt review of the need for supportive measures, including the potential modification of these measures, to the extent that the party is affected by the measure(s) being reviewed. The request for review of the denial of, or the need for or details of, supportive measures should be made to either the Dean of Students or Director of Human Resources, depending

on the status of the parties involved, and may be made at any time. Each party will be allowed to submit evidence in support of, or in opposition to, the request to the extent the supportive measures under review affect that party. The Dean of Students or Director of Human Resources will advise the parties of the result of the review. This determination is not subject to further review absent changed circumstances.

Emergency Removal

The University may need to undertake emergency removal of a student in order to protect the safety of its community, which may include contacting local law enforcement to address imminent safety concerns. Emergency removal is not a substitute for reaching a determination as to a student responding party's responsibility for misconduct allegations; rather, emergency removal is for the purpose of addressing imminent and serious threats posed to any person's health or safety, which may arise out of the allegations of misconduct. Emergency removal may be total (i.e., the student is suspended from the University) or partial (e.g., the student is suspended from being present on campus) at the discretion of the University based on the circumstances.

Prior to removing a student responding party through the emergency removal process, the University will undertake an individualized safety and risk analysis. If the individualized safety and risk analysis determines that an imminent and serious threat to the health or safety of any student or other individual arising from the allegations of misconduct justifies removal, then a student responding party will be removed. This is the case regardless of the severity of the allegations and regardless of whether a formal complaint was filed.

In the event a determination is made to effectuate an emergency removal, the Title IX Coordinator will provide written notice of the emergency removal to both the reporting party/complainant (if any) and responding party. This notice will contain: (1) the date the removal is set to begin, (2) the reason for the emergency removal, (3) the consequences of non-compliance, and (4) how to appeal the decision. If a student responding party disagrees with the decision to be removed, they may appeal the decision in writing to the Associate Director of Campus Safety within ten (10) days of receiving the notice of removal. The burden of proof is on the student responding party to show that the removal decision was incorrect. The emergency removal will remain in effect while the appeal is considered.

The emergency removal process applies only to student responding parties. Employee responding parties are not subject to this process and may be placed on administrative leave pursuant to the University's applicable policies and/or collective bargaining agreements during any process under this policy.

Investigations: If an investigation is to be conducted pursuant to this policy, the Title IX Coordinator will send a written Notice of Allegations to both the reporting party and the responding party that will include:

- Notice of the University's Sex Discrimination, Sex-Based Harassment and Sexual Misconduct Policy and a hyperlink to a copy of the policy;
- To the extent known, the identities of the involved parties; the date, time, location and factual allegations concerning the alleged violation; the policy provisions allegedly violated; a description of the investigation and adjudication process; and potential sanctions;
- A statement that the responding party is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process;
- A statement that the parties may have an advisor of their choice, who may be, but is not required to be, an attorney;
- A statement that the parties may inspect and review evidence obtained as part of the investigation in accordance with this policy;
- Notice that knowingly making false statements or knowingly submitting false information is prohibited under University policies; and
- A statement about the University's policy on retaliation.

To the extent the Title IX Coordinator has reasonable concerns for the safety of any person as a result of providing the Notice of Allegations, the Title IX Coordinator may reasonably delay providing the Notice in order to address the safety concerns appropriately. Reasonable concerns must be based on an individualized safety and risk analysis and not on mere speculation or stereotypes. In any event, the parties will receive the Notice of Allegations with sufficient time to prepare a response before any initial interview.

If, in the course of an investigation, the University decides to investigate allegations that are not included in the Notice of Allegations, the University will notify the parties whose identities are known of the additional allegations by their institutional email accounts or other reasonable means. The parties will be provided sufficient time to review the additional allegations to prepare a response before any initial interview regarding those additional allegations.

In addition to the Notice of Allegations, the University will provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings with a party, with sufficient time for the party to prepare to participate.

The Title IX Coordinator will assign investigators (usually no more than two) to interview involved parties for the purposes of gathering facts and evidence. The reporting party and responding party will be provided with notice of the name(s) of the appointed investigator(s) (typically in the Notice of Allegations) and an opportunity of not more than three (3) days after the notice to raise an objection to the investigator(s) based on any alleged conflict of interest known to the party. If an objection is raised, the Title IX Coordinator will determine whether a conflict of interest in fact exists and necessitates the replacement of the investigator(s). The investigator(s) will provide written notice to any individual who is asked to participate in an investigatory interview, including the reporting party and the responding party. The investigator will communicate the date, time and location of the interview in the notice. The investigator will also let the reporting party and responding party know that they may bring an advisor of choice (who may or may not be an attorney) to the investigatory interview, but only for supportive purposes. The advisor will not be allowed to interject without permission from both the investigator and the interviewee. Witnesses are not permitted to bring advisors to investigative interviews.

If either party chooses not to participate in the investigation interview in person and instead wishes to submit written material and evidence (in lieu of an interview), that party will not be allowed to submit additional evidence once the hearing begins absent extraordinary circumstances as determined by the decision-maker. A party who chooses not to participate in the investigation interview will still have a right to review evidence (see below) as outlined in this policy.

The University's investigation may be temporarily delayed where there is a concurrent law enforcement investigation if necessary to avoid interference with the law enforcement investigation; such a delay will not exceed ten (10) days unless a longer time period is requested and justified by the law enforcement agency.

Evidence Collection and Review: Both the reporting party and responding party have the right to present relevant, not impermissible inculpatory and exculpatory evidence (see definitions). For purposes of this policy, the following types of evidence will be excluded as impermissible (even if otherwise relevant):

- evidence that is protected under a privilege as recognized by federal or state law or evidence provided to a Confidential Resource, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality;
- a party's or witness's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the party or witness, unless the University obtains that party's or witness's voluntary, written consent for use in the investigation and adjudication process; and
- evidence that relates to the reporting party's sexual interests or prior sexual conduct, unless evidence about the prior sexual conduct is offered to prove that someone other than the responding party committed the

alleged conduct or is evidence about specific incidents of the reporting party's prior sexual conduct with the responding party that is offered to prove consent.

Each party also has the right to discuss allegations and gather evidence; however, at all times, the burden of gathering evidence remains with the University. The investigator(s) may decline to interview any witness or to gather information the investigators find to be not relevant or impermissible. The investigator(s) will determine the order and method of investigation.

No unauthorized audio or video recording of any kind is permitted during investigation meetings or interviews. If the investigator(s) elect to audio and/or video record interviews, all parties involved in the meeting or interview will be made aware that audio and/or video recording is occurring.

The investigator(s) will provide the reporting party, responding party, and their advisors an equal opportunity to inspect and review any relevant and not impermissible evidence that is gathered in the investigation, regardless of whether the information will be relied on in reaching a determination. The evidence will be sent in electronic format or hard copy, or made available through an electronic file sharing platform, subject to redaction permitted and/or required by law. The parties will be provided with at least 10 business days to inspect, review, and respond to the evidence and submit a written response, which the investigator(s) will consider prior to completion of the investigative report. Based on the parties' written responses the investigator(s) will determine if additional investigation is necessary (and, if so, will complete any additional investigative steps), and will incorporate appropriate elements of the responses and any additional relevant and not impermissible evidence into the report.

Investigative Reports: Once the evidence is gathered and made available for review as described above, the investigator(s) will prepare an investigative report that fairly summarizes the relevant and not impermissible evidence. The report will be provided to the reporting party, the responding party, their respective advisors in electronic format or hard copy, or made available through an electronic file sharing platform, and to the Title IX Coordinator. The reporting party and responding party will have 10 business days to review and, if desired, to respond to the report. After 10 business days have passed, or after having heard from both parties, whichever comes first, the Title IX Coordinator will provide the report to the decision-maker (see definitions) to begin the hearing process.

In any case where a student is a reporting party or responding party, both the reporting party and responding party will be permitted to submit a written impact statement to the Title IX Coordinator for consideration in the event of a finding of responsibility for violation of this policy and the determination of an appropriate sanction(s). The Title IX Coordinator will provide copies of any such written impact statements to the decision-maker for making a determination regarding appropriate sanctions if (but only if) the responding party is found responsible for one or more allegations.

Hearings: Once the decision-maker receives the investigative report, a live hearing will be scheduled not less than 10 days after the parties have been provided access to the report, for the purpose of determining whether the responding party is responsible or not responsible for the allegation(s).

The decision-maker or the Title IX Coordinator will send notice of the hearing to the reporting party/complainant and responding party, and their advisors, with the date, time and location of the hearing, and how to challenge participation by any decision-maker for bias or conflict of interest. Bias or conflict of interest will be judged by an objective standard (whether a reasonable person would conclude the decision-maker is biased or has a conflict of interest).

Participants in the hearing will include the decision-maker, the reporting party/complainant and the responding party, their respective advisors, the investigator(s) who conducted the investigation, and witnesses (solely during their own testimony). Hearings are private. Observers or additional support personnel, other than the parties' advisors, are not allowed unless deemed necessary by the Title IX Coordinator for purposes such as

accommodation of a disability. Cell phones and recording devices may not be used by the parties or their advisors in the hearing room(s).

Hearings may be conducted with all parties physically present in the same location or, at the Title IX Coordinator's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling the decision-maker and the parties to simultaneously see and hear any party or witness while speaking. If either party so requests, the hearing will be conducted with the parties located in separate rooms using technology as described in the preceding sentence.

The Title IX Coordinator may postpone the hearing for good cause as determined by the Title IX Coordinator. Good cause may include, without limitation, unavailability of one or more participants due to unanticipated events or circumstances, the timing of academic breaks or holidays, or other extenuating circumstances.

Procedural Matters

The decision-maker is in charge of organizing the presentation of information to be considered at the hearing. Generally, the hearing will proceed in the following order:

1. Opportunity for opening statement by the reporting party/complainant
2. Opportunity for opening statement by the responding party
3. If requested by the decision-maker, a summary of the results of the investigation by the investigator(s)
4. Questions for the investigator(s) by the decision-maker and, if desired, on behalf of the reporting party/complainant and the responding party (as described below)
5. Questions for the reporting party/complainant by the decision-maker and, if desired, on behalf of the responding party (as described below)
6. Questions for the responding party by the decision-maker and, if desired, on behalf of the reporting party/complainant (as described below)
7. Questions for each witness by the decision-maker and, if desired, on behalf of the reporting party/complainant and the responding party (as described below)
8. Opportunity for closing statement by the reporting party/complainant
9. Opportunity for closing statement by the responding party

Formal rules of evidence will not apply. Except as otherwise expressly prohibited by this policy, any information that the decision-maker determines is relevant and not impermissible may be considered, including hearsay, history and information indicating a pattern of behavior, and character evidence. Absent extraordinary circumstances as determined by the decision-maker, no party may seek to introduce at the hearing any evidence not previously made available for review by the parties, other than the investigative report itself and any responses to the investigative report submitted by the parties.

The decision-maker will address any concerns regarding the consideration of information prior to and/or during the hearing and may exclude irrelevant or impermissible information. Subject to the terms of this policy, the decision-maker will have discretionary authority to determine all questions of procedure, to determine whether particular questions, evidence or information will be accepted or considered, to call breaks or temporary adjournments of the hearing, to alter the order of the proceedings from that described above, and/or to recall parties or witnesses for additional questions as the decision-maker deems necessary or appropriate. The decision-

maker may impose additional ground rules as decision-maker may deem necessary or appropriate for the orderly and efficient conduct of the hearing, which will apply equally to both parties.

Advisors

The reporting party/complainant and the responding party may each have present with them during the hearing an advisor of their choice (at the party's expense, if the advisor is a paid advisor). If a party does not have an advisor present at the hearing, the University will provide, without fee or charge to that party, an advisor of the University's choice upon request. The advisor's role is limited to consulting with their advisee, and the advisor may not present evidence, address the decision-maker during the hearing, question the other party or witnesses, object to any aspect of the proceeding, or disrupt the hearing in any way, and any consultation with the advisee while the hearing is in progress must be done in a quiet non-disruptive manner or in writing. The advisor may also consult with the advisee verbally outside the hearing during breaks, when such breaks are granted by the decision-maker. If the decision-maker determines that an advisor is not adhering to these or other ground rules, the advisor may be required to leave the hearing, and the hearing will proceed without an opportunity for the party to obtain a replacement advisor; provided, however, that the University will assign an advisor of the University's choosing upon request, without charge.

Witnesses are not permitted to bring an advisor or other person to the hearing, absent an approved disability accommodation. The decision-maker may be advised by and/or consult with the University's legal counsel as the decision-maker deems necessary or appropriate.

Questioning Procedures

The parties are not permitted to conduct direct questioning of the other party or witnesses during the hearing. The decision-maker will allow each party to propose questions that the party wants asked of the other party or any witness. The parties must submit their initial set of proposed questions to the decision-maker at least 2 days prior to the hearing, so as to allow the decision-maker to assess whether they will be asked as described below.

The decision-maker will determine whether a proposed question is relevant and not impermissible before the question is posed, and will pose any relevant and not impermissible question to the other party or witness on the questioning party's behalf. For purposes of the preceding sentence, following types of questions are impermissible even if otherwise relevant:

- questions regarding information that is protected under a privilege as recognized by federal or state law or information provided to a Confidential Resource, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality;
- questions regarding a party's or witness's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the party or witness, unless the University obtains that party's or witness's voluntary, written consent for use in this process; and
- questions that relate to the reporting party's sexual interests or prior sexual conduct, unless evidence about the prior sexual conduct is offered to prove that someone other than the responding party committed the alleged conduct or is evidence about specific incidents of the reporting party's prior sexual conduct with the responding party that is offered to prove consent.

In the event the decision-maker excludes a question as not relevant or impermissible, the decision-maker will explain the decision prior to or at the hearing. Questions that are unclear or harassing of the party or witness being questioned will not be permitted. The decision-maker will give the party proposing the question an opportunity to clarify or revise a relevant and not impermissible question that the decision-maker determines is unclear or harassing. If the party sufficiently clarifies or revises the question, the question will be asked. During the hearing, the decision-maker will afford the parties breaks to consult with their respective advisors for the purpose of

formulating and submitting in writing desired questions (if not previously submitted) and follow-up questions, which will be reviewed, assessed and (if appropriate) posed by the decision-maker to the other party or witness using the standards and process described above.

If a party or witness does not submit to questioning on behalf of a party at the hearing, the decision-maker may nevertheless rely on statements of that party or witness, during the hearing or otherwise, in reaching a determination regarding responsibility, but may also determine what (if any) significance to afford those statements in view of the lack of questioning (for example, the decision-maker may determine whether the statements are sufficiently reliable in the absence of questioning). The decision-maker will not, however, draw an inference as to responsibility based solely on a party's or witness's absence from the hearing or refusal to answer questions posed on behalf of a party.

Hearing Determinations

Following conclusion of the hearing, the decision-maker will deliberate and render a determination as to whether the responding party is responsible or not responsible for the alleged violation(s). The decision-maker will use "preponderance of the evidence" as the standard of proof to determine whether each alleged violation of the policy occurred.

If the decision-maker determines that the responding party is responsible for one or more violations, any personal impact statements submitted by the parties will be made available to the decision-maker for consideration in determining sanctions. In addition to the impact statement(s), if any, factors considered when determining sanctions may include:

- the nature and severity of, and circumstances surrounding, the violation(s);
- the responding party's state of mind at the time of the violation(s) (intentional, knowing, bias-motivated, reckless, negligent, etc.);
- the responding party's previous disciplinary history;
- the need for sanctions to bring an end to the conduct; and/or to prevent the future recurrence of similar conduct;
- the need to remedy the effects of the conduct on the reporting party/complainant and/or the community;
- the impact of potential sanctions on the responding party;
- sanctions imposed by the University in other matters involving comparable conduct; and
- any other lawful factors deemed relevant by the decision-maker.

Students who are found responsible will be issued disciplinary action in accordance with Utica University's Code of Student Conduct and its corresponding Point System. Faculty and other collective bargaining unit members who are found responsible will be issued disciplinary action in accordance with the current Collective Bargaining Agreement between Utica University and AAUP-Utica. Staff who are found responsible will be issued discipline in accordance with the current Utica University Employee Handbook.

Notice of Outcome

The decision-maker will issue a written determination including the following information:

- A description of the allegations that were adjudicated;
- A description of the policies and procedures used to evaluate the allegations;
- The decision-maker's evaluation of the relevant and not impermissible evidence and determination whether prohibited conduct occurred;
- Conclusions regarding the application of the policy to the facts;
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions to be imposed on the responding party, and whether remedies designed to restore or preserve equal access to the University's educational programs or activities will be provided to the reporting party/complainant; and
- The procedures and permissible bases for the reporting party/complainant and responding party to appeal.

The decision-maker will provide the written determination to the parties simultaneously.

Appeals

In all cases (except when a vendor, visitor, or other non-community member does not have a right to appeal), either party may appeal (1) the decision-maker's decision; and/or (2) the University's dismissal of a complaint or any allegations therein by filing a written appeal with the Title IX Coordinator within three (3) business days of the decision or dismissal. Where the responding party is a student, the appeal will be considered by an appeals panel comprised of three individuals from the University community who are appointed to serve as an appeals board. Where the responding party is a faculty member, the appeal will be considered by the Provost. Where the responding party is a staff member, the appeal will be considered by the staff member's area vice president.

The grounds for appeal are limited to the following:

- A procedural irregularity that affected the determination or dismissal;
- Newly discovered evidence that was not reasonably available at the time the determination or dismissal was made that could affect the determination or dismissal; or
- The Title IX Coordinator, investigator(s), or decision-maker had a conflict of interest or bias for or against reporting parties/complainants or respondents generally or the individual reporting party/complainant or respondent in the case that affected the determination regarding responsibility or dismissal; or
- A sanction is inconsistent with the severity of the violation or otherwise inappropriate.

In the event that an appeal is submitted by a party, the other part(y)(ies) will be provided a copy of the appeal and an opportunity to submit a response. Sanctions are stayed pending the outcome of the appeal.

The individual or body considering an appeal may take any action deemed appropriate, including the following actions:

- Uphold the original decision as to responsibility, sanction, or dismissal;
- Alter the decision as to responsibility, sanction or dismissal;

- Remand the matter to the decision-maker. The individual or body considering an appeal may (but is not required to) take this action when there is a procedural irregularity that could be corrected or for purposes of considering previously unavailable relevant and not impermissible evidence that could impact the decision-maker's determination; or
- Remand the matter to a new decision-maker not previously involved in the matter. This will typically be done only in cases in which the individual or body considering an appeal has concluded that bias or a conflict of interest exists, or otherwise when, in its/their opinion, the matter would be best addressed by a newly-constituted decision-maker.

The appeal decision will be provided to both parties in writing simultaneously and will be final, except to the extent that one or more parties seek review of proceedings ordered on remand.

Vendor, Visitor, or Other Non-Community Member

In cases involving allegations against a non-community member (e.g., a vendor, visitor, contractor, parent, etc.), the case will be referred to the Office of Human Resources. The Office of Human Resources will work with the appropriate parties (such as the Associate Director of Campus Safety) and make a final determination regarding remedies, including, if appropriate, the imposition of action such as banning the non-community member from University property or other appropriate responsive measures.

A non-community member may make a report that a University community member has violated this policy. A non-community member's complaint will be processed in accordance with the applicable disciplinary procedures listed above.

Training

All University employees will receive annual training on

- The University's obligation to address Sex Discrimination in its education programs or activities;
- The scope of conduct that constitutes Sex Discrimination under Title IX and this policy, including the definition of Sex-Based Harassment; and
- All applicable notification and information requirements with respect to reports of Sex Discrimination and when an employee is informed that the student is pregnant or experiencing a pregnancy related event.

The Title IX Coordinator, Deputy Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process or has the authority to modify or terminate supportive measures, will receive training on the following aspects of the policy:

- The University's obligations to respond to Sex Discrimination under Title IX and other relevant laws;
- The University's formal and informal resolution processes;
- The meaning and application of the term "relevant" in relation to questions and evidence, and the types of evidence that are impermissible regardless of relevance under in the formal resolution process;
- The effects of trauma;
- How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias; and

- The rights of the responding party (including the right to a presumption that the responding party is “not responsible” unless and until a finding of responsibility is made).

Decision-makers will also receive training on:

- any technology to be used at a live hearing, and
- issues of relevance and impermissibility of questions and evidence, including when questions and evidence about the reporting party’s sexual predisposition or prior sexual behavior are not permissible.

Individuals who facilitate informal resolution processes will also receive training on:

- the rules and practices associated with the University’s informal resolution process; and
- on how to serve impartially, including by avoiding conflicts of interest and bias.

Investigators will also receive training on:

- conducting investigations of Prohibited Conduct, and
- issues of relevance and how to create an investigative report that fairly summarizes relevant evidence.

Law Enforcement and Criminal Charges

A victim of a crime, including sexual misconduct, is encouraged, but is not required, to report the incident to law enforcement and pursue criminal charges. Members of the University community who want to pursue criminal charges may contact the Student Counseling Center, Office of Student Affairs, the Office of Campus Safety, or the YWCA/local crisis center for assistance in making a report of a crime to law enforcement, or may contact law enforcement authorities directly.

The criminal process and the University’s investigatory/disciplinary processes are not mutually exclusive or dependent on each other, meaning that a person may pursue either a criminal complaint or internal complaint with the University, both, or neither. Any internal University investigation and/or hearing process will be conducted concurrently with any criminal justice investigation and proceeding that may be pending. Temporary delays in the University’s internal processes may be requested by local law enforcement authorities for the purpose of evidence gathering. Any temporary delay shall not last more than ten (10) days, except when local law enforcement authorities specifically request and justify a longer delay. The University will cooperate with any criminal proceedings as required or permitted by law.

In criminal cases, including non-consensual sex offenses, the preservation of evidence is critical and must be done properly and promptly. Local law enforcement agencies can assist in filing a criminal complaint and in securing appropriate examination, including by a sexual assault nurse examiner. The New York State Police Sexual Assault Hotline, which can be reached at 1-844-845-7269, may also be of assistance in reporting an incident to law enforcement. Additionally, orders of protection and other forms of legal protection may be available to individuals who have experienced or are threatened with violence. In appropriate circumstances, an order of protection may be available that restricts the offender’s right to enter University property, and the University will abide by a lawfully issued order of protection. Utica University officials will, upon request, provide reasonable assistance to any member of the University community in obtaining an order of protection or, if outside New York State, an equivalent protective or restraining order.

Upon receipt of an order of protection (or equivalent order) by the University, University officials will also assist by providing all applicable parties with a copy of the order. Those parties will be given an opportunity to

meet or speak with a Utica University representative, or other appropriate individual, who can explain the order and answer questions about it, including information from the order about the other person's responsibility to stay away from the protected person or persons. The University official, or other appropriate individual, will also provide an explanation of the consequences for violating these orders, including but not limited to arrest, additional conduct charges, and emergency removal, and will assist in contacting local law enforcement regarding alleged violations of such an order.

Amnesty

The health and safety of every student at Utica University is of utmost importance. Utica University realizes that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) at the time that violence, including but not limited to domestic violence, dating violence, stalking, or sexual assault, occurs may be hesitant to report such incidents due to fear of potential consequences for their own conduct. Utica University strongly encourages students to report domestic violence, dating violence, stalking, or sexual assault to Utica University officials. A bystander acting in good faith or a reporting individual acting in good faith that discloses any incident of domestic violence, dating violence, stalking, or sexual assault to Utica University officials or law enforcement will not be subject to the University's Student Code of Conduct action for violations of alcohol and/or drug use policies occurring at or near the time of the commission of the domestic violence, dating violence, stalking, or sexual assault.

Non-Retaliation

Retaliation against any person involved in an investigation, proceeding or hearing under this policy, including the reporting party, responding party, witnesses, or University personnel, is strictly prohibited. This includes retaliation from a third party on behalf of the reporting party, responding party, witnesses, or University personnel. The University defines retaliation as intimidation, threats, coercion, or discrimination against any person by for the purpose of interfering with any right or privilege secured by Title IX, its implementing regulations or this policy, or because the person has reported information, made a complaint, testified, assisted, or participated or refused to participate in any manner (as a reporting party, responding party, witness or otherwise) in an investigation, proceeding, or hearing under this policy, including in an informal resolution process. Reports of retaliation should be directed to the Title IX Coordinator or Deputy Title IX Coordinators, who will then determine the most appropriate course of action.

Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance process under this policy does not constitute retaliation. At the same time, a determination contrary to a statement, alone, is not enough to conclude that any party made a false statement in bad faith.

Records Retention

Utica University will create and maintain for not less than seven years the following records:

- Each investigation pursuant to this policy, including any determination regarding responsibility and any audio or audiovisual recording or transcript made in connection with a formal resolution, any disciplinary sanctions imposed on the responding party, and any remedies provided to the reporting party or other affected individuals designed to restore or preserve equal access to the University's education program or activity;
- Any appeal and the result therefrom; and
- Any informal resolution and the result therefrom.

Utica University will also keep for not less than seven years records regarding the response to every report of Prohibited Conduct of which it becomes aware, even if no complaint was filed, including documentation of any

supportive measures offered and implemented. If the University does not provide a party with requested supportive measures, then the University will document the reasons for that decision. In each instance, the University will document the reason for actions taken or not taken, and document that it has taken measures designed to restore or preserve equal access to the University's education program or activity.

The University will also maintain for not less than seven years records of all materials used to train the Title IX Coordinator, Deputy Title IX Coordinators, investigators, decision-makers, persons who facilitate an informal resolution process, and persons responsible for considering appeals. The University will make these training materials available for inspection by members of the public on request.

Clery Act Compliance and Federal Statistical Reporting Obligations

Certain campus officials have a duty to report incidents of sexual assault, domestic violence, dating violence, and stalking for federal statistical reporting purposes under the Clery Act. All personally identifiable information is kept confidential, but statistical information must be passed along to Director of Student Conduct and Community Standards regarding the type of incident and its general location (on or off-campus, in the surrounding area) for publication in the University's Annual Security Report (ASR). This report helps to provide the University community with a clear picture of the extent and nature of campus crime.

In the case of a reported situation reflecting a serious and continuing threat to the University community, the University will issue a timely warning to the University community. In such circumstances, the name of the alleged perpetrator may be disclosed to the community, but the name of the victim/reporting party will not be disclosed.

Transcript Notations

For those crimes of violence that the University is required by federal law to include in its Annual Security Report, the transcripts of students found responsible after a hearing and appeal, if any, shall include the following notation (as applicable):

- Withdrew with conduct charges pending;
- Suspended after a finding of responsibility for a code of conduct violation; or
- Expelled after a finding of responsibility for a code of conduct violation.

A student may request that the University remove a transcript notation for suspension, no earlier than one year after the conclusion of the suspension. The University will review the request and decide, in its sole discretion, whether the notation will be removed. Transcript notations for expulsion shall not be removed.

Delegation of Authority and University Counsel; Use of External Resources

Any University administrator or official responsible for performing a responsibility under this policy may delegate their authority, or the Title IX Coordinator may require reassignment of authority, to any other appropriate University official. Delegation of authority may be necessary to avoid conflicts of interest or where time constraints or other obligations prevent a University official named in this policy from fulfilling the person's designated role. The University may also utilize appropriately trained external personnel for any role under this policy as it may deem necessary or appropriate. Any University administrator or official functioning under this policy may seek the advice and counsel of the Title IX Coordinator and/or the University's legal counsel at any time.

Coordination with Other Policies

A particular situation may potentially invoke one or more university policies or processes. The University reserves the right to determine the most applicable policy or process and to utilize that policy or process.

Without limiting the foregoing, if determined appropriate by the Title IX Coordinator, the processes described in this policy may be used to respond to, investigate and adjudicate conduct allegedly violating other policies if the alleged conduct is related to or arises out of the same facts, circumstances or incidents as alleged Prohibited Conduct to be addressed pursuant to this policy.

DISCRETIONARY AUTHORITY; CHANGE IN APPLICABLE LAW

The Title IX Coordinator shall have discretionary authority to construe and interpret this policy, and to determine the meaning of any disputed or uncertain provisions. In the course of any process under this policy, the Title IX Coordinator may make minor modifications to procedures that do not materially jeopardize the fairness owed to any party. The Title IX Coordinator may also vary procedures materially with notice upon determining that changes to law or regulation, or interpretations thereof, require policy or procedural alterations not reflected in this policy. If government laws or regulations change – or court decisions alter – the requirements in a way that impacts this policy, this policy will be construed to comply with the applicable government laws, regulations or holdings.

RESPONSIBILITY:

The University’s Title IX Coordinator is responsible for ensuring compliance with this policy. Any questions or concerns about the administration of this policy should be directed to the Title IX Coordinator, Nina N. Gray, at 315-792-3012 or nngray@utica.edu. Inquiries and complaints may be made externally to:

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

ENFORCEMENT:

Enforcement of Utica University policies is the responsibility of the office or offices listed in the “Resources/Questions” section of each policy. The responsible office will contact the appropriate authority regarding faculty or staff members, students, vendors, or visitors who violate policies.

Utica University acknowledges that University policies may not anticipate every possible issue that may arise. The University therefore reserves the right to make reasonable and relevant decisions regarding the enforcement of this policy. All such decisions must be approved by an officer of the University (i.e. President, Provost and Senior Vice President for Academic Affairs, or Vice President for Financial Affairs).

RESOURCES/QUESTIONS:

For questions regarding the implementation and interpretation of this policy, contact Nina N. Gray, Title IX Coordinator, at 315-792-3012 or nngray@utica.edu.

Please note that other Utica University policies may apply or be related to this policy. To search for related policies, use the Keyword Search function of the online policy manual.

Todd J. Pfannestiel, President

Date

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