

XAVIER UNIVERSITY

HARASSMENT CODE AND ACCOUNTABILITY PROCEDURES

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1. INTRODUCTION TO THE XAVIER UNIVERSITY HARASSMENT CODE AND ACCOUNTABILITY PROCEDURES

1.1. Purpose

Individuals who believe they have been harassed, individuals charged with harassment, and individuals with knowledge of situations in which harassment may exist should consult the Xavier University Harassment Code and Accountability Procedures (HCAP). To encourage persons to come forward, the University provides several channels of communication, information, and both informal and formal complaint resolution procedures. Persons or groups who believe they are victims of such an action are encouraged to report the incident to the appropriate University authority. All complaints are considered serious and are dealt with through informal intervention or formal intervention resolution procedures as described below. Disciplinary action will be taken in all cases where there is a finding of responsibility through a formal procedure.

This HCAP is only part of Xavier University's effort to prevent harassment in our community. In addition to spelling out steps for making and resolving complaints, the University is also committed to programs of education to raise the level of understanding concerning the nature of harassment and ways to prevent its occurrence.

These policies and procedures are intended to replace the Xavier University Sexual Harassment Policy, but are in addition to and are not intended to replace all other policies and procedures of Xavier University, except where noted. To the extent any provision of this HCAP conflicts with another Xavier policy or procedure, the language of this HCAP shall take precedent over the other conflicting statement, except that if the other policy or procedure is found within the Faculty Handbook. The Faculty Handbook shall take precedent over the HCAP.

1.2. Applicability of the HCAP

This HCAP applies to the "University Community" which includes all persons who are enrolled at or employed by Xavier University while they are on campus or are participating in a University-related off-campus activity, except where noted. Additionally, all others present on the Xavier campus or participating in a University-related off-campus activity are expected to observe the policies outlined herein.

This HCAP is subject to change as deemed appropriate by the University. Notice of changes to this HCAP will be provided to all persons to whom it applies through the Campus portal, email system, or by some other method reasonably intended to reach all members of the University Community. The University will strive to provide this notice of changes within a reasonable period of time after the changes have been made.

The official version of this HCAP is located on the Xavier University website. This is a living document, which will be reviewed and updated.

2. XAVIER UNIVERSITY POSITION STATEMENT ON HARASSMENT

2.1. Position Statement on Harassment

Xavier is committed to eliminating barriers that impede learning and research development and to establishing and maintaining diverse human relationships essential to living harmoniously in a global society. Xavier is creating and implementing educational and development initiatives through the discovery and transmission of knowledge in order to establish and maintain diverse human relationships essential to living harmoniously in a global society. Therefore, it is essential that members of the University Community function effectively and justly when exposed to ideas, beliefs, values, personal characteristics, and cultures different from their own. Incidents of harassment jeopardize the proper functioning of the Xavier Community and therefore the University takes all claims of harassment seriously.

3. THE HCAP AND RELATED LAWS

3.1. Title IX of the Education Amendments Act of 1972

This law provides that, “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance....” This includes protection from sexual harassment. Xavier University does not discriminate, exclude from participation in, or deny benefits of its educational programs, admission policies, activities, or employment policies and opportunities on the basis of gender. Xavier’s Title IX Coordinator monitors compliance with this law and coordinates Xavier’s response to complaints of discrimination based on gender, including assisting Complainants in receiving any medical, mental

health, or other services and facilitating any interim protective measures that may be warranted. More information about Interim Measures and the Title IX Coordinator is available in Sections 3.3 (“Interim Measures for Individuals and/or the Campus Community”) and 3.4 (“Title IX Coordinator – Sex discrimination Charges only (Including Sexual Harassment, Sexual Assault, Sexual Violence, Stalking, Rape or Other Sexual Misconduct)) of the Student Handbook. Inquiries concerning the application of Title IX, including but not limited to gender discrimination and sexual harassment, may be referred to Xavier’s Title IX Coordinator, Kate Lawson, Gallagher Student Center, RM 332, 513-745-3046, lawsonk1@xavier.edu, or to the Office of Civil Rights, Cleveland Office, U.S. Department of Education, 600 Superior Avenue East, Suite 750, Cleveland, OH 44114-2611, 216-522-4970, OCR.Cleveland@ed.gov.

3.1.1. Title IX Coordinator – Sex Discrimination Charges Only (Including Sexual Harassment, Sexual Assault, Sexual Violence, Stalking, Rape, Other Sexual Misconduct, or Retaliation)

Sex discrimination (including sexual harassment, sexual assault, sexual violence, stalking, rape, other sexual misconduct, or retaliation) is prohibited by Title IX of the Education Amendments of 1972 (“Title IX”) and Xavier. More information about this prohibited conduct, including examples, can be found at Section 4.1.1.1. of this HCAP and at Section 2.3.3 (“Sex Discrimination (Including Sexual Harassment, Sexual Assault, Sexual Violence, Stalking, Rape, Other Sexual Misconduct, or Retaliation”) of the Student Handbook.

3.1.1.1. Contact Information

As listed above, the Title IX Coordinator can be contacted for purposes of making a complaint or to get information and resources related to sex discrimination issues at 513-745-3046-Gallagher Student Center, RM 332. The Affirmative Action Officer, Kathy Riga, Assistant Vice President for Human Resources, Alumni Center Room 132, 3800 Victory Parkway, Cincinnati, Ohio 45207-5400, 513-745-3638, riga@xavier.edu, acts as a Deputy Title IX Coordinator for matters involving faculty, staff and administrators.

3.1.1.2. Role

The Title IX Coordinator is responsible for overseeing all of Xavier's Title IX compliance efforts. Matters of sex discrimination (including sexual harassment, sexual assault, sexual violence, stalking, rape, other sexual misconduct, or retaliation) must be handled in accordance with this HCAP, which is drafted in compliance with Title IX. With respect to violations of the HCAP, the Title IX Coordinator will work with the Affirmative Action Officer (and with the Director of Student Integrity for matters involving students) to oversee the HCAP process – from complaint to resolution – of any allegation that, if proven true, would constitute sex discrimination. This includes conducting an investigation of the complaints, producing a report, providing the report and collected materials to the Hearing Panel, and monitoring Interim Measures and sanctions. (These tasks will usually be completed by the Title IX Coordinator for allegations against students or non-Xavier individuals, and by the Affirmative Action Officer, acting as Deputy Title IX Coordinator, for allegations against faculty, staff and administrators.)

3.1.1.3. Fact-Finding Investigation

The Title IX Coordinator or Deputy Title IX Coordinator will promptly investigate all complaints of sex discrimination (including sexual harassment, sexual assault, sexual violence, stalking, rape, other sexual misconduct, or retaliation). Under Title IX, this investigation must be adequate, reliable and impartial. While the time it takes to conduct an investigation depends on the particular facts and circumstances, most investigations will begin within 10 business days of a complaint being made and will be completed within 15 business days of the date the investigation is started. These timelines may expand or contract depending on many factors including, but not limited to, the complexity of the matter, the availability of witnesses or evidence, or

the time in the school year when the investigation takes place. In general, the Title IX Coordinator or Deputy Title IX Coordinator's fact-finding investigation will include talking to the parties involved, other witnesses, members of law enforcement (if applicable), other individuals and collecting any materials or information that may be related to the allegations.

3.1.1.4. Title IX Coordinator's Report

After concluding the fact-finding investigation, the Title IX Coordinator or Deputy Title IX Coordinator shall prepare a written report, summarizing the facts, materials or other information collected and any observations made during the investigation. The report is intended to be factual in nature and not draw conclusions or give opinions about whether a violation occurred. The report and any other collected materials are provided by the Title IX Coordinator or Deputy Title IX Coordinator to the Hearing Panel.

3.1.1.5. Compliance With Law Enforcement

To the extent consistent with Xavier's obligation under Title IX, Xavier will comply with law enforcement requests for cooperation. Such cooperation may require Xavier to temporarily delay the start of or suspend an ongoing fact-finding investigation while the law enforcement agency is in the process of gathering evidence (not the ultimate outcome of the criminal investigation or the filing of any criminal charges). If Xavier has temporarily delayed or suspended its investigation, Xavier will promptly resume its investigation as soon as it is notified by the law enforcement agency that it has completed the evidence gathering process. Law enforcement agencies typically take three to ten calendar days for their evidence gathering process, although the delay in Xavier's Title IX investigation may be shorter or longer in certain circumstances. In any case, Xavier will implement appropriate Interim Measures during the law enforcement agency's investigation period.

to provide for the safety of the Complainant and the campus community and to avoid retaliation. For additional information about Interim Measures by Xavier, see Section 5.5.

3.2. Clery Act

Federal law, known as the Clery Act, mandates reporting and disclosure procedures for higher education institutions. The Clery Act requires every institution to provide the campus community with information necessary to make informed decisions about their health and safety. The Clery Act specifically mandates every institution to do the following: (1) have emergency notification and evacuation procedures; (2) issue timely campus alerts for crimes that represent an ongoing threat to the safety of students or employees; (3) keep a crime and fire log; (4) collect crime reports from campus security authorities; (5) request crime statistics from local law enforcement; (6) submit crime and fire statistics to U.S. Department of Education; (7) publish an annual security report and fire safety report. For more information on the Clery Act see 10 U.S.C. Section 1092 or <http://www2.ed.gov/admins/lead/safety/handbook.pdf>.

3.2.1. XU Alert Me

In compliance with the Clery Act, Xavier created the XU Alert Me program to increase safety and awareness within the Xavier community. XU Alert Me allows Xavier to alert students, faculty, and staff of threats, emergency situations, and weather-related closings via text messaging, email, and voice messaging.

In order to receive alerts from the XU Alert Me program, students must provide Xavier with the phone number and e-mail address through which they wish to be contacted. This information can be provided online at <http://www.xavier.edu/audit-risk/Sign-Up.cfm>.

Students, faculty and staff enrolled in XU Alert Me will be promptly notified upon the confirmation of a significant emergency or dangerous on-campus situation involving an immediate threat to the health or safety of students, faculty, or staff as determined in Xavier's sole discretion, unless issuing a notification will compromise efforts to contain or manage the emergency. Individual(s) enrolled in the XU Alert Me program understand that substance and timing of alerts will be at Xavier's sole discretion. In the event Xavier decides to send an

alert, XU Alert Me will send each enrolled individual(s) an e-mail and/or text message, and/or will attempt to contact each enrolled individual by phone up to three times. The method(s) of contact will depend on the contact information provided by the individual at the time of enrollment. Once a call is answered by the individual or the individual's automated voice mail, no further attempts will be made to contact that individual.

Xavier will not charge individual(s) a fee for enrolling in the XU Alert Me program, but individual(s) will be responsible for any fees charged by their phone/cellular service providers for the associated calls, text messages, or voice mails.

3.3. Violation of Law and University Policy In General

Violations of this HCAP are sometimes also potential violations of criminal law. The University acknowledges that simultaneous adjudication of a HCAP matter and a criminal case may make the criminal case more difficult for an individual to defend or for the prosecutor to prosecute.

The University reserves the right to initiate or proceed with the HCAP process, regardless of any pending criminal investigation, charges, arrest, or prosecution arising out of the same or a related factual situation. At the discretion of the Affirmative Action Officer, or designee (with respect to faculty, staff and administrators) or the Director of Student Integrity, or designee (with respect to students), and in consultation with the Title IX Coordinator in matters involving sex discrimination, the HCAP process may be carried out prior to, simultaneously with, or following any related criminal matter.

The dismissal, failure to prosecute, "no bill" from a grand jury, settlement or reduction in charges of any related criminal matter shall not be grounds for a challenge to any HCAP matter.

For additional information related to HCAP matters that are also Student Conduct matters, see the Student Handbook at Section 1.3.5.1.

3.4. University Response to Police Citations Issued to Members of the University Community

The HCAP process may also be instituted by Xavier when information is received from the Xavier University Police Department, the Cincinnati Police Department, the Norwood Police Department, or

other police entities, about misdemeanor or criminal citations that have been issued to a member of the University Community.

3.5. Independent Legal Counsel

While the role of an attorney throughout the HCAP process is limited by the terms of this HCAP, individuals involved in HCAP matters that may also be criminal matters are encouraged to seek legal counsel. The Cincinnati Bar Association has a referral service and can be contacted at 513-381-8359 or further information can be found at <http://www.cincybar.org/news-resources/find-lawyer/index.php>.

4. HARASSMENT POLICY

4.1. Nature of Prohibited Conduct

4.1.1. Definition of Harassment at Xavier University

For the purposes of this policy, harassment is the creation of a hostile or intimidating environment, in which conduct, because of its severity and/or persistence, is likely to interfere significantly with an individual's life by affecting the person physically or emotionally. Such harassment will not be tolerated.

Harassment can be uninvited or unwelcome verbal, physical or visual conduct. Harassing conduct is often, but not always, in reference to the individual's or a group of individuals' sex, gender identity, race, color, economic status, class, religion, culture, national origin, citizenship, veteran status, ethnicity, sexual orientation, position, age, handicap, or disability.

Verbal conduct may be either oral or written words, such as epithets. Physical conduct may include assault or battery, physically interfering with, blocking or impeding an individual's normal movement. Visual conduct may include drawings, pictures, cartoons or derogatory posters. (None of these descriptions is intended to describe all manners of the particular type of conduct.)

Examples of harassing conduct include, but are not limited to:

- Any intentional, willful or malicious abuse, mocking, or disparaging of a person or persons so as to affect their educational performance or living or working environment at Xavier.

- Actions or expressions that might cause or contribute to violent situations, or that create a clear and present danger of violent situations.
- Phone calls, Instant Messenger sessions, or other electronic communications that violate the Ohio Telecommunications harassment statute, O.R.C. § 2917.21.
- Acts of violence, stalking, unwelcome physical touch, physical, verbal, or written threats, and/or other inappropriate communications.
- Incidents of sexual harassment, as defined below.

The victim of harassment can be male or female. The conduct alleged to constitute harassment under this policy is evaluated from the perspective of a reasonable person similarly situated to the complainant and considering all the circumstances.

4.1.1.1. Sexual Harassment

Sexual harassment is a particular form of harassment with specific distinguishing characteristics. Conduct that constitutes sexual harassment can be verbal, visual or physical. It may be direct or explicit or it may be inferred from the conduct, circumstances and relationship of the individuals involved.

Sexual harassment, covered by this HCAP, is a form of sex discrimination prohibited by Title IX. Sexual harassment can be in the form of sexual assault, sexual violence, stalking, rape, other forms of sexual misconduct, or retaliation.

What constitutes sexual harassment will vary with particular circumstances, but it generally consists of unwelcome sexual advances, explicit or implicit requests for sexual favors, or other verbal or physical conduct of a sexual nature when:

- Submission to or rejection of such conduct is an explicit or implicit term or condition of education, employment, or participation in other University activities;
- Submission to or rejection of such conduct is used as a basis for an employment,

- Such conduct has the purpose or effect of unreasonably interfering with an individual's work, academic performance, or status; or
- Such conduct has the purpose or effect of creating an intimidating, hostile, or offensive University environment.

In so far as Title VII (Equal Employment Opportunity) of the Civil Rights Act of 1964 is applicable, the University adopts the definition of sexual harassment found in the Equal Employment Opportunity Commission (EEOC) Guidelines: "conduct of a sexual nature...when such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment."

Examples of sexual harassment may include, but are not limited to:

- Ongoing use of offensive language or discussions of a sexual nature that creates a hostile or offensive environment.
- A supervisor or professor promising a raise or a better grade in exchange for sexual contact.
- Repeated, unwanted attempts to change a professional relationship to a personal relationship.
- Criminal acts such as assault or rape.
- Repeated joking or teasing about sexual orientation.
- Repeated joking or teasing about other peoples' bodies.
- Whistling, touching, or other repeated unwanted flirtation.
- Displaying graphic pictures that create a hostile or offensive working or living environment.
- Unwelcome attention of a sexual nature after requesting that the attention be stopped.

Sexual harassment need not be intentional. Behavior is sexual in nature if a reasonable person could have interpreted the alleged behavior to be sexual. The intent of the person who is alleged to have committed sexual harassment is not relevant in determining whether sexual harassment has occurred.

4.1.2. Amorous Relationships

Because the University views it professionally unethical, because the potential for abuse or the appearance of abuse is so great, and because of the inherent differential in authority, the University prohibits the following relationships and acts, whether they are consensual or not:

- Every non-student member of the University Community is prohibited from engaging in romantic and/or sexual relationships or in romantic and/or sexual conduct with any student currently enrolled as an undergraduate at the University.
- Every member of the University Community is prohibited from engaging in romantic and/or sexual relationships or in romantic and/or sexual conduct with anyone whom he or she educates, counsels, coaches, supervises or evaluates in any way.

For application of the provisions contained in this section to mixed-status individuals, see section 5.2.1.

Even when both parties have consented at the outset to the development of such a relationship, it is the officer, instructor or other person in the relative position of power who, by reason of authority conferred by the University, bears the burden of accountability.

It should be noted that exceptions to any of these prohibitions will be considered by the Affirmative Action Officer on a limited, case-by-case basis. Some examples of acceptable relationships may include:

- A recent Xavier graduate, hired by the University, continuing a relationship that began while both individuals were students.

- An employee's spouse enrolling as a graduate or non-traditional undergraduate student.

Similarity to one of the situations does not automatically deem the relationship acceptable. If you have any questions about the application or effect of this policy to an existing or potential relationship, it is your duty to consult with your supervisor and/or the Affirmative Action Officer.

In keeping with this University policy, if charges of harassment are made, the existence of a consensual relationship in any of the contexts stated above shall not be a defense in any proceeding brought under the HCAP.

Disciplinary penalties for individuals who violate these provisions may include written reprimand, formal warning, suspension, termination or dismissal, or such other penalties, as the University deems appropriate and consistent with the gravity of the offense. In the case of faculty, violation of these prohibitions may constitute "serious misconduct...or neglect of professional duties and responsibilities, or moral turpitude," and can therefore constitute grounds for dismissal of a tenured or untenured faculty member. Xavier University Faculty Handbook, p. 2.19.

4.1.3. Academic Freedom

While nothing in this policy should be construed to infringe upon the exercise of academic freedom, academic freedom does not include the freedom to harass.

4.1.4. Reprisals

Retaliation by the University, its faculty, staff, administrators, or its students against any of the following individuals is prohibited.

4.1.4.1. Against the Complainant

It is a violation of this HCAP to attempt to penalize, intimidate, or retaliate in any way against a complainant for filing a charge of harassment.

4.1.4.2. Against the Respondent

Filing of a complaint of harassment is not proof of prohibited conduct. A complaint shall not be taken into account during reappointment, tenure, promotion, performance review, merit increases, or other evaluation or review unless a final determination has been made that the University's HCAP has been violated, in which case it shall only be taken into account to the extent allowed under these procedures.

4.1.4.3. Against Others Because of Their Connection to an Incident of Alleged Harassment

It is a violation of this HCAP to attempt to penalize, intimidate, or retaliate in any way against a witness or panel member in a harassment hearing, anyone seeking guidance concerning a harassment matter, or any individual who provides information related to or is otherwise involved in any informal or formal procedure for investigating or addressing an alleged claim of harassment.

4.1.4.4. Claim of Retaliation

A complaint of retaliation may be pursued against any individual violating this section using the steps followed for a complaint of harassment. Such a complaint will be treated as a separate incident of harassment and will be adjudicated accordingly. When necessary, the appropriate dean or other University officer may monitor student grading or administrative/faculty/staff reappointment, tenure, promotion, performance review, merit increases, or other decisions to ensure that prohibited retaliation does not occur. When necessary and appropriate, the appropriate dean or other University officer may determine that such decisions may be deferred until the claim is resolved.

4.2. Knowingly Filing False Complaints

Knowingly filing a false complaint of harassment or of retaliation, or knowingly providing false testimony regarding a claim of harassment or retaliation is a violation of Xavier's HCAP. Such conduct may be pursued using the steps followed for a complaint of harassment. A complaint under this provision does not constitute prohibited retaliation.

Any employee or student who knowingly files a false complaint of harassment or who knowingly provides false testimony shall be subject to discipline in accordance with the provisions of this HCAP.

4.3. Confidentiality

All persons involved in any aspect of an allegation of harassment should respect the confidentiality of the matter and must keep the matter strictly confidential, unless otherwise required by law. Information will only be disclosed to the extent required by law, and to the extent that such disclosure is necessary and permitted under this HCAP for the investigation and adjudication of any claim of harassment.

Failure of any individual to maintain this confidentiality may result in disciplinary action in accord with the applicable University procedures (Student Handbook, Xavier University Faculty Handbook, or University's Policy and Procedures Manual).

Any respondent identified in a complaint that has been filed may, at his or her option, inform his or her supervisor or academic advisor that such a complaint has been filed.

If a complainant requests that his or her identity not be disclosed, the University representative shall honor the request to the extent it is possible so long as the informal resolution procedures apply. However, once formal procedures are pursued, the complainant's identity must be disclosed to the respondent. In any event of disclosure of the complainant's identity where the complaint has sought anonymity, the complainant shall be notified in advance of the disclosure.

A complaint alleging an intentional breach of confidentiality may be pursued using the steps followed for a complaint of harassment. Such a breach may also constitute an act of retaliation. A breach of confidentiality may void the outcome of any previously agreed-upon resolution to a complaint.

4.3.1. Confidentiality of Reports of Sex Discrimination (Including Sexual Harassment, Sexual Assault, Sexual Violence, Stalking, Rape, Other Sexual Misconduct, or Retaliation)

The following information relates to the confidentiality of reports of sex discrimination (including sexual harassment, sexual assault, sexual violence, stalking, rape, other sexual misconduct, or retaliation) in accordance with Title IX.

All individuals with knowledge of sex discrimination (including sexual harassment, sexual assault, sexual violence, stalking, rape, other sexual misconduct, or retaliation) are encouraged to report the incident to Xavier University. In accordance with Title IX, Xavier prohibits retaliation and will not only take steps to prevent retaliation but also will take strong responsive action if it occurs.

Even if an individual who has been negatively affected by sex discrimination does not want to pursue the matter through the HCAP process or the criminal justice system, he or she should still consider making a confidential report to Xavier. The purpose of the confidential report is to maintain confidentiality while allowing Xavier to take steps to ensure the future safety of the individual and the community. Anonymous reports can be made by calling the Anonymous Reporting Hotline at 855-481-6238 or submitting an anonymous report online by following the link on the Audit & Risk Management's website (www.xavier.edu/audit-risk/ethicspoint.cfm).

By reporting the incident, Xavier can keep an accurate record of the number of reported incidents involving members of the University Community, determine where there is a pattern of sex discrimination with regard to a particular location, method, or assailant, alert the campus community to potential danger, and initiate the HCAP process. Pursuant to the Clery Act, reports of certain types of sex discrimination to Xavier (including but not limited to reports to the Affirmative Action Officer, Title IX Coordinator, Residence Life, the Director of Student Integrity, the Advocate Program, the Women's Center, the Anonymous Reporting Hotline, the Xavier University Police Department, and any other Xavier faculty, staff or administrator) must be counted and disclosed in the annual crimes statistics for Xavier. Xavier's annual crime statistics report does not reveal the identities of the persons involved.

Disclosure of the reported incident for inclusion in the annual crimes statistics does not typically involve disclosure of personally identifiable information within Xavier except to the extent necessary to ensure the incident is not double counted. Only reports to pastoral and professional counselors (i.e. counselors at the Health and Wellness Center and Psychological Services Center) acting in their role of pastoral or professional counselor may not be disclosed and counted in the annual crimes statistics for Xavier.

If an individual who has been negatively affected by sex discrimination reports the incident and requests confidentiality or asks that the complaint not be pursued through the HCAP process, Xavier will still take all reasonable steps to investigate and respond to the complaint consistent with the request for confidentiality or request not to pursue the investigation. Individuals should be aware that Xavier's ability to respond (including sanctioning the alleged perpetrator) may be limited by such a request. Still, Xavier will pursue other steps to limit the effects of the alleged discrimination and prevent its recurrence.

Xavier must evaluate all requests for confidentiality in the context of its responsibility to provide a safe and nondiscriminatory environment for all members of the University Community. In doing so, Xavier will weigh the request for confidentiality against the following factors: the seriousness of the alleged discrimination, the ages of the persons involved, whether there have been other complaints about the same alleged perpetrator, and the alleged perpetrator's rights to receive information about the allegations if the information is maintained by Xavier as an "education record" under FERPA. See section 1.7 ("Family Educational Rights and Privacy Act (FERPA)") of the Student Handbook. Accordingly, Xavier cannot guarantee absolute confidentiality in response to every request, but will inform the person requesting confidentiality if it cannot ensure confidentiality in light of the foregoing factors.

4.4. Duty to Report Harassment

To assist Xavier in preventing harassment, all members of the University Community are encouraged to report all incidents of harassment which they witness or which are known to them.

Any member of the University Community who witnesses harassment or is made aware of a harassment situation is encouraged to urge the complainant to report the harassment situation to Xavier's Affirmative Action Officer for further advice or action.

Any member who has any knowledge of conduct that could be in violation of this policy is encouraged to report such information to the Affirmative Action Officer or another University official.

Vice presidents, deans, department chairs, administrators, managers, and supervisors of the University have a duty to report incidents of harassment as follows: (1) to promptly report to the Affirmative Action Officer or Title IX Coordinator any conduct he or she observes that he or she believes constitutes harassment in violation of this HCAP; and (2) to promptly inform the Affirmative Action Officer or Title IX Coordinator of any report of, complaint of, or request for assistance with a harassment situation. These duties may apply even when the intention is to resolve the situation through informal procedures.

The Affirmative Action Officer will promptly, upon the filing of a complaint alleging harassment by a Xavier student, report such filing and related information to the Director of Student Integrity. The Affirmative Action Officer may report to the Director of Student Integrity any other information regarding a potentially harassing situation involving a Xavier student, only with the consent of the person alleging the harassment.

Anyone who perceives an imminently dangerous situation should immediately report the situation to the Campus Police.

5. HARASSMENT PROCEDURES

5.1. Introduction to Procedures

The Xavier University Harassment Accountability Procedures reflect the commitment to maintain a community that is free from harassment of any kind. Xavier has designed procedures for prompt internal resolution of harassment complaints that arise within the University Community. The University expects that the use of these procedures will facilitate and promote resolution of such complaints.

A member of the Xavier University Community who believes that he or she has been harassed in violation of this HCAP is encouraged to take action in any of the following ways provided for in these Procedures. Anyone who believes she/he has experienced harassment or assault is encouraged to contact Campus Police at 513-745-1000 for support and

information about the options available to him/her on and off the Xavier campus.

Some forms of harassment may violate federal and state laws, and a complainant may choose to invoke external processes to resolve his or her grievances instead of or in addition to pursuing the procedures set forth herein. Such individuals may contact the appropriate state or local agency, the Equal Employment Opportunity Commission, the Ohio Civil Rights Commission or the United States Department of Education, Office of Civil Rights. Complainants should note that there are statutes of limitation for seeking remedies within these external processes.

Xavier will initiate or continue with any internal processes under this HCAP without regard to external processes, unless otherwise instructed by University Counsel.

5.2. Applicability of Procedures

5.2.1. Xavier Staff, Faculty, Administrators, Students

In all instances, the alleged harasser will be subject to the procedures relevant to his or her University Community status, i.e., student, administrator, faculty member or staff member. For example, if a staff member is alleged to have harassed an administrator, a student, another staff member or a faculty member, he or she will be subject to the harassment procedures for staff; if a faculty member is alleged to have harassed a staff member, another faculty member, an administrator or a student, he or she will be subject to the harassment procedures governing faculty; if an administrator is alleged to have harassed a staff member, a faculty member, another administrator or a student, he or she will be subject to the harassment procedures governing administrators; and if a student is alleged to have harassed a staff member, a faculty member, an administrator or another student, he or she will be subject to the harassment procedures governing students.

The procedures specified in this HCAP apply to all administrators, faculty and staff.

All the procedures specified in this HCAP also apply to students, except sections 5.7 and 5.8, which relate to the use of the formal process of investigating, adjudicating and resolving complaints. Alleged incidents of harassment against students that are to be

pursued formally will be investigated and adjudicated under the procedures provided in the Xavier University Student Handbook.

Situations involving administrators, staff, faculty or students who believe they have been harassed, either on campus or in a university-related activity, by an individual who is not enrolled at or employed by Xavier (e.g., visitors, graduates of Xavier University, applicants for admission or employment, former employees, contractors, or vendors), may be addressed only through the informal process for handling an allegation (described below in section 5.6).

For purposes of applying this HCAP, an administrator, a faculty member or staff member who participates in a University class or other activity as a student shall always be considered a faculty or staff member, respectively, even with respect to incidents occurring in such class or activity. Similarly, an undergraduate or graduate student receiving compensation or other benefit from the University for counseling, advocacy, clinical, tutoring, or teaching responsibilities, or who is employed by the University in any other manner shall be considered a student rather than faculty or staff.

5.2.2. All Others

Situations involving individuals who are not enrolled at or employed by Xavier (e.g., visitors, graduates of Xavier University, applicants for admission or employment, former employees, contractors, or vendors) but who believe they have been harassed either on campus or in a university-related activity by someone who is enrolled at or employed by Xavier University may be addressed only through the informal process for handling an allegation (described below in Section 5.6).

5.2.3. Contractors or Vendors Working on the Xavier Campus but Not Employed by the University

Such individuals are treated as not enrolled at or employed by Xavier. Any use of the informal process by or against such individuals shall be in addition to any procedures provided in the individual's employment contract, union agreement, or other policy that relates to the individual's employment on the Xavier campus.

5.3. Advice, Information, Counseling

Anyone may seek advice, information or counseling on matters related to harassment without having to file a complaint. Persons who feel they are being harassed, or are uncertain as to whether what they are experiencing is harassment, and/or desire information as to their options in dealing with harassment are encouraged to talk with one of the University resource persons listed below. Additionally, some forms of behavior that are disturbing to members of the Xavier University Community may not meet the definition of harassment found in this HCAP. Some behaviors may be violations of the Student Handbook, Faculty Handbook or the University's Policy and Procedures Manual or may be covered by various grievance or dispute procedures.

To seek advice, information, or counseling about these issues, an individual may contact any of the following resource persons or offices: Human Resources, Director of Student Integrity, Office of Diversity and Equity, Health and Counseling, Psychological Services, Campus Police. Questions about handling complaints under any of the harassment procedures cited here may be directed to the Affirmative Action Officer.

Persons seeking advice, information or counseling should recognize that certain individuals have a duty to report harassment under section 4.4 of this HCAP.

5.3.1. Resources Regarding Sex Discrimination (Including Sexual Harassment, Sexual Assault, Sexual Violence, Stalking, Rape, Other Sexual Misconduct, or Retaliation)

In addition to the resources discussed in Section 5.3, the following resources and processes are available to individuals seeking more information about sex discrimination (including sexual harassment, sexual assault, sexual violence, stalking, rape, other sexual misconduct, or retaliation) or who believe they have experienced sex discrimination:

- **Emergencies** – If the situation is an off-campus emergency, call 911.
- **Xavier University Student Conduct process** – Xavier takes all allegations of sex discrimination seriously and handles allegations of such conduct against a student pursuant to the student conduct process outlined in Part 3 of the Xavier Student handbook.

- **Filing a Police Report or Pursuing Criminal Charges** – A violation of this HCAP may also be a violation of local, state, or federal law. Individuals may contact the Xavier University Police Department or another law enforcement agency to file a police report or to talk with a law enforcement officer about the possibility of filing a police report. The Xavier University Police Department 24-hour emergency number is 513-745-1000, the non-emergency number is 513-745-2000, and the Xavier University Police Department is located in Flynn Hall. More information is available at www.xavier.edu/police.
- **Xavier University Advocate Program** – Trained advocates through the Advocate Program are available 24 hours a day to provide confidential support, information, and advocacy to anyone who believes they have been a victim of sex discrimination (including sexual harassment, sexual assault, sexual violence, stalking, rape, other sexual misconduct, or retaliation). To be connected with a trained advocate, call the Xavier University Police Department 24-hour number at 513-745-1000. For more information, visit www.xavier.edu/advocate.
- **Local Crisis and Support Provider** – Women Helping Women provides crisis intervention and support services for direct and indirect victims (women and men) of sexual assault, domestic violence and stalking. The 24-Hour Crisis Line is 513-381-5610, the phone number is 513-977-5541, and the website is www.womenhelpingwomen.org.
- **Exam by a Sexual Assault Nurse Examiner at a Hospital** – A Sexual Assault Nurse Examiner (SANE) is a registered nurse (RN) who has received special training in order to provide comprehensive care to the sexual assault patient, and who has been specially trained on collecting forensic evidence (evidence that is suitable for use in court). At the local hospital, the SANE will discuss

what happened, do an exam looking for injury, and may provide medication to decrease the chance of getting sexually transmitted infections, and may test for pregnancy and sexually transmitted diseases (one test on the first visit to the SANE and a second test at a later date to determine if sexual assault resulted in pregnancy or sexually transmitted diseases). In addition to medical treatment and forensic evidence collection, the SANE can provide the names of other professionals available for follow-up care. **If a student believes he or she has been sexually assaulted it is best not to bathe, shower, change clothes, smoke, or brush your teeth after the assault since some evidence may be lost. Even if these have been done, the individual should still see the SANE as an exam can still be performed. It is best to contact a SANE as soon as possible after the assault. A SANE nurse is available through Cincinnati's University Hospital. The Xavier University Police Department Officers are available to transport or arrange for the transport of victims of sexual assault to University Hospital. The Xavier Advocate Program can have a trained advocate accompany the victim to the hospital and remain at the hospital. The services of a SANE nurse are provided free of charge to victims.** More information is available by calling University Hospital's SANE Program 24 hours a day at 513-584-4201 or visiting their website at www.universityhospital.uhealth.com/services/sexual-assault-nurse-examiners/.

- **Counseling-** Outpatient counseling and psychotherapeutic treatment is available at no charge to Xavier students at the Health and Wellness Center (www.xavier.edu/health-wellness/), 513-745-3022, located at 1714 Cleneay Avenue next to Cohen Center parking lot, and the Psychological Services Center (www.xavier.edu/psychologicalservices/), 513-745-3531, located in the Sycamore House at 3818 Winding Way next to Schmidt Fieldhouse. Any individual may also choose to seek counseling services from a private provider. Individuals should contact their insurance provider to find out about possible insurance coverage for services from a private provider.

5.4. Procedure for Reporting Harassment

An initial course of action for any faculty member, staff member, administrator, student, or other individual who feels that he or she is being harassed may be for that person to tell or otherwise inform the alleged harasser that the conduct is unwelcome and must stop. Members of the University Community who want to resolve their concerns in this manner may do so directly with the persons involved, although it is recommended that a complaint be filed in all incidents of alleged harassment to ensure that all concerns are resolved satisfactorily. This filing of a complaint also helps the University identify alleged repeat incidents by the same individual, and gauge the effectiveness of its anti-harassment policies and programs.

5.4.1. Filing a Complaint

Any faculty member, staff member, administrator, student, or other person protected by this policy who has experienced or witnessed an incident of harassment he or she believes is a violation of this HCAP is encouraged to file a complaint with the Affirmative Action Officer. Alternatively, reports of harassment may be made to any of the following, who will then assist in filing a complaint with the Affirmative Action Officer:

- If the situation is an off-campus emergency, call 911;
- Xavier University Police – 513-745-1000 (on or near campus emergencies) or 513-745-2000 (non-emergencies) – Flynn Hall, 1648 Herald Avenue;
- Title IX Coordinator – 513-745-3046 – Gallagher Student Center, Room 332;
- Residence Life – 513-745-3203 – Rm. 009D – Musketeer Mezzanine in Fenwick Place;
- Director of Student Integrity – 513-745-3166 – Gallagher Student Center, Suite 300, 3815 Ledgewood Avenue;
- Advocate Program – 513-745-1000
- Anonymous Reporting Hotline – 855-481-6238; to submit a report online, follow the link on the Audit & Risk Management’s website: (www.xavier.edu/audit-risk/ethicspoint.cfm).

A complaint against the Affirmative Action Officer may be filed with the University President.

A complaint may be filed even if the person making the complaint (the “complainant”) is uncertain whether the conduct of another rises to the level of harassment prohibited under this HCAP.

5.4.2. When Submitted

The complainant should submit the complaint as soon as possible following the incident or incidents of alleged harassment for which a complaint is filed.

5.4.3. Form of the Complaint

A complaint must be submitted in writing to the Affirmative Action Officer and signed by the complainant. This written complaint is to include the name of the complainant, the date of the complaint, details of the incident(s) relating to the alleged harassment, the name of the person or persons alleged to have engaged in the conduct (the “respondent(s)”), the names of any witnesses, and a description of the type of remedy or assistance sought.

If an oral complaint is made to someone other than the Affirmative Action Officer, the person to whom the complaint is made is encouraged to make and preserve notes identifying the facts specified in the previous paragraph to the extent related in the conversation. If the complaining individual is willing, he or she may sign these notes and the signed notes can be submitted to the Affirmative Action Officer as a complaint.

5.5. Interim Measures for Individuals and/or the Campus Community

Pending resolution of an HCAP matter, “Interim Measures” may be taken by the Affirmative Action Officer, Director of Student Integrity (students only), Director of Residence Life (students only), or Xavier University Police when there is a significant conduct or health and safety concern that requires immediate intervention to preserve and support the general welfare and academic experience of one or more Xavier individuals and/or the Xavier community. In matters involving allegations of sex discrimination (including sexual harassment, sexual assault, sexual violence, stalking, rape, other sexual misconduct, or retaliation), the Title IX Coordinator may work with the listed

individuals to identify, coordinate or implement Interim Measures. Requests for Interim Measures should be directed to the Affirmative Action Officer, Director of Student Integrity, Director of Residence Life, Xavier University Police or Title IX Coordinator. The following is a list of Interim Measures that may be implemented, if appropriate.

5.5.1. No Contact Order

A No Contact Order can be issued to prevent a person from contacting another person. See Student Handbook Section 3.7.1.7 (“No Contact Order”) for more details. Note that confidentiality of the requesting party’s identity cannot be maintained when a no contact order is requested to keep the individual alleged to have violated the HCAP from having contact with the person making the request for no contact.

5.5.2. Escorts

Arrangements may be made so that an individual has an escort (a friend, a police officer, or another individual) at particular times (e.g., to/from a particular class or activity, to/from his or her vehicle, etc.).

5.5.3. Added Police Presence

Xavier University Police Department presence may be increased in a particular area or over the entire campus.

5.5.4. Making Adjustments to On-Campus Living Arrangements

Adjustments may be made to a student’s on-campus living arrangements, if space allows. For example, a student may be required to move to a different dormitory if he or she is in the same dormitory as a student who has been personally adversely affected by an alleged violation of the HCAP. A student may also be required to move off-campus in certain circumstances. Note that the burden of any move or other adjustment will usually be placed on the student alleged to have violated the HCAP.

5.5.5. Making Adjustments to Class Schedules or Xavier Activities

Adjustments can be made to a student’s class schedule and/or his or her participation in a Xavier activity (e.g., a student club, a club or NCAA athletic team, a Xavier-sponsored trip, etc.) may

be limited or restricted, pending the resolution of an HCAP matter. For example, a student may be required to withdraw from or make other arrangements for participating in a particular class that is shared with a student or other individual who has been personally adversely affected by an alleged violation. Note that the burden of any change will usually be placed on the student alleged to have violated the HCAP. If the resolution of the underlying matter does not result in a separation from Xavier (i.e., suspension or expulsion), measures will be taken to assist the student in mitigating any negative academic impact resulting from the temporary adjustments to his or her class schedule or Xavier activities.

5.5.6. Separation from Xavier

An individual may be separated from Xavier, including removal from all housing, classes, employee duties and activities, pending the resolution of an HCAP matter. In the case of students, if the resolution of the underlying matter does not result in a separation from Xavier (i.e., suspension or expulsion), measures will be taken to assist the student in mitigating any negative academic impact resulting from being temporarily removed from campus.

5.5.7. Other Interim Measures

Other Interim Measures may be taken if deemed appropriate by the Affirmative Action Officer (with respect to faculty, staff and administrators), or the Director of Student Integrity (with respect to students), based on the facts and circumstances of a particular situation.

5.5.8. Emergency Administrative Action

Should an individual pose an immediate danger to, or severely disrupt the Xavier community or endanger any individual, one or more Interim Measures may be taken as an Emergency Administrative Action. Within five business days of the Emergency Administrative Action, the formal process will be initiated. The decision whether or not to take Emergency Administrative Action will be at the sole discretion of the Affirmative Action Officer (with respect to staff, faculty and administrators) and the Director of Student Integrity (with respect to students).

5.5.9. Psychological Emergencies

Interim measures may also be taken by the Director of Student Integrity to address a psychological emergency situation involving a student. A student who is believed to be in immediate life threatening danger to him or herself, or an immediate life threatening danger to others, due to psychological difficulties, may be required to obtain professional evaluation and treatment. Failure to comply with the treatment requirement can result in contact with parents of dependent students, disciplinary action, and removal from on-campus housing, or mandatory withdrawal from Xavier.

Further, Xavier may disclose information from a student's education record to appropriate parties in connection with an emergency if the information is necessary to protect the health or safety of the student or other individuals.

When a Xavier employee believes that a student is potentially harmful to him or herself or others or if the student has demonstrated behaviors that threaten or disrupt the community, Xavier reserves the right to mandate an assessment. This assessment will be conducted by qualified personnel. In such instances, the student will be required to sign a release of information indicating that specific limited information can be shared with the Director of Student Integrity regarding the outcome of the assessment which may become part of the student's education record. Specifically, information shared may include whether the student has complied with scheduling and completing the mandated assessment, and whether or not the student has agreed to follow-up treatment recommendations. The student will be advised of the possible consequences of signing such a release. If the release of information has not been signed, and a copy has not been provided to the Director of Student Integrity within five business days of the request, the student may not be permitted to continue as an enrolled student until such time as the student is able to demonstrate to the satisfaction of the Director of Student Integrity that he or she is not a danger to him or herself or others and can participate in the personal, social, and academic responsibilities of being a Xavier University student.

5.6. Beginning the Process of Resolution of a Complaint

Once a complaint is filed, the Affirmative Action Officer and/or any resource person listed in section 5.3 above with whom the complainant has counseled will assist the complainant to end conduct that he or she believes violates this HCAP. Within 10 days after the filing of a complaint, the Affirmative Action Officer will arrange a meeting with the complainant and other resource persons, as is appropriate. At this meeting, the Affirmative Action Officer and/or resource persons will work with the complainant to determine and then implement the best approach(es) to satisfactorily resolve the matter. This shall include deciding whether to proceed informally or formally. Notwithstanding the foregoing, in cases involving a complaint of sexual assault, the informal process may not be used, and in other cases, including specifically those involving a complaint of other forms of sex discrimination, the complainant has the right to reject the use of the informal process.

Subject to the foregoing, the complainant's wishes will be respected to the fullest extent possible in determining the appropriate course of action.

5.6.1. Time Limits

All complaints of harassment are to be filed with the Affirmative Action Officer as soon after the offending conduct as possible. Formal procedures will only be used with respect to complaints filed no more than two (2) years after the most recent conduct alleged to constitute harassment. The two-year limit for filing a harassment complaint for which formal procedures may be used shall not be extended. The Affirmative Action Officer may grant a reasonable extension of any other time period established in these guidelines, except where otherwise noted.

The University's two year time limit on the filing of claims of harassment for which formal procedures may be used is intended to encourage complainants to come forward as soon as possible after the offending conduct and to protect respondents against complaints that are too old to be effectively investigated. Further, delay may make addressing the harassment difficult as witnesses may no longer be able to recall events, witnesses may have gone on to other programs or employment, corroborating evidence may not be available, and/or intervening events may have occurred.

Although a complaint that is filed after the two year time period

cannot be pursued under the formal procedures, informal procedures may be used at any time. Additionally, if sufficient evidence is available, disciplinary action under other judicial processes may be available to address the improper behavior.

5.7. Resolution Through the Informal Process

Although an attempt to informally resolve a harassment complaint is not required before an individual may use formal procedures, the University's HCAP favors informal resolution of harassment claims whenever such resolutions can be affected fairly. The exception to this preference is in matters involving allegations of sexual assault, which will automatically bypass the informal process and proceed to a formal process. Despite use of any process to achieve an informal resolution, formal procedures may be instituted at any time under the procedures described in Section 5.6.

5.7.1. Achieving an Informal Resolution

Below is a list of common approaches to resolving a matter informally. This list is not exhaustive and other approaches may be appropriate depending on the particular facts and circumstances.

- The complainant, either alone or with another person, may meet with the respondent to discuss the situation, identify the unwanted behavior, and make it clear that the behavior must cease. The Affirmative Action Officer or resource person can help the complainant prepare for this meeting.
- The Affirmative Action Officer or resource person may discuss the alleged conduct with the respondent, reminding the respondent of University policies against harassment, and seek a commitment by the respondent to comply with the HCAP.
- The respondent's supervisor or academic advisor may be contacted and asked to help address the situation with the respondent.
- The Affirmative Action Officer may suggest that the complainant discuss the situation with individuals who are available through the following offices in order to determine the best way to proceed:
 - Human Resources
 - Director of Student Integrity
 - Office of Diversity and Equity
 - Health and Counseling

- Psychological Services
- Campus Police

5.7.2. Monthly Status Meetings

During the informal resolution process, monthly status meetings shall be held until an informal resolution is reached, or until the formal process is initiated. This meeting should include the complainant, the Affirmative Action Officer and/or any resource person involved in the informal resolution process.

The first meeting shall be scheduled to occur approximately one month after the date of the decision to proceed informally made under section 5.5.

At each status meeting, those present will discuss what action has been taken and what action should be taken. This should include discussing whether to continue with the informal process or begin the formal process.

5.7.3. Form of an Informal Resolution

An informal resolution may include, but is not limited to, the matter being brought to the attention of the respondent, an agreement to terminate and not repeat specific conduct, an apology, and/or participation in education, training, or counseling. An informal resolution typically will not include any sanction against the respondent. A complaint may also be resolved informally with the complainant signing a Request for No Action and submitting it to the Affirmative Action Officer.

If a complaint is filed against a non-member of the University Community, resolution of the complaint shall be limited to reporting the alleged incident to an appropriate party and/or notifying the individual he or she is not permitted on the Xavier campus.

The Affirmative Action Officer shall review all informal resolutions to ensure the parties fully understand the terms.

All resolutions resulting in an agreement between the complainant and respondent (e.g., an agreement not to repeat specific conduct) must be agreed to and signed by both parties. Any breach of the terms of this agreement may result in disciplinary action or a further claim of harassment. If the resolution does not include any agreement (e.g., the matter

being brought to the attention of the respondent), a statement of the resolution must only be signed by the complainant.

An informal resolution achieved or agreement signed by the parties does not constitute a finding of harassment. However, any conduct admitted to by the respondent while attempting to resolve the matter informally or in resolution of the matter, may be considered in any Mediation or Formal Hearing against the same respondent, brought by the same complainant. Additionally, the fact that a complaint was filed and an informal resolution was reached may be used by the Affirmative Action Officer in a Formal Proceeding against the respondent as described in section 5.7.3 or section 5.8.

5.7.4. Anonymity

A complainant may request that, whenever possible, a conversation with the respondent for purposes of resolving a complaint informally will be held without revealing the complainant's identity directly to the respondent. If the resolution to a specific matter is to include an agreement between the parties, the complainant's identity must be revealed to the respondent.

5.7.5. Record of Informally-Resolved Complaints

After a complaint has been resolved informally, all documentation concerning the complaint will be maintained in the Affirmative Action Office under both the complainant's name and the respondent's name for the shorter of: (1) five years after the resolution of the matter in which it was created, or (2) one year after the complainant ceases all employment by and/or enrollment at Xavier University. At the end of that time period, the Affirmative Action Officer shall destroy all the documentation and shall keep a permanent record only consisting of the names of the complainant and respondent, the status of each (e.g., faculty, student), the incident date and the date of resolution. Such records will be kept in order to document that the claim of harassment was made and that an informal resolution was reached without a finding in the situation. This documentation may be used:

- If the complainant raises a question about how the claim was handled.
- If the respondent wishes to establish that the matter which the same complainant now seeks to pursue

formally (by the same or a later complaint) was already informally resolved.

- Any information regarding conduct admitted to by the respondent while attempting to informally resolve or in an informal resolution of a complaint may be provided by the Affirmative Action Officer to a Hearing Panel or Mediator to be considered in reviewing a complaint pursued formally against the respondent, if both complaints were filed by the same complainant.
- The fact that a complaint was filed and an informal resolution was achieved may be used by the Affirmative Action Officer in a future proceeding against the same respondent as described in section 5.7.3 or section 5.8.

In the unusual circumstance that an informal resolution does involve a sanction against the respondent, the official responsible for implementing the sanction must maintain a record of the resolution for the purposes of enforcing the sanction. In such a case, see section 5.7.13 to determine the responsible official.

5.8. Resolution Through the Formal Procedures

Although use of the informal process is not required, the formal procedures are ordinarily used only if informal resolution is not agreed upon or fails to resolve a concern satisfactorily, or if the complaint is of sexual assault or is otherwise so serious as to warrant an immediate use of the formal procedures. Disciplinary action will result from a finding of responsibility under the formal procedures.

The formal process for resolving a complaint should proceed using the timelines given below. The Affirmative Action Officer, in his or her sole discretion, may adjust any time periods as necessary to ensure the proper resolution of each complaint. Time periods governing the conduct and participation of complainants or respondents shall be strictly enforced, unless specifically adjusted by the Affirmative Action Officer, in his or her sole discretion. All other time periods shall be guidelines, and though it is important to act promptly, strict adherence to these guidelines may not be possible in some or many instances.

For purposes of sections 5.7.1 – 5.7.12, one business day shall be any weekday school is in session, according to the University's academic calendar, including the fall, spring and summer semesters.

5.8.1. Pre-Hearing, Pre-Mediation Procedure

Within seven business days of the determination to address a complaint using the formal procedures, the Affirmative Action Officer will provide the respondent with a copy of the complaint. The respondent may submit a written response to the charges of harassment to the Affirmative Action Officer within ten business days of the date the copy of the complaint was sent to the respondent. Upon receipt of an answer by the respondent, the Affirmative Action Officer will forward a copy of the response to the complainant. Subject to and in accordance with the provisions of Section 5.6 concerning complaints of sexual assault or sex discrimination, the complainant and the respondent will then each have five business days from the day the answer is received by the Affirmative Action Officer to indicate the procedure (mediation or a formal hearing) they wish to use to resolve the complaint by providing a signed written statement to the Affirmative Action Officer.

A complaint requiring use of the formal process will be resolved either through mediation (if permitted by these procedures) or by a formal hearing. If within the five business days either the complainant or respondent submits a written statement requesting mediation, and if mediation is permitted by these procedures, the Affirmative Action Officer will designate a mediator within ten business days of receipt of such request. If within the five business days one party submits a written statement requesting a formal hearing and the other party does not submit a written statement within the five-day period, the formal hearing procedures will be initiated at the end of the five day period. If both parties desire a formal hearing, the formal hearing procedures will be initiated. If neither party submits a signed written statement within the five business days, the Affirmative Action Officer will designate a mediator within ten business days of the end of the five-day response period, unless a formal hearing is required by these procedures.

Mediation is not appropriate and will not be offered in matters involving allegations of sexual assault. In such matters, formal hearing procedures will be initiated promptly.

5.8.2. Mediation of a Complaint

The mediator will schedule a meeting with each of the parties, together or separately, to attempt to negotiate a settlement of the complaint. If a resolution is not reached within ten business

days of the initial meeting, the Affirmative Action Officer will inform both parties in writing that either may seek a resolution of the complaint by a formal hearing.

Upon request by the complainant, the Affirmative Action Officer may provide for the Mediator's consideration, information regarding any conduct admitted to by the respondent while attempting to resolve, or in resolution of this or any other complaint filed by the same complainant against the same respondent.

A settlement occurs when the parties agree in writing to a resolution of the complaint. A resolution may include, but is not limited to, withdrawal of the complaint without the right to re-file it; an agreement by the respondent to terminate or not repeat specific conduct; an apology; and/or participation in counseling. The Affirmative Action Officer reviews all resolutions to ensure that the parties fully understand the terms. If there is any sanction agreed to as part of the resolution, the official responsible for implementing any such sanction must also agree to the resolution in writing. Resolution need not imply an admission of violation on the part of the respondent.

Whether or not a settlement is reached, all information and documentation used in the mediation that is not otherwise available under other provisions of this HCAP will remain confidential and may not be used in any future proceedings involving the same or different parties. However, the fact that a complaint was filed and a settlement was reached through mediation may be used by the Affirmative Action Officer in a future formal proceeding brought by the same or a different complainant against the same respondent, as described in section 5.7.9 or section 5.8.

5.8.3. Initiation of the Formal Hearing Process

Upon failure to reach a settlement through mediation, either party may request appointment of a Hearing Panel to resolve the complaint by a formal hearing. The request for a hearing must be made no later than seven business days after the party receives written notice of the right to proceed. The request must be in writing, signed by the party making the request. A formal hearing process is initiated once the request is received by the Affirmative Action Officer.

A formal hearing process is also initiated once the Affirmative

Action Officer has been notified by both complainant and respondent of their desire to proceed with a formal hearing and not attempt to mediate the complaint, as described above at section 5.7.2. A formal hearing process is also initiated promptly in matters involving allegations of sexual assault.

5.8.4. Pre-Hearing Timeline

Within ten business days of the initiation of the formal hearing process the Affirmative Action Officer will notify the complainant and respondent of the members of the Hearing Panel. The complainant and respondent will then have three business days to object in writing to any one or more of the members of the Panel, or raise potential conflicts of interest. Any decision to change a member or members of a Panel will be in the sole discretion of the Affirmative Action Officer. If any objections are raised, the Affirmative Action Officer will notify the complainant and respondent of the final Panel members (whether changed or not) within five business days after receiving the last objection.

The Hearing Panel will notify the complainant and respondent of the hearing date, time and place, which shall be set for no less than seven but no more than 15 business days after the date of the Affirmative Action Officer's initial notice of the members of the Hearing Panel. The hearing may be set for an earlier or later time for good cause as determined in the discretion of the Affirmative Action Officer or by agreement of the complainant and respondent.

As soon as possible after their selection, the Hearing Panel shall select a Chairperson from among the members of the Panel to serve for the duration of the Hearing procedures for which this Panel was selected. The Chair may then consult with the Affirmative Action Officer about the complaint to determine the need for any consultants to assist the Panel during or after the formal hearing.

5.8.5. Composition of Harassment Hearing Board

The Harassment Hearing Board consists of 24 members, selected as follows:

- Six members of the Board shall be appointed by the Faculty Committee from among the University faculty.
- Six members of the Board are selected from the exempt employees of the University, as defined by the Office of

Human Resources, by the President or his designee.

- Six members of the Board are selected from the non-exempt employees of the University, as defined by the Office of Human Resources, by the President or his designee.
- Three members of the Board are selected by SGA (Student Government Association) from the undergraduate student population, and three members of the Board are selected by GSA (Graduate Student Association) from the graduate student population.

The appointing authority for each category of members shall consult with the Affirmative Action Officer prior to selecting any member to serve on the Board to ensure that the members selected within each category reasonably represent the population of the University.

All Board members will serve staggered terms of two years each. Vacancies on the Board will be filled in the same manner as members are selected. A member of the Board appointed to fill a vacancy will serve the remaining term of the member being replaced. Half of the members of the initially appointed Harassment Hearing Board shall serve one-year terms and the other half shall serve two-year terms. Those serving one-year terms shall include three of the faculty members, three of the exempt employees, three of the non-exempt employees and three of the students.

5.8.6. Selection of a Hearing Panel

The Affirmative Action Officer maintains the roster for each category of Board members (faculty, exempt employees, non-exempt employees, and students) on the Harassment Hearing Board.

The Affirmative Action Officer will select a Hearing Panel of seven members of the Harassment Hearing Board to hear each complaint set for a formal hearing. The Affirmative Action Officer will adhere to the following guidelines in making the selection:

- A Panel will include at least two members of the same status as the respondent (e.g., non-exempt employee, faculty member) and two members of the same status as the complainant (e.g., exempt employee, undergraduate student). If the complainant and respondent are of the

same status (e.g. both are exempt employees) the Panel will include at least three members of the status of the complainant and respondent. The remaining three or four members of the Panel will be selected from the remaining members of the Harassment Board so long as one member of each of the following four groups is represented on each Panel: faculty, non-exempt employee, student. After consultation with all parties and for good cause in the discretion of the Affirmative Action Officer, a Panel consisting of a minimum of five members, with three of the four categories represented, may be appointed to expedite the process.

- No member of the Panel may hear a case involving a party if the Affirmative Action Officer deems it to be a conflict of interest.
- Any member who has a conflict of interest will be removed and may be replaced by another member from the same category in the same manner that the conflicted member was selected.

5.8.7. Conduct of Harassment Panel Hearings

Consistent with customary standards of fairness and with procedures specified in this HCAP, the Hearing Panel will determine the most appropriate manner to proceed with a case. In all formal hearings, the following guidelines are intended to protect the rights of both parties and to assure the fairness of the process:

- For a hearing to proceed, a quorum of no less than five members must be present. If quorum is not achieved, the hearing will be rescheduled and a new Panel will be selected, using the guidelines above.
- Both parties have the right to attend the hearing. Failure of one party to appear will have no effect on the hearing proceeding, and the Hearing Panel will reach a decision based on the evidence available.
- Neither party may be compelled to testify.
- Both parties have the right to present evidence and to call a reasonable number of witnesses as determined by the Hearing Panel. Witnesses may be present only when testifying.
- Both parties have the right to question all witnesses.
- In matters involving allegations of sex discrimination (including sexual harassment, sexual assault, sexual violence, stalking, rape, other sexual misconduct, or

retaliation), the complainant has the right to request to be separated from the respondent during the hearing. This request can be made on the grounds that being in the presence of the respondent may heighten post-traumatic stress symptoms and/or an experience of being re-victimized. The complainant's request will be accommodated at the discretion of the Hearing Panel, so long as the respondent's rights to hear all information presented and confront all witnesses who testify at the hearing are preserved. For example, the complainant may be in a separate room from the Hearing Panel and the respondent, where by use of closed circuit television or other technology, the parties in each room may see and communicate with each other, without being in close proximity to one another.

- Using a general measure of relevance and credibility to the complaint being heard, the Panel will determine what testimony will be permitted at the hearing.
- In cases in which the complainant alleges sexual harassment, other than those complaints brought by the Affirmative Action Officer alleging a pattern of harassment, the only sexual history evidence that may be used in the hearing is that of the parties with each other, if it is relevant. However, if a party introduces his or her own sexual history in furtherance or defense of his or her position, the other party may then discuss that party's sexual history, if it is relevant.
- Upon request by the complainant or the Hearing Panel, the Affirmative Action Officer may provide for the Hearing Panel's consideration, information regarding any conduct admitted to by the respondent while attempting to informally resolve, or in an informal resolution of a complaint filed by the same complainant against the same respondent.
- A non-party witness may not testify about any misconduct by the parties except the conduct alleged in the complaint.
- Each party has a right to an advisor from the student body, faculty, administration or staff. This representative, not functioning as legal counsel, may help with preparation of the case, may be present when the case is heard, and may confer with the party during the hearing.
- Neither party may have legal counsel present at the hearing.
- Hearings will be audio tape recorded.

5.8.8. Standard of Proof

To find a violation of the University's HCAP the complainant has the burden of showing that the evidence establishes that more likely than not, the respondent harassed the complainant in violation of the HCAP. This standard is known as "preponderance of the evidence." While the Panel does not draw a negative inference from the failure of either party to attend a hearing or to testify, a choice not to appear or testify does not change the burden of proof.

5.8.9. The Hearing Panel's Deliberation

In deciding whether a violation of the HCAP has occurred, the Hearing Panel attempts to reach a consensus. If consensus cannot be reached, a vote is taken. All decisions of the Hearing Panel are made by a majority.

If the Panel finds that the respondent violated the University's HCAP, it will determine the appropriate remedial action, taking into consideration all of the circumstances of the respondent's conduct. Once it has determined that the respondent violated the HCAP, it may seek testimony from the Affirmative Action Officer about prior procedures brought against the respondent by a complainant alleging harassment. The Affirmative Action Officer's testimony will be limited to the following:

- The fact that a complaint was filed by the same or a different complainant against this same respondent and an informal resolution was achieved;
- Any conduct admitted to by the respondent while attempting to informally resolve or in an informal resolution of a complaint filed by the same complainant against this same respondent;
- The fact that a complaint was filed by the same or a different complainant against this same respondent and a settlement was reached through mediation; and
- The fact that a complaint was filed by the same or a different complainant against this same respondent and a Hearing Panel found a violation of the HCAP.

The Hearing Panel may consider this information in determining an appropriate sanction.

Examples of the types of sanctions that the Panel may issue include, but are not limited to the following: participation of the respondent in counseling; required community service; prohibition of the respondent from participating in grading, honors, recommendations, reappointment and promotion decisions, or other evaluations of the complainant; letter of reprimand and copy of grievance record placed in the respondent's permanent file; restrictions on the respondent's access to University resources, such as merit pay or other salary increases for a specific period; or suspension or dismissal from the University.

In addition, the Hearing Panel may seek to make the complainant whole by requiring a review of the complainant's grade, denial of promotion or similar benefit denied to the complainant, in whole or in part by the respondent. Any such decision by the Hearing Panel shall be given to the respondent's supervisor in a position to conduct such a review to determine if a change is proper, and to effect the change.

A written report of the Hearing Panel's findings and determination of sanctions is recorded and signed by all members of the Hearing Panel. No minority opinion will be recorded, nor will dissenting members be noted or identified.

This report is then delivered by the Chair to the Affirmative Action Officer, the official(s) responsible for implementing the Hearing Panel's decision, the complainant and the respondent. Members of the Hearing Panel also receive a copy of this report with the stipulation that any written documentation remain confidential.

The Panel's findings and sanctions are subject to an appeal. If neither the complainant nor the respondent files written request for an appeal with the University President or designee within five business days after the decision is delivered by the Chair under 12.9.7, the Panel's findings and sanctions shall be final and binding.

5.8.10. Time for Filing a Request for an Appeal

To appeal any Hearing Panel decision, a request for appeal must be filed with the President or his designee's office by the complainant or respondent within five business days after the

date the Chair delivers the Hearing Panel's decision to the appropriate individuals.

5.8.11. Appeal of a Finding of a Violation

If the Hearing Panel finds a violation of the HCAP, the complainant or respondent may request an appeal of the Panel's findings and/or sanctions. Requests for appeal will be granted only for the following reasons:

- There was a denial of the elements of a fair hearing.
- There was insufficient evidence to establish responsibility for the alleged harassment.
- The sanctions imposed can be shown to be arbitrary or capricious.
- There is new information to present that was not available at the time of the hearing, and that may have a bearing on the Hearing Panel's decision or sanctions.

The request for appeal must state the reason(s) the appeal should be accepted and provide specific details or an explanation to support each reason. Any request for an appeal will be denied that fails to explain why one of these four reasons justifies the appeal.

Within seven business days after the request for appeal is filed, the President or his designee will determine whether the request will be accepted or denied. Within three business days of making the determination, the President or designee will notify the complainant, respondent, Affirmative Action Officer, and the Hearing Panel Chairperson of his decision to accept or deny the request for appeal. If the request for appeal is denied then the decision of and any sanction imposed by the Hearing Panel shall be final and binding.

If a request for appeal is granted, both complainant and respondent will have the opportunity to make written arguments to the President or designee, within a reasonable time to be determined by the President or designee. The review will be confined to these written arguments and the evidence that was presented to the Hearing Panel, except for requests that are granted because new information is available that was not available at the time of the hearing.

Requests for appeal that are granted, in whole or in part, because new information is available will be remanded by the President or his designee to the original Hearing Panel for further proceedings. When the President or his designee grants a request for appeal for any other reason, he shall have the power to affirm, reverse, or modify the decision and/or the sanction imposed, or to remand the matter to the original Hearing Panel.

Within ten business days after the time expires for receiving written arguments pursuant to section 5.7.12, the President or his designee shall review the matter and either remand, affirm, reverse, or modify the decision and/or sanction. Within three business days the President shall provide written notice of his decision to the complainant, respondent, Affirmative Action Officer, and the Hearing Panel Chairperson.

All decisions by the President or his designee regarding an appeal are final.

When the President or his designee remands a matter to the original Hearing Panel, the President or designee shall provide to the Hearing Panel a copy of the written request for appeal and any written arguments submitted pursuant to section 5.7.12. In reviewing the matter, the Panel shall consider only the new evidence or issues upon which the request for appeal was granted. Within ten business days after the matter is remanded, the original Hearing Panel shall review the matter and either affirms, reverse, or modify its original decision and/or sanction. Within three business days the Chair shall provide written notice of the Panel's decision to the complainant, respondent, Affirmative Action Officer, and the President or his designee.

All decisions by the Hearing Panel upon remand will be reviewed by the President or his designee. The President or his designee may approve or modify the Hearing Panel's decision upon remand and that approval or modification will be final and binding.

In cases where there is a finding of a violation of this policy, the Faculty Hearing Committee is not part of the process.

5.8.12. Appeal of a Finding of No Violation

If the Hearing Panel finds no violation of the HCAP, the complainant or respondent may request an appeal of the Panel's findings. Requests for appeal will be granted only for the following reasons:

- There was a denial of the elements of a fair hearing.
- The decision was not made in accordance with the procedures set forth in the HCAP.

The request for appeal must state the reason(s) the appeal should be accepted and provide specific details or an explanation to support each reason. Any request for an appeal will be denied that fails to explain why one of these two reasons justifies the appeal.

Within seven business days after the request for appeal is filed, the President or his designee will determine whether the request will be accepted or denied. Within three business days of making the determination, the President or designee will notify the complainant, respondent, Affirmative Action Officer, and the Hearing Panel Chairperson of his decision to accept or deny the request for appeal. If the request for appeal is denied then the decision of the Hearing Panel shall be final and binding.

If a request for appeal is granted, both complainant and respondent will have the opportunity to make written arguments to the President or designee, within a reasonable time to be determined by the President or designee. The review will be confined to these written arguments and the evidence that was presented to the Hearing Panel.

Within ten business days after the time expires for receiving written arguments pursuant to section 5.7.11, the President or his designee shall review the matter and do one of the following:

- Affirm the decision;
- Vacate the finding and remand the case to the original Hearing Panel for further proceedings if the President or designee finds that these procedures were not followed in any material respect or if the President or designee finds there was a denial of the elements of a fair hearing; or

- Order a new hearing, if the President or designee believes, in his sole discretion, that such drastic measure is required to ensure proper adjudication of the matter under the HCAP.

Within three business days the President shall provide written notice of his decision to the complainant, respondent, Affirmative Action Officer, and the Hearing Panel Chairperson.

All decisions by the President or his designee regarding an appeal are final.

When the President or his designee remands a matter to the original Hearing Panel, the President or designee shall provide to the Hearing Panel a copy of the written request for appeal and any written arguments submitted pursuant to section 5.7.11. The Hearing Panel shall conduct proceedings necessary to correct the procedural violation or denial of a fair hearing, as found by the President or his designee. Within ten business days after the matter is remanded, the original Hearing Panel shall conduct these proceedings and either affirm or reverse its original decision, and it may impose any appropriate sanctions if a violation is found. Within three business days the Chair shall provide written notice of the Panel's decision and any sanctions to the complainant, respondent, Affirmative Action Officer, and the President or his designee.

All decisions by the Hearing Panel upon remand will be reviewed by the President or his designee. The President or his designee may approve or modify the Hearing Panel's decision upon remand and that approval or modification shall be final and binding.

5.8.13. Implementation of Hearing Panel's Decision

In all cases in which a Hearing Panel finds that the respondent violated the University's HCAP, the decision and sanctions of the Panel will be implemented by the official responsible for the respondent:

- In cases in which the respondent is a member of the faculty, the responsible official is the Dean of the school to which the respondent belongs, as the immediate

- In cases in which the respondent is a non-faculty staff member, the responsible official is the appropriate divisional vice president or his or her designee.
- In cases in which the respondent is not otherwise defined, the responsible official is the immediate Supervisor in consultation with his or her department head or dean.

5.8.14. Record of Formally-Resolved Complaints

After a complaint has been formally resolved, all documentation concerning the complaint will be maintained in the Affirmative Action Office for the shorter of: (1) five years after the resolution of the matter in which it was created, or (2) one year after the complainant ceases all employment by and/or enrollment at Xavier University. At the end of that time period, the Affirmative Action Officer shall destroy all the documentation and shall keep a permanent record only consisting of the names of the complainant and respondent, the status of each (e.g., faculty, student), the incident date, the date of resolution and the resolution or result of mediation, and/or the decision of the Hearing Panel.

The recording of a hearing is for the sole use of the University, though it may be used by either party during an appeal. Any use by a party is limited to listening to the tape recording. The tape recording may not be removed from the Xavier campus, and it may only be reproduced by the University for University purposes. Such recordings will be maintained by the Affirmative Action Office and will be destroyed after the shorter of: (1) five years after the resolution of the matter in which it was created, or (2) one year after the complainant ceases all employment by and/or enrollment at Xavier University.

All these records are subject to the confidentiality provisions of the HCAP, including section 5.0.

5.9. Pattern of Harassment

The Affirmative Action Officer may file a complaint of harassment to be pursued formally under these procedures against any individual he

or she has reason to believe has engaged in a pattern of harassment, based upon the number of complaints filed against the individual and resolved through informal procedures, mediation, or by a formal hearing. In the event of this type of complaint, the Affirmative Action Officer functions as the complainant. In connection with the complaint, the President or his designee performs all functions assigned to the Affirmative Action Officer in the process for resolution of harassment complaints.

5.10. Recovery

Xavier supports those striving for recovery after any form of harassment regardless of whether the harassment has been reported to Xavier or local law enforcement. Each individual's experience is unique and recovery may go through many stages. Accordingly, Xavier seeks to connect any individual whose life has been affected by harassment with a broad network of recovery information and resources both on and off campus. This may include, but is not limited to, crisis intervention/emergency psychological care; hospital and justice system advocacy; educational groups; workshops; individual and group counseling; peer education; volunteer opportunities; and collaboration with peers, administration, and family. For more information about recovery after harassment, contact Xavier's Advocate Program at 513-745-1000 or advocate@xavier.edu or visit www.xavier.edu/advocate/, Xavier's Women's Center, Gallagher Student Center, Suite 200, 513-745-3940, womenscenter@xavier.edu (www.xavier.edu/womenscenter/), Xavier's Health and Wellness Center, 1714 Cleneay Avenue, 513-745-3022 (www.xavier.edu/health-wellness/) or Xavier's Psychological Services Center, 3818 Winding Way, 513-745-3531 (www.xavier.edu/psychological-services/).

5.11. Record Retention Under this Policy

The record retention policies contained in this HCAP will only apply to documentation related to complaints filed on or after the date this HCAP was initially enacted as University Policy.

A respondent may petition to have purged any or all permanent records relating to him or her made under any provision of this HCAP.

The earliest such a petition will be considered is ten years after the day on which each permanent record was created. In his or her petition the respondent shall identify the records which he or she seeks to have purged and shall state the reason he or she believes the petition should be granted.

The Affirmative Action Officer may consider the following in determining whether or not to grant the petition: the nature of the permanent record; whether the respondent has had any complaints filed against him or her since the time the permanent record was created; whether the respondent has been involved in any other disciplinary actions since the time the permanent record was created; the length of time since the record was created; the reasons provided in the respondent's petition; whether the requesting respondent is still a member of the Xavier Community; anything else the Affirmative Action Officer believes is relevant to the decision whether or not to grant the petition.

The Affirmative Action Officer will notify the respondent of his or her decision in writing within 30 days of the petition.

The respondent may appeal the decision of the Affirmative Action Officer to the President or his designee in writing within 10 days of the date of the Affirmative Action Officer's decision. The President or his designee may affirm or modify the Affirmative Actions Officer's decision or remand the matter to the Affirmative Action Officer for further consideration.

Any decision of the President or un-appealed decision by the Affirmative Action Officer shall be final and binding with respect to the records that are the subject of the petition for a period of two years. During that time no petition by the respondent will be considered with respect to the same permanent records that were the subject of the earlier petition.

5.12. Deviations from this Policy

Minor deviations from this HCAP will not render a decision invalid. However, if it is found on appeal of a Hearing Panel's decision that the deviation resulted in substantial prejudice to one of the parties, the case may be remanded to the original Hearing Panel to correct the deviation, or set for a new hearing.

If at any point the Affirmative Action Officer determines that the respondent is likely to repeat his or her harassing conduct and cause harm to others, the University may take reasonable steps to prevent such result prior to the initiation or conclusion of the procedures set forth above.

5.13. Monitoring the Annual Record

At the beginning of each academic year, the Affirmative Action Officer will submit a written report to the President setting forth the number of informal and formal cases filed in the prior year; which of these cases, if any, reached mediated solutions; and which, if any, were resolved by a Hearing Panel. The report will specify the number of cases in which Hearing Panels made findings of harassment, the types of harassment found, and the final disposition of the cases, including any disciplinary action taken. The cases will be reported in a manner that protects the privacy of the parties. The President will make the Affirmative Action Officer's annual report available to all members of the University.