



**XAVIER UNIVERSITY  
HARASSMENT CODE  
AND  
ACCOUNTABILITY PROCEDURES**

Last Updated September 4, 2015

# TABLE OF CONTENTS

|  |          |
|--|----------|
| <b>1. INTRODUCTION TO THE XAVIER UNIVERSITY HARASSMENT CODE AND ACCOUNTABILITY PROCEDURES (“HCAP”)</b> | <b>1</b> |
| 1.1 PURPOSE  | 1        |
| 1.2 APPLICABILITY OF THE HCAP  | 1        |
| <b>2. XAVIER UNIVESRITY POSITION STATEMENT ON HARASSMENT</b>   | <b>2</b> |
| 2.1 POSITION STATEMENT ON HARASSMENT   | 2        |
| <b>3. THE HCAP AND RELATED LAWS</b>  | <b>2</b> |
| 3.1. TITLE VII OF THE CIVIL RIGHTS ACT OF 1964   | 2        |
| 3.2. TITLE IX OF THE EDUCATION AMENDMENTS ACT OF 1972  | 3        |
| 3.3. CLERY ACT   | 4        |
| 3.3.1. XU ALERT ME   | 4        |
| 3.4. SECTION 504 OF THE REHABILITATION ACT   | 5        |
| 3.5. AMERICANS WITH DISABILITIES ACT OF 1990 AS AMENDED  | 6        |
| 3.6. VIOLATION OF LAW AND UNIVERSITY POLICY IN GENERAL   | 6        |
| 3.7. UNIVERSITY RESPONSE TO POLICE CITATIONS ISSUED TO MEMBERS OF THE UNIVERSITY COMMUNITY             | 6        |
| 3.8. INDEPENDENT LEGAL COUNSEL   | 6        |
| <b>4. HARASSMENT POLICY</b>  | <b>7</b> |
| 4.1 NATURE OF PROHIBITED CONDUCT   | 7        |
| 4.1.1. DEFINITION OF HARASSMENT AT XAVIER UNIVERSITY   | 7        |
| 4.1.2. DUTY TO REPORT HARASSMENT NOT BASED ON SEX  | 8        |
| 4.1.3. CONFIDENTIALITY OF HARASSMENT COMPLAINTS  | 9        |
| 4.2 SEX DISCRIMINATION AT XAVIER UNIVERSITY  | 10       |
| 4.2.1. DEFINITION OF SEX DISCRIMINATION  | 10       |
| 4.2.2. FORMS OF PROHIBITED SEX DISCRIMINATION  | 10       |
| 4.2.2.1. SEXUAL HARASSMENT DEFINED   | 10       |
| 4.2.2.2. PUBLIC INDECENCY DEFINED  | 12       |

|  |    |
|--|----|
| 4.2.2.3. VOYEURISM DEFINED   | 12 |
| 4.2.2.4. STALKING DEFINED  | 13 |
| 4.2.2.5. NON-DISCLOSURE OF KNOWN POSITIVE<br>HIV STATUS OR STD                     | 13 |
| 4.2.2.6. SEXUAL EXPLOITATION DEFINED   | 13 |
| 4.2.2.7. SEXUAL IMPOSITION DEFINED   | 13 |
| 4.2.2.8. SEXUAL ASSAULT DEFINED  | 13 |
| 4.2.2.9. RAPE DEFINED  | 17 |
| 4.2.2.10. DOMESTIC VIOLENCE DEFINED  | 17 |
| 4.2.2.11. DATING VIOLENCE DEFINED  | 19 |
| 4.2.2.12. RETALIATION  | 19 |
| 4.2.2.13. GENDER-BASED AND SEXUAL MISCONDUCT – OTHER                               | 19 |
| 4.2.2.14. ADDITIONAL IMPORTANT DEFINITIONS FOR<br>UNDERSTANDING SEX DISCRIMINATION | 20 |
| 4.2.2.15. VIOLENCE AGAINST WOMEN ACT (VAWA)<br>AND U.S. CODE DEFINITIONS           | 23 |
| 4.3. DUTY TO REPORT SEX DISCRIMINATION   | 25 |
| 4.4. REPORTING SEX DISCRIMINATION AT XAVIER UNIVERSITY                             | 26 |
| 4.4.1. CONFIDENTIALITY OF SEX DISCRIMINATION REPORTS                               | 29 |
| 4.5. SEX DISCRIMINATION RESPONSE AND RECOVERY                                      | 31 |
| 4.6. PREVENTION OF SEX DISCRIMINATION  | 35 |
| 4.7. SEX DISCRIMINATION COMPLAINT RESOLUTION PROCESS                               | 36 |
| 4.7.1. ROLE OF THE TITLE IX COORDINATOR –<br>SEX DISCRIMINATION REPORTS ONLY       | 38 |
| 4.7.1.1. FACT-FINDING INVESTIGATION  | 39 |
| 4.7.1.2. THRESHOLD ASSESSMENT  | 39 |
| 4.7.1.3. TITLE IX COORDINATOR’S REPORT   | 40 |
| 4.7.2. COMPLIANCE WITH LAW ENFORCEMENT   | 40 |
| 4.8. AMOROUS RELATIONSHIPS   | 41 |
| 4.9. ACADEMIC FREEDOM  | 42 |
| 4.10. REPRISALS  | 42 |
| 4.4.1. AGAINST THE COMPLAINANT   | 42 |
| 4.4.2. AGAINST THE RESPONDENT  | 43 |

|  |           |
|--|-----------|
| 4.4.3. AGAINST OTHERS BECAUSE OF THEIR CONNECTION<br>TO AN INCIDENT OF ALLEGED HARASSMENT        | 43        |
| 4.4.4. CLAIM OF RETALIATION  | 43        |
| 4.4.5. KNOWINGLY FILING FALSE COMPLAINTS   | 43        |
| 4.11. SEX OFFENDER REGISTRATION  | 44        |
| <b>5. <u>HARASSMENT PROCEDURES</u></b>   | <b>44</b> |
| 5.1. INTRODUCTION TO PROCEDURES  | 44        |
| 5.2. APPLICABILITY OF PROCEDURES   | 45        |
| 5.2.1. XAVIER EMPLOYEES AND STUDENTS   | 45        |
| 5.2.2. ALL OTHERS  | 46        |
| 5.2.3. CONTRACTORS OR VENDORS WORKING ON THE<br>XAVIER CAMPUS BUT NOT EMPLOYED BY THE UNIVERSITY | 46        |
| 5.3. ADVICE, INFORMATION, COUNSELING   | 46        |
| 5.4. PROCEDURE FOR REPORTING HARASSMENT  | 47        |
| 5.4.1. FILING A COMPLAINT  | 47        |
| 5.4.2. WHEN SUBMITTED  | 48        |
| 5.4.3. FORM OF THE COMPLAINT   | 48        |
| 5.4.4. POLICY ON AMNESTY   | 48        |
| 5.5. INTERIM MEASURES<br>FOR INDIVIDUALS AND/OR THE CAMPUS COMMUNITY                             | 49        |
| 5.5.1. NO CONTACT NOTICE   | 50        |
| 5.5.2. EXTERNALLY ISSUED PROTECTIVE ORDERS   | 50        |
| 5.5.3. ESCORT  | 51        |
| 5.5.4. ADDED POLICE PRESENCE   | 51        |
| 5.5.5. MAKING ADJUSTMENTS TO ON-CAMPUS LIVING<br>AND WORKING ARRANGEMENTS                        | 51        |
| 5.5.6. MAKING ADJUSTMENTS TO CLASS SCHEDULES,<br>EMPLOYMENT, OR XAVIER ACTIVITIES                | 52        |
| 5.5.7. SEPARATION FROM XAVIER UNIVERSITY   | 52        |
| 5.5.8. OTHER INTERIM MEASURES  | 52        |
| 5.5.9. EMERGENCY ADMINISTRATIVE ACTION   | 52        |
| 5.6. PATTERN OF HARASSMENT   | 53        |
| 5.7. BEGINNING THE PROCESS OF RESOLUTION OF A COMPLAINT  | 53        |

|   |    |
|---|----|
| 5.7.1. TIME LIMITS                                  | 54 |
| 5.8. RESOLUTION THROUGH THE INFORMAL PROCESS        | 54 |
| 5.8.1. ACHIEVING AN INFORMAL RESOLUTION             | 55 |
| 5.8.2. MONTHLY STATUS MEETINGS                      | 55 |
| 5.8.3. FORM OF AN INFORMAL RESOLUTION               | 56 |
| 5.8.4. ANONYMITY                                    | 57 |
| 5.8.5. RECORD OF INFORMALLY-RESOLVED COMPLAINTS     | 57 |
| 5.9. RESOLUTION THROUGH THE FORMAL PROCESS          | 58 |
| 5.9.1. PRE-HEARING, PRE-MEDIATION PROCEDURE         | 58 |
| 5.9.2. MEDIATION OF A COMPLAINT                     | 59 |
| 5.9.3. INITIATION OF THE FORMAL HEARING PROCESS     | 60 |
| 5.9.4. PRE-HEARING TIMELINE                         | 60 |
| 5.9.5. COMPOSITION OF HARASSMENT HEARING BOARD      | 61 |
| 5.9.6. SELECTION OF A HARASSMENT HEARING PANEL      | 61 |
| 5.9.7. CONDUCT OF HARASSMENT PANEL HEARINGS         | 62 |
| 5.9.8. STANDARD OF PROOF                            | 65 |
| 5.9.9. THE HEARING PANEL'S DELIBERATION             | 65 |
| 5.9.10. SANCTIONING                                 | 65 |
| 5.9.10.1 BENCHMARK SANCTIONS FOR SEX DISCRIMINATION | 66 |
| 5.9.11. NOTIFICATION OF OUTCOME                     | 68 |
| 5.10. APPEAL  | 68 |
| 5.10.1. TIME FOR FILING A REQUEST FOR AN APPEAL     | 68 |
| 5.10.2. APPEAL OF A FINDING OF A VIOLATION          | 68 |
| 5.10.3. APPEAL OF A FINDING OF NO VIOLATION         | 71 |
| 5.11. IMPLEMENTATION OF HEARING PANEL'S DECISION    | 72 |
| 5.12. RECORD OF FORMALLY-RESOLVED COMPLAINTS        | 73 |
| 5.13. RECORD RETENTION UNDER THIS POLICY            | 73 |
| 5.14. DEVIATIONS FROM THIS POLICY                   | 74 |

# 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 handled through the informal or formal complaint 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.

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. If a faculty member is found responsible for violating the HCAP through the formal HCAP procedures the recommended sanctions will be applied through the appropriate process outlined in the Faculty Handbook.

## 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.

The HCAP applies when an employee (including contracted employees employed by the University) is accused of violating Xavier's harassment policies by a student, employee, contracted employee, or third party (i.e. visitor to campus). The [Xavier Student Handbook](#) applies when a student is accused of violating Xavier policy by a

student, employee, contractor employed by the University or third party (i.e. visitor to campus).

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.

Xavier community members and third parties who have experienced or are experiencing harassment by a Xavier employee are encouraged to bring them to the attention of Affirmative Action Officer , Office of Human Resources, Alumni Center Room 132, 3800 Victory Parkway, Cincinnati, Ohio 45207-5400, 513-745-3638. For complaints of Sex Discrimination (Including Sexual Harassment, Sexual Assault, Stalking, Rape, Domestic Violence, Dating Violence, Other Gender-Based and Sexual Misconduct, or Retaliation) Xavier community members and third parties are encouraged to bring them to the attention of Xavier's Title IX Coordinator , Title IX Office, Gallagher Student Center 332, 3800 Victory Parkway, Cincinnati, Ohio 45207-5400, 513-745-3046.

## **3. THE HCAP AND RELATED LAWS**

### **3.1. Title VII of the Civil Rights Act of 1964**

This law provides that, “No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance...” Xavier University does not discriminate, exclude from participation in, or deny benefits of its educational programs, admission policies, activities, or employment policies and opportunities that would be violative of Title VII. Individuals complaining of any type of discrimination or harassment outlined above are encouraged to bring them to the attention of the University via one of the following resources:

- Affirmative Action Officer, Human Resources, Alumni Center, Room 132, 3800 Victory Parkway, Cincinnati, Ohio 45207-5400, 513-745-3638.
- For Sex Discrimination complaints, Xavier’s Title IX Coordinator, Title IX Office, Gallagher Student Center 332, 3800 Victory Parkway, Cincinnati, Ohio 45207-5400, 513-745-3046.
- When a student is accused of engaging in discrimination or harassment, the Dean of Students, Gallagher Student Center, Room 302, 3800 Victory Parkway, Cincinnati OH 45207-2120, 513-745-3166.

### **3.2. 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...” Examples of Sex Discrimination include, but are not limited to, sexual harassment, sexual assault, dating violence, domestic violence, stalking, and discriminating against an individual based on her status as pregnant.

In accordance with Title IX, 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 sex.

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, immigration, legal, safety, or other services and facilitating any interim protective measures that may be warranted. More information about the role of the Title IX Coordinator is available in Section 4.7.1. Inquiries concerning the



application of Title IX may be referred to Xavier's Title IX Coordinator Kate Lawson, Gallagher Student Center, Room 332, 513-745-3046, or to the Office of Civil Rights, Cleveland Office, U.S. Department of Education, 1350 Euclid Ave., Suite 325, Cleveland, OH 44114-2611, 216-522-4970, OCR.Cleveland@ed.gov. See Section 4.2.1 for definitions of what conduct may constitute Sex Discrimination.

Individuals who have experienced and/or who have knowledge of Sex Discrimination will find all Xavier University policies on reporting Sex Discrimination, Xavier's response to Sex Discrimination, and comprehensive resources for individuals impacted by Sex Discrimination in this HCAP.

### **3.3. 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 10U.S.C. Section 1092 or <http://www2.ed.gov/admins/lead/safety/handbook.pdf>.

#### **3.3.1. 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.

#### **3.4. Section 504 of the Rehabilitation Act**

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..." Examples of Sex Discrimination include, but are not limited to, sexual harassment, sexual assault, dating violence, domestic violence, stalking, and discriminating against an individual based on her status as pregnant.

This law provides that, "No otherwise qualified individual with a disability in the United States...shall, solely by reason of his or her disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance...." Xavier University does not discriminate against qualified individuals with disabilities in its educational programs, admissions policies, activities, or employment opportunities and policies. Individuals complaining of any type of discrimination or harassment outlined above are encouraged to bring them to the attention of the University via one of the following resources:

- Affirmative Action Officer, Alumni Center, Room 132, 3800 Victory Parkway, Cincinnati, Ohio 45207-5400, (513)-745-3938,
- The Dean of Students, Gallagher Student Center,

Room 302, 3800 Victory Parkway, Cincinnati OH 45207-2120,  
(513)-745-3166.

**3.5. Americans With Disabilities Act of 1990, As Amended**

This law recognizes and protects the civil rights of people with disabilities. Disability discrimination includes not making a reasonable accommodation to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, barring undue hardship. Xavier does not discriminate against qualified individuals with disabilities in the context of employment and public accommodations, if any. Inquiries regarding disability discrimination may be directed to Affirmative Action Officer, Alumni Center Room 132, 3800 Victory Parkway, Cincinnati, Ohio 45207-5400, (513)-745-3638, or the Equal Employment Opportunity Commission 131 M Street, NE Washington DC, 20507, 202-663-4900, 1-(800)-669-4000, <http://www.eeoc.gov/>.

**3.6. Violation of Law and University Policy In General**

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 Dean of Students, 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 1.1.5.

**3.7. 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.

**3.8. 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>.

In matters involving complaints of Sex Discrimination, the Complainant and Respondent may have an advisor of their choice (including an attorney) in any related meeting or hearing.

#### **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 Sex Discrimination, 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.

#### **4.1.2. Duty to Report Harassment Not Based on Sex**

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 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 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 Dean of Students. The Affirmative Action Officer may report to the Dean of Students 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.

#### **4.1.3. Confidentiality of Harassment Complaints**

All person involved in any aspect of an allegation of harassment should respect the privacy of the parties involved and keep the matter confidential within the parameters of preparation for and participation in the complaint resolution process unless otherwise required by law. All communication by parties and witnesses should be respectful and comply with this HCAP. 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.)

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.

See Section 4.4.1 Confidentiality of Sex Discrimination Reports for a full description of policies and procedures that apply when a complaint may constitute Sex Discrimination.

For reports concerning matters that do not involve Sex Discrimination, 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 be grounds to amend or void the outcome of any previously agreed-upon resolution to a complaint.

## 4.2. Sex Discrimination at Xavier University

### 4.2.1. Definition of Sex Discrimination

For the purposes of this HCAP, Sex Discrimination can include Sexual Harassment, Sexual Imposition, Sexual Assault, Rape, Stalking, Domestic Violence, Dating Violence, Other Gender-Based and Sexual Misconduct, and Retaliation. Men and women can both engage in and experience Sex Discrimination. Sex Discrimination can occur against and be perpetrated by individuals who identify as heterosexual, lesbian, gay, bisexual, and/or transgender.

Xavier University defines the forms of Sex Discrimination it prohibits in this HCAP and the Student Handbook. Many of these forms of Sex Discrimination are also violations of Ohio criminal and/or civil law. Below are Xavier's definitions and policies, and Ohio legal definitions where applicable. The criminal and civil law list here is not intended to be exhaustive and this material should not be relied upon as legal advice or guidance regarding these offenses. In addition, the types of misconduct prohibited by this HCAP may be broader than state law and some prohibited conduct may not rise to the level of violating criminal or civil law. Xavier strives to ensure that its policies are followed and initiate the procedures outlined to address alleged misconduct regardless of whether a police report is filed about that misconduct and/or whether a criminal investigation is pursued. For complete information of state law, please see the Ohio Revised Code at <http://codes.ohio.gov/orc/>.

### 4.2.2. Forms of Prohibited Sex Discrimination

**4.2.2.1. Sexual Harassment is:** Unwelcome, gender-based verbal or physical conduct that is:

- Sufficiently severe, persistent or pervasive that it
- Unreasonably interferes with, denies or limits someone's ability to participate in or benefit from the University's educational programs, services, and/or activities, and is
- Based on power differentials (**quid pro quo**), the creation of a **hostile environment**, or **retaliation**.

- **Quid pro quo sexual harassment** exists when there are:
- Unwelcome sexual advances, request for sexual favors, or

other verbal or physical conduct of a sexual nature; and

- Submission to or rejection of such conduct results in adverse educational or employment action.
- **Retaliatory harassment** is any adverse employment or educational action take because of the individual's participation in an investigation or resolution of a Sex Discrimination complaint.
- **Hostile environment sexual harassment.** Determining whether the conduct has created a hostile environment requires an assessment of whether the conduct is sufficiently serious to deny or limit the individual's ability to participate in or benefit from the University program. To determine whether the conduct denies or limits benefits or services, the following will be considered:
  - The conduct from subjective and objective perspectives;
  - Whether the conduct is sufficiently severe or serious;
  - Effect of the conduct on the individual's education and/or employment;
  - All other relevant circumstances, such as type, frequency, location, duration, number of individuals involved, and the relationship/roles of the parties.

**Behavior is sexual in nature if a reasonable person could have interpreted the alleged behavior to be sexual.**

Conduct that constitutes sexual harassment can be verbal, visual or physical and may be through telephone or electronic contact.

Not all workplace or educational conduct that may be described as "harassment" affects the terms, conditions or privileges of employment or education. For example, a mere utterance of a gender-based epithet which creates offensive feelings in an employee or student would not normally affect the terms or conditions of their employment or education.

Examples of sexual harassment may include:

- Sexual Assault, Dating Violence, Domestic Violence and Stalking (defined in Section 4.2.2., subsections 1-15).
- Unwelcome sexual advances.
- Explicit or implicit requests for sexual favors.
- 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.
- 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.
- Amorous Relationships may constitute Sexual Harassment (See Section 4.8.)

The more severe the conduct the less the need to show repeated incidents; The Dept. of Education's Office for Civil Rights has concluded that a single incident of Rape is sufficiently severe to create a hostile environment.

The foregoing is not an exhaustive list of conduct that constitutes Sexual Harassment, for example, there does not need to be sexual desire motivating the conduct. The key inquiry is whether the Respondent's words or actions are directed at an individual because of the individual's sex. This includes harassment based on failure to conform to stereotypical notions of sex and gender, including non-conforming appearance and non-conforming mannerisms.

**4.2.2.2. Public Indecency is:** defined as masturbating or flashing/exposing breasts or genitals to others in a public and/or uninvited manner. It also includes engaging in an activity in public appearing to an ordinary observer to be sexual conduct or masturbation.

**4.2.2.3. Voyeurism is:** defined as trespassing, secretly invading the privacy of another, spying or eavesdropping upon another, usually with the purpose of sexually arousing or gratifying oneself (e.g., watching a person or persons in an intimate setting without that person's permission). Voyeurism may involve telescopes, still and video cameras, audio recording, or other technologies.

#### 4.2.2.4. Stalking

**Xavier definition:** a pattern of conduct by a person with a sexual, romantic or gender-based motivation that causes or is intended to cause another person to believe that the offender will cause physical harm or mental distress to the other.

#### **Ohio Revised Code 2903.211 Menacing by Stalking**

(A) (1) No person by engaging in a pattern of conduct shall knowingly cause another person to believe that the offender will cause physical harm to the other person or cause mental distress to the other person. (2) No person, through the use of any electronic method of remotely transferring information, including, but not limited to, any computer, computer network, computer program, or computer system, shall post a message with purpose to urge or incite another to commit a violation of division (A)(1) of this section. No person, with a sexual motivation, shall violate division (A)(1) or (2) of this section.

#### 4.2.2.5. Non-Disclosure of Known Positive HIV Status or STD

Individuals are responsible for disclosing any known positive HIV status or known sexually transmitted disease prior to engaging in any Act that could spread the disease or infection.

#### 4.2.2.6. Sexual Exploitation

Without the person's Consent, taking sexual advantage of another for one's benefit or the benefit of a third party.

#### 4.2.2.7. Sexual Imposition

Sexual touching of another when the touching is unwanted or offensive to the other person, including the touching of thighs, genitals, buttocks, the pubic region, or the breast/chest area, without the person's Consent, or when Coercion is used.

#### 4.2.2.8. Sexual Assault

**Xavier definition:** Sexual Assault occurs when an Act is committed by:

- a) physical force, violence, threat, or intimidation;
- b) ignoring the objections of the other person;
- c) causing another's intoxication or impairment through the use of drugs or alcohol; or
- d) taking advantage of another person's inability to Consent.

All sexual misconduct involving physical force, violence, threat or intimidation falls under the definition of Sexual Assault and will be treated as such.

## **Ohio Revised Code 2907.03 – 2907.06**

### **➤ 2907.03 Sexual Battery**

(A) No person shall engage in sexual conduct with another, not the spouse of the offender, when any of the following apply:

(1) The offender knowingly coerces the other person to submit by any means that would prevent resistance by a person of ordinary resolution.

(2) The offender knows that the other person's ability to appraise the nature of or control the other person's own conduct is substantially impaired.

(3) The offender knows that the other person submits because the other person is unaware that the act is being committed.

(4) The offender knows that the other person submits because the other person mistakenly identifies the offender as the other person's spouse.

(5) The offender is the other person's natural or adoptive parent, or a stepparent, or guardian, custodian, or person in loco parentis of the other person.

(6) The other person is in custody of law or a patient in a hospital or other institution, and the offender has supervisory or disciplinary authority over the other person.

(7) The offender is a teacher, administrator, coach, or other person in authority employed by or serving in a school for which the state board of education prescribes minimum standards pursuant to division (D) of section 3301.07 of the Revised Code, the other person is enrolled in or attends that school, and the offender is not enrolled in and does not attend that school.

(8) The other person is a minor, the offender is a teacher, administrator, coach, or other person in authority employed by or serving in an institution of higher education, and the other person is enrolled in or attends that institution.

(9) The other person is a minor, and the offender is the other person's athletic or other type of coach, is the other person's instructor, is the leader of a scouting troop of which the other person is a member, or is a person with temporary or occasional disciplinary control over the other person.

(10) The offender is a mental health professional, the other person is a mental health client or patient of the offender, and the offender induces the other person to submit by falsely representing to the other person that the sexual conduct is necessary for mental health treatment purposes.

(11) The other person is confined in a detention facility, and the offender is an employee of that detention facility.

(12) The other person is a minor, the offender is a cleric, and the other person is a member of, or attends, the church or congregation served by the cleric.

(13) The other person is a minor, the offender is a peace officer, and the offender is more than two years older than the other person.

➤ **2907.04 Unlawful Sexual Conduct with Minor**

No person who is eighteen years of age or older shall engage in sexual conduct with another, who is not the spouse of the offender, when the offender knows the other person is thirteen years of age or older but less than sixteen years of age, or the offender is reckless in that regard.

➤ **2907.05 Gross Sexual Imposition**

(A) No person shall have sexual contact with another, not the spouse of the offender; cause another, not the spouse of the offender, to have sexual contact with the offender; or cause two or more other persons to have sexual contact when any of the following applies:

(1) The offender purposely compels the other person, or one of the other persons, to submit by force or threat of force.

(2) For the purpose of preventing resistance, the offender substantially impairs the judgment or control of the other person or of one of the other persons by administering any drug, intoxicant, or controlled substance to the other person surreptitiously or by force, threat of force, or deception.

(3) The offender knows that the judgment or control of the other person or of one of the other persons is substantially impaired as a result of the influence of any drug or intoxicant administered to the other person with the other person's consent for the purpose of any kind of medical or dental examination, treatment, or surgery.

(4) The other person, or one of the other persons, is less than thirteen years of age, whether or not the offender knows the age of that person.

(5) The ability of the other person to resist or consent or the ability of one of the other persons to resist or consent is substantially impaired because of a mental or physical condition or because of advanced age, and the offender knows or has reasonable cause to believe that the ability to resist or consent of the other person or of one of the other persons is substantially impaired because of a mental or physical condition or because of advanced age.

(B) No person shall knowingly touch the genitalia of another, when the touching is not through clothing, the other person is less than twelve years of age, whether or not the offender knows the age of that person, and the touching is done with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

➤ **2907.06 Sexual Imposition**

(A) No person shall have sexual contact with another, not the spouse of the offender; cause another, not the spouse of the offender, to have sexual contact with the offender; or cause two or more other persons to have sexual contact when any of the following applies:

(1) The offender knows that the sexual contact is offensive to the other person, or one of the other persons, or is reckless in that regard.

(2) The offender knows that the other person's, or one of the other person's, ability to appraise the nature of or control the offender's or touching person's conduct is substantially impaired.

(3) The offender knows that the other person, or one of the other persons, submits because of being unaware of the sexual contact.

(4) The other person, or one of the other persons, is thirteen years of age or older but less than sixteen years of age, whether or not the offender knows the age of such person, and the offender is at least eighteen years of age and four or more years older than such other person.

(5) The offender is a mental health professional, the other person or one of the other persons is a mental health client or patient of the offender, and the offender induces

the other person who is the client or patient to submit by falsely representing to the other person who is the client or patient that the sexual contact is necessary for mental health treatment purposes.

#### **4.2.2.9. Rape**

**Xavier definition:** Rape is any Act involving vaginal or anal penetration (with any body part or object) or oral sex by a man or a woman that takes place without the other person's Consent or that is Coerced.

#### **Ohio Revised Code 2907.02 Rape**

(A) (1) No person shall engage in sexual conduct with another who is not the spouse of the offender or who is the spouse of the offender but is living separate and apart from the offender, when any of the following applies:

(a) For the purpose of preventing resistance, the offender substantially impairs the other person's judgment or control by administering any drug, intoxicant, or controlled substance to the other person surreptitiously or by force, threat of force, or deception.

(b) The other person is less than thirteen years of age, whether or not the offender knows the age of the other person.

(c) The other person's ability to resist or consent is substantially impaired because of a mental or physical condition or because of advanced age, and the offender knows or has reasonable cause to believe that the other person's ability to resist or consent is substantially impaired because of a mental or physical condition or because of advanced age.

(2) No person shall engage in sexual conduct with another when the offender purposely compels the other person to submit by force or threat of force.

#### **4.2.2.10. Domestic Violence**

**Xavier definition:** Domestic Violence is abusive behavior in an intimate or family relationship where the behavior is used to exert power and control over another party in the relationship. Domestic violence can include but is not limited to physical, sexual, emotional, economic, or psychological actions or threats of actions that influence another person. Abusive behavior can be spoken, written, or

physical. This includes any behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure, or wound someone. Both men and women can perpetrate domestic violence and can be victims of domestic violence. Domestic violence can be perpetrated by and against individuals who identify as heterosexual, lesbian, gay, bisexual, and/or transgender, and crosses all social, ethnic, racial, age, and economic lines.

**Ohio Revised Code 2919.25 Domestic Violence (Criminal)**

(A) No person shall knowingly cause or attempt to cause physical harm to a family or household member.

(B) No person shall recklessly cause serious physical harm to a family or household member.

(C) No person, by threat of force, shall knowingly cause a family or household member to believe that the offender will cause imminent physical harm to the family or household member.

➤ **2903.11 Felonious Assault**

(A) No person shall knowingly do either of the following:

(1) Cause serious physical harm to another or to another's unborn;

(2) Cause or attempt to cause physical harm to another or to another's unborn by means of a deadly weapon or dangerous ordnance.

(B) No person, with knowledge that the person has tested positive as a carrier of a virus that causes acquired immunodeficiency syndrome, shall knowingly do any of the following:

(1) Engage in sexual conduct with another person without disclosing that knowledge to the other person prior to engaging in the sexual conduct;

(2) Engage in sexual conduct with a person whom the offender knows or has reasonable cause to believe lacks the mental capacity to appreciate the significance of the knowledge that the offender has tested positive as a carrier of a virus that causes acquired immunodeficiency syndrome;

(3) Engage in sexual conduct with a person under eighteen years of age who is not the spouse of the offender.

**Ohio Revised Code 3113.31**  
**Domestic violence Definitions – Hearings (Civil)**

(A) (1) "Domestic violence" means the occurrence of one or more of the following acts against a family or household member:

(a) Attempting to cause or recklessly causing bodily injury;

(b) Placing another person by the threat of force in fear of imminent serious physical harm or committing a violation of section 2903.211 or 2911.211 of the Revised Code;

(c) Committing any act with respect to a child that would result in the child being an abused child, as defined in section 2151.031 of the Revised Code;

(d) Committing a sexually oriented offense.

**4.2.2.11. Dating Violence is defined as abusive behavior committed**

by a person who is or has been in a relationship of a romantic or intimate nature with the victim. Dating violence can include but is not limited to physical, sexual, emotional, economic, or psychological actions or threats of actions that influence another person. Abusive behavior can be spoken, written, or physical. This includes any behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure, or wound someone. Both men and women can perpetrate dating violence and can be victims of dating violence. Dating violence can be perpetrated by and against individuals who identify as heterosexual, lesbian, gay, bisexual, and/or transgender, and crosses all social, ethnic, racial, age, and economic lines.

**4.2.2.12. Retaliation**

Retaliation against a person complaining of Sex Discrimination is prohibited.

**4.2.2.13. Gender-Based and Sexual Misconduct – Other**

An individual may be found responsible for “gender-based and sexual misconduct – other” if his or her actions meet the definition of this type of misconduct but do not meet the definition of any particular type of sexual misconduct listed in



this section.

#### 4.2.2.14. **Additional Important Definitions for Understanding Sex Discrimination**

**“Act”** means a sex act, including but not limited to sexual intercourse, anal sex, oral sex, sexual penetration with an inanimate object, the touching of a person's intimate parts (including genitalia, groin, breast, buttocks, or clothing over these parts), or compelling a person to touch his or her own or another person's intimate parts without Consent.

**“Coercion”** means compelling another person to do something through emotional or physical pressure, threats, or other forms of intimidation. Real or perceived power differentials between individuals also may create an atmosphere of Coercion that can significantly impair a person's ability to Consent.

**“Consent”**

**Xavier definition:** Consent is defined as words or actions that demonstrate an affirmative, knowing and voluntary agreement to engage in a mutually agreed-upon sexual act.

- Consent must be informed and freely given.
- Consent is invalidated when it is forced, Coerced, or when a person is physically and/or mentally incapable of giving Consent. For example, a person who is substantially impaired by drugs or alcohol may not be able to Consent. Some signs of substantial impairment may include, but are not limited to, loss of balance/inability to walk without stumbling, slurred speech, inability to focus their vision, vomiting, erratic or extreme behavior, knowledge of person's significant use of drugs or alcohol, or passing out.
- Consent is an active, on-going process. It can be withdrawn at any time, and Consent for one sexual act does not imply Consent for another subsequent sexual act.
- Consent, a lack of Consent or a withdrawal of Consent can be expressed by words or actions or both. For example, verbal silence or the absence of physical resistance does not automatically mean someone has consented to a sexual act; nor is physical resistance required for a person to verbally communicate a lack of Consent or to withdraw Consent.

Ohio Revised Code

➤ **2907.01 Sex Offenses General Definitions  
(as used in sections 2907.01 to 2907.38)**

(A) **"Sexual conduct"** means vaginal intercourse between a male and female; anal intercourse, fellatio, and cunnilingus between persons regardless of sex; and, without privilege to do so, the insertion, however slight, of any part of the body or any instrument, apparatus, or other object into the vaginal or anal opening of another. Penetration, however slight, is sufficient to complete vaginal or anal intercourse.

(B) **"Sexual contact"** means any touching of an erogenous zone of another, including without limitation the thigh, genitals, buttock, pubic region, or, if the person is a female, a breast, for the purpose of sexually arousing or gratifying either person.

(C) **"Sexual activity"** means sexual conduct or sexual contact, or both.

(D) **"Prostitute"** means a male or female who promiscuously engages in sexual activity for hire, regardless of whether the hire is paid to the prostitute or to another.

(E) **"Harmful to juveniles"** means that quality of any material or performance describing or representing nudity, sexual conduct, sexual excitement, or sado-masochistic abuse in any form to which all of the following apply:

- (1) The material or performance, when considered as a whole, appeals to the prurient interest of juveniles in sex.
- (2) The material or performance is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable for juveniles.
- (3) The material or performance, when considered as a whole, lacks serious literary, artistic, political, and scientific value for juveniles.

(F) When considered as a whole, and judged with reference to ordinary adults or, if it is designed for sexual deviates or other specially susceptible group, judged with reference to that group, any material or performance is "obscene" if any of the following apply:

- (1) Its dominant appeal is to prurient interest;
- (2) Its dominant tendency is to arouse lust by displaying or depicting sexual activity, masturbation, sexual

excitement, or nudity in a way that tends to represent human beings as mere objects of sexual appetite;

(3) Its dominant tendency is to arouse lust by displaying or depicting bestiality or extreme or bizarre violence, cruelty, or brutality;

(4) Its dominant tendency is to appeal to scatological interest by displaying or depicting human bodily functions of elimination in a way that inspires disgust or revulsion in persons with ordinary sensibilities, without serving any genuine scientific, educational, sociological, moral, or artistic purpose;

(5) It contains a series of displays or descriptions of sexual activity, masturbation, sexual excitement, nudity, bestiality, extreme or bizarre violence, cruelty, or brutality, or human bodily functions of elimination, the cumulative effect of which is a dominant tendency to appeal to prurient or scatological interest, when the appeal to such an interest is primarily for its own sake or for commercial exploitation, rather than primarily for a genuine scientific, educational, sociological, moral, or artistic purpose.

(G) "**Sexual excitement**" means the condition of human male or female genitals when in a state of sexual stimulation or arousal.

(H) "**Nudity**" means the showing, representation, or depiction of human male or female genitals, pubic area, or buttocks with less than a full, opaque covering, or of a female breast with less than a full, opaque covering of any portion thereof below the top of the nipple, or of covered male genitals in a discernibly turgid state.

(I) "**Juvenile**" means an unmarried person under the age of eighteen.

(J) "**Material**" means any book, magazine, newspaper, pamphlet, poster, print, picture, figure, image, description, motion picture film, phonographic record, or tape, or other tangible thing capable of arousing interest through sight, sound, or touch and includes an image or text appearing on a computer monitor, television screen, liquid crystal display, or similar display device or an image or text recorded on a computer hard disk, computer floppy disk, compact disk, magnetic tape, or similar data storage device.

(K) "**Performance**" means any motion picture, preview, trailer, play, show, skit, dance, or other exhibition performed before an audience.

(L) "**Spouse**" means a person married to an offender at the time of an alleged offense, except that such person shall not be considered the spouse when any of the following apply:

(1) When the parties have entered into a written separation agreement authorized by section 3103.06 of the Ohio Revised Code;

(2) During the pendency of an action between the parties for annulment, divorce, dissolution of marriage, or legal separation;

(3) In the case of an action for legal separation, after the effective date of the judgment for legal separation.

(M) "**Minor**" means a person under the age of eighteen.

(N) "**Mental health client or patient**" has the same meaning as in section 2305.51 of the Ohio Revised Code.

(O) "**Mental health professional**" has the same meaning as in section 2305.115 of the Ohio Revised Code.

(P) "**Sado-masochistic abuse**" means flagellation or torture by or upon a person or the condition of being fettered, bound, or otherwise physically restrained.

#### **4.2.2.15. Violence Against Women Act and the US Code Definitions**

**The definitions below are the definitions used by Xavier's Clery Compliance Officer to classify crimes for counting purposes only.**

**These definitions are different than the definitions used in the Ohio Revised Code or in Xavier's HCAP and Student Handbook.**

**Additionally, these definitions are not used in the criminal prosecution under Ohio Law or in the student or employee conduct processes at Xavier.**

**Sexual Assault:** "Sexual assault" means an offense that meets the definition of rape, fondling, incest, or statutory rape as used in the FBI's Uniform Crime Reporting system. A sex offense is any act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent.

**Rape:** penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.

**Fondling:** the touching of the private parts of another person for the purposes of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.

**Incest:** non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

**Statutory Rape:** a non-forcible sexual intercourse with a person who is under the statutory age of consent.

**Domestic Violence:**

- 1) Felony or misdemeanor crimes of violence committed
  - (i) By a current or former spouse or intimate partner of the victim;
  - (ii) By a person with whom the victim shares a child in common;
  - (iii) By a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner;
  - (iv) By a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred; or
  - (v) By any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.
- 2) For the purposes of complying with the requirements of this section and section 668.41, any incident meeting this definition is considered a crime for the purposes of Clery Act reporting.

**Dating Violence:** The term "dating violence" means violence committed by a person:

- 1) Who is or has been in a social relationship of a romantic or intimate nature with the victim and
- 2) The existence of such a relationship shall be based on the reporting party's statement and with consideration of the length

of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

For the purposes of this definition-

- (i) Dating Violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
- (ii) Dating Violence does not include acts covered under the definition of domestic violence.

For the purposes of complying with the requirements of this section and section 668.41, any incident meeting this definition is considered a crime for the purposes of Clery Act reporting.

**Stalking:** The term “stalking” means:

1) Engaging in a course of conduct directed at a specific person that would cause a reasonable person to

- (i) fear for the person’s safety or the safety of others; or
- (ii) Suffer substantial emotional distress.

2) For the purposes of this definition

(i) Course of conduct means two or more acts, including, but not limited to, acts which the stalker directly, indirectly, or through third parties, by any action, method, device, or means follows, monitors, observes, surveils, threatens, or communicates to or about, a person, or interferes with a person’s property.

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

(iii) Reasonable persons means a reasonable person under similar circumstances and with similar identities to the victim.

3) For the purposes of complying with the requirements of this section and section 668.41, any incident meeting this definition is considered a crime for the purposes of Clery Act reporting.

#### **4.3. Duty to Report Sex Discrimination**

In accordance with Title IX, all Xavier employees (including certain identified student employees) who have knowledge of potential Sex Discrimination experienced and/or reported by a student, staff, faculty, administrator or visitor must report all information learned to the Title IX Coordinator so that she or he can respond promptly and in

compliance with all federal, state, and other applicable law. Confidential resources on campus that are not required to report to the Title IX Coordinator include Advocates from Xavier's Advocacy Service Program, mental health counselors, physicians, and nurses at McGrath Health & Wellness, mental health counselors at the Psychological Services Center, and clergy functioning in the role of a pastoral counselor.

Xavier employees are trained on (1) identifying what constitutes Sex Discrimination (2) Xavier's policies addressing Sex Discrimination (3) the role of Xavier's Title IX Coordinator (4) their obligation to report knowledge of Sex Discrimination (5) conduct procedures and the consequences for violating Xavier's policies and standards (6) informing individuals about how to report Sex Discrimination and (7) sharing on and off-campus confidential and non-confidential resources for individuals experiencing Sex Discrimination.

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

Once the Title IX Coordinator is on notice of a potential Sex Discrimination complaint, she or he will conduct a Title IX investigation and facilitate Xavier's Sex Discrimination complaint resolution process. See Section 4.7.1. for details on the Role of the Title IX Coordinator.

#### **4.4 Reporting Sex Discrimination at Xavier University**

The University informs individuals about their right to file criminal charges and the availability of counseling, health, mental health, victim advocacy, legal assistance, visa and immigration assistance and other services on and/or off campus as well as additional remedies to prevent contact between a Complainant and Respondent, such as housing, academic, transportation and working accommodations, if reasonably available. The University will make such accommodations, if the victim requests them and if they are reasonable and available, regardless of whether the victim chooses to report the crime to the Xavier University Police Department, local law enforcement, or to pursue a complaint under Xavier's internal complaint resolution process. All inquiries related to Sex Discrimination should be directed to Xavier's Title IX Coordinator , Gallagher Student Center, Room 332, Xavier University 3800 Victory Parkway, Cincinnati, OH 45207, 513-745-3046.

If an individual has been the victim of any form of Sex Discrimination, that person is strongly encouraged to report the incident promptly to the Title IX Coordinator, Xavier University Police, and/or local law enforcement. If a victim desires to speak to a confidential resource she or he should contact Xavier's Advocacy Service (for Xavier students) or a

local organization serving victims of these crimes (see Section 4.4 “Confidential” for list of confidential resources).

Reports can be made to any of the following resources below. If an individual is unsure about what she or he wants to have happen in response to the report, they should speak with a confidential resource first to help ensure that they understand all of their options, rights, and understand all confidentiality considerations (see Xavier’s Gender-Based and Sexual Misconduct Reporting & Support Options resource sheet at <http://www.xavier.edu/titleix/documents/2015-16XavierGender-BasedSexualMisconductReportingSupportOptions.pdf>).

An individual has to right to report Sex Discrimination to University employees and/or to Xavier University Police and/or local law enforcement. Xavier University has an obligation to respond to a report of Sex Discrimination under these HCAP procedures regardless of whether an individual makes a police report or pursues a criminal remedy.

## REPORTING RESOURCES

- **Title IX Coordinator** – (513)-745-3046, Gallagher Student Center, Room 332, 3800 Victory Parkway, Cincinnati, OH 45207;
- **Law Enforcement**- 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 local law enforcement agency to file a police report or to talk with a law enforcement officer about the possibility of filing a police report.

If the situation is an off-campus emergency, call 911;

**Xavier University Police Department** – (513)-745-1000 (on or near campus emergencies) or 513-745-2000 (non-emergencies), Flynn Hall, 1648 Herald Avenue, Cincinnati, OH 45207. More information is available at [www.xavier.edu/police](http://www.xavier.edu/police).

- **Cincinnati Police Department**- 911/non-emergency (513)-765-1212.
- **Norwood Police Department**- 911/non-emergency (513)-458-4520 Deputy Title IX Coordinator in Human Resources (leads the response in matters in which no student is involved as either Complainant or Respondent), Human Resources, Alumni Center, Room 132, 3800 Victory Parkway, Cincinnati, Ohio 45207-5400, (513)-745-3638.
- **Affirmative Action Officer**, Human Resources, Alumni



Center, Room 132, 3800 Victory Parkway, Cincinnati, Ohio 45207-5400, (513)-745-3638.

- **Dean of Students**, Gallagher Student Center, Room 302, 3800 Victory Parkway, Cincinnati OH 45207-2120, (513)-745-3166.
- **Office of Human Resources**– (513)-745-3638, Alumni Center, Room 132, 3800 Victory Parkway, Cincinnati, Ohio 45207.
- **Residence Life** – (513)-745-3203, Rm. 009D, Musketeer Mezzanine in Fenwick Place, 3800 Victory Parkway, Cincinnati, OH 45207.
- **Center for Diversity and Inclusion**, (513)-745-3181, GSC 200/280, 3800 Victory Parkway, Cincinnati, OH 45207  
[http://www.xavier.edu/gender-diversity/;](http://www.xavier.edu/gender-diversity/)

## CONFIDENTIAL SUPPORT AND ADVOCACY RESOURCES

- **Xavier University Advocacy Service** – 513-745-1000. Trained advocates through the Advocacy Service 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. An individual does not need to report to the police to obtain an 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. 24-Hour Crisis Line (513)-381-5610, business line 513-977-5541,  
[www.womenhelpingwomen.org](http://www.womenhelpingwomen.org).
- **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](http://www.xavier.edu/audit-risk/ethicspoint.cfm)).
- **Counseling**- Outpatient counseling and psychotherapeutic treatment is available at no charge to Xavier students at the Health and Wellness Center <http://www.xavier.edu/health-wellness/counseling/> (513)-745-3022, located at 1714 Cleneay Avenue next to Cohen Center parking lot, and the Psychological Services Center <http://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.

#### **4.4.1. Confidentiality of Sex Discrimination Reports**

The following information relates to the confidentiality of reports of Sex Discrimination in accordance with Title IX.

The University strongly supports the privacy of individuals reporting Sex Discrimination and will honor requests for confidentiality within the University's response to the report if and where it is able while meeting its obligation to respond to Sex Discrimination under the law.

Even if an individual who has been negatively affected by Sex Discrimination does not want to pursue the matter through Xavier's internal complaint resolution process and/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 promote 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 <http://www.xavier.edu/business-services/ethicspoint.cfm>.

By reporting the incident, Xavier can keep an accurate record of the number of reported incidents, 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. Pursuant to the Clery Act, reports of certain types of Sex Discrimination to Xavier (including but not limited to reports to the Title IX Coordinator, Residence Life, Resident Assistants, the Dean of Students, the Advocacy Service, the Center for Diversity & Inclusion, 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.

In accordance with Title IX, Xavier prohibits retaliation and will not only take steps to prevent retaliation but will also take strong responsive action if it occurs. 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 this HCAP, 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 through the HCAP) 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 employees and students. When weighing an individual's request for confidentiality that could preclude a meaningful investigation or potential discipline of the alleged perpetrator, Xavier will consider a range of factors. These factors include circumstances that suggest there is an increased risk of the alleged perpetrator committing additional acts of Sex Discrimination (e.g., whether there have been other sexual harassment or sexual violence complaints about the same alleged perpetrator, whether the alleged perpetrator has a history of arrests or records from a prior school indicating a history of violence, whether the alleged perpetrator threatened further sexual harassment, sexual violence or other violence against the individual or others, and whether the Sex Discrimination was committed by multiple perpetrators). These factors also include circumstances that suggest there is an increased risk of future acts of Sex Discrimination under similar circumstances (e.g., whether the report reveals a pattern of perpetration (e.g., via illicit use of drugs or alcohol) at a given location or by a particular group). Other factors that should be considered in assessing a request for confidentiality include whether the Sex Discrimination was perpetrated with a weapon; the age of the individual subjected to the Sex Discrimination; and whether the University possesses other means to obtain relevant evidence (e.g., security cameras or personnel, physical evidence). The Title IX Coordinator or her designee in her absence will be responsible for evaluating request for confidentiality.

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.

#### **4.5. Sex Discrimination Response and Recovery**

After an incident of Sex Discrimination the victim should consider seeking medical attention as soon as possible at one of the medical facilities listed below. In Ohio, if an individual has experienced Sexual Assault or Rape, evidence may be collected even if the person chooses not to make a report to law enforcement. The University of Cincinnati Health SANE Program has certified Sexual Assault Nurse Examiners (SANE) who are specially trained to collect evidence from men and women who have been sexually assaulted. See below for contact information:

- University of Cincinnati Medical Center, 234 Goodman Street, Cincinnati, OH 45219, (513) 584-5700.
- University of Cincinnati Health Sexual Assault Nurse Examiner (SANE) Program, 234 Goodman Street, Cincinnati, OH 45219, (513) 584-3379.
- Good Samaritan General Hospital, 375 Dixmyth Avenue, Cincinnati, OH 45220-2489, (513) 862-1400.

It is important that a victim of Sexual Assault not bathe, douche, smoke, change clothing or clean the bed/linen/area where they were assaulted if the offense occurred within the past 72 hours so that evidence may be preserved that may assist in proving that the alleged criminal offense occurred/or is occurring or may be helpful in obtaining a protection order. In circumstances of Sexual Assault, if victims do not opt for forensic evidence collection, health care providers can still treat injuries and take steps to address concerns of pregnancy and/or sexually transmitted disease.

Victims of Sex Discrimination are encouraged to also preserve evidence by saving text messages, instant messages, social networking pages, other communications, and keeping pictures, logs or other copies of documents, if they have any, that would be useful to University hearing boards/investigators or police.

As time passes, evidence may dissipate or become lost or unavailable, thereby making investigation, possible prosecution, disciplinary proceedings, or obtaining protection from abuse orders related to the incident more difficult. If a victim chooses not to make a complaint regarding an incident, he or she nevertheless should consider speaking with Xavier University Police Department or other law enforcement to

preserve evidence in the event that the victim changes her/his mind at a later date.

Although the University strongly encourages all members of its community to report violations of this policy to law enforcement, it is the victim's choice whether or not to make such a report and victims have the right to decline involvement with the police. The University will assist any victim with notifying local police if they so desire. Xavier University Police Department are sworn police officers with jurisdiction to investigate reports of assault and work closely with local law enforcement in investigating these offenses. The Cincinnati Police Department may also be reached directly by calling 513-765-1212 or in person at any of the District stations (see maps online at the web address below for all addresses, telephone numbers and directions to each District Station.) Additional information about the Cincinnati Police Department may be found online at: <http://www.cincinnati-oh.gov/police/>.

Xavier supports those striving for recovery after Sex Discrimination regardless of whether the Sex Discrimination 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 employee or student whose life has been affected by Sex Discrimination 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 counseling; peer education; volunteer opportunities; and collaboration with peers, administration, and family.

**Resources for victims of Sex Discrimination include:**

**On-Campus**

| <b>Resource</b>   | <b>Address/Location on Campus</b>                                    | <b>Phone Number</b> |
|---|--|---------------------|
| Office of Human Resources   | Alumni Center, Room 132  | 513-745- 3638       |
| McGrath Health and Wellness Center<br>(counseling and medical for students) | 1714 Cleneay Ave, Cinti<br>OH 45207                                  | 513-745-3022        |
| Xavier Advocacy Service   | Advocacy Services are provided by phone and in two campus locations- | 513-745-1000        |

|                                     |  |                              |
|-------------------------------------|--|------------------------------|
|                                     | within a residence hall and within Xavier University Police Department |                              |
| Xavier University Police Department | 1648 Musketeer Drive   | 513-745-1000<br>513-745-2000 |
| Xavier Psychological Services       | Sycamore House, 3818 Winding Way, Cinti OH 45207                       | 513-745-3531                 |
| Title IX Coordinator                | 332 Gallagher Student Center   | 513-745-3046                 |
| Dean of Students                    | Gallagher Student Center, Suite 300                                    | 513-745-3166                 |
| Center for Mission and Identity     | Fenwick Hall   | 513-745-3530                 |
| Center for Diversity & Inclusion    | Suite 200, Gallagher Student Center                                    | 513-745-1029                 |
| Center for International Education  | Suite 230, Gallagher Student Center                                    | 513-745-2861                 |

### Off-Campus

| Resource  | Address/Location   | Phone Number  |
|---|--|---|
| Cincinnati Police Dept.   | District 4<br>4150 Reading Road<br>Cincinnati, OH 45229  | Emergencies: 911<br>Non-Emergencies<br>513-765-1212<br>District 4: 513-569-8600 |
| Norwood Police Dept.  | 4701 Montgomery Rd, Cincinnati, OH 45212                 | Emergencies: 911<br>Non-Emergencies<br>513-458-4520                             |
| University of Cincinnati Medical Center                                       | 234 Goodman Street, Cincinnati, OH 45219                 | 513-584-5700  |
| University of Cincinnati Health Sexual Assault Nurse Examiner (SANE) Program* | 234 Goodman Street, Cincinnati, OH 45219<br>513-584-1000 | 513-584-3379  |
| Women Helping Women   | 215 E. Ninth Street, 7th Floor Cincinnati, OH 45202-6109 | phone 513-977-5541<br>24-Hour Crisis Line<br>513-381-5610<br>TTY 513.977.5545   |
| YWCA of Greater Cincinnati  | 898 Walnut Street, Cincinnati, OH 45202                  | 513-241-7090  |
| Ohio Alliance to End Sexual Violence  | 526 Superior Avenue, Suite 1400<br>Cleveland, Ohio 44114 | 216-658-1381<br>888-886-8388  |

|   |   |   |
|---|---|---|
| Ohio Domestic Violence Network  | 4807 Evanswood Dr,<br>Columbus, OH 43229  | 614-781-9651  |
| Hamilton Co. Court of Domestic Relations  | 800 Broadway, Cincinnati,<br>OH 45202   | 513-946-9000  |
| Hamilton Co. Court of Common Pleas  | 1000 Main Street<br>Cincinnati, Ohio 45202  | 513-946-5800  |
| Juvenile Court  | 800 Broadway, Cincinnati,<br>OH 45202   | 513-946-9200  |
| Hamilton Co. Prosecuting Attorney Victim Services   | 230 E. Ninth Street<br>Suite 4000<br>Cincinnati, Ohio 45202   | 513-946-3070  |
| Legal Aid Society of Greater Cincinnati   | 215 E 9th St #200,<br>Cincinnati, OH 45202  | 513-241-9400  |
| University of Cincinnati Domestic Violence and Civil Protection Order Clinic  | University of Cincinnati<br>College of Law<br>Center for Race, Gender,<br>and Social Justice<br>PO Box 210040<br>Clifton Avenue and<br>Calhoun Street<br>Cincinnati, Ohio 45221 | 513-556-0180  |
| Ohio Domestic Violence Network Legal Assistance Program (lawyers available for sexual assault and stalking victims as well) | 4807 Evanswood Drive,<br>Suite 201<br>Columbus, OH 43229  | 614-781-9651  |
| Cincinnati Bar Association Lawyer Referral Service  | 225 E. Sixth Street,<br>Cincinnati, Ohio 45202  | 513-381-8359 or toll free<br>at 888-628-2577                                      |
| Visa/Immigration Assistance- see all legal resources above and Catholic Charities Southwestern Ohio Su Casa Hispanic Center | 7036 Fairpark Avenue,<br>Cincinnati, Ohio 45216   | 513-761-1588  |
| Gay, Lesbian & Straight Education Network Greater Cincinnati Chapter  | PO Box 19856<br>Cincinnati OH 45219   | 866-934-9119  |
| Rape, Abuse and Incest National Network   |   | 1-800-565-HOPE<br><a href="http://www.rainn.org">http://www.rainn.org</a>         |
| U.S. Department of Justice  |   | 202-514-2000<br><a href="http://www.ovw.usdoj.gov/">http://www.ovw.usdoj.gov/</a> |

|  |  |  |
|--|--|--|
|  |  | sexassault.htm   |
| U.S. Department of Education Office for Civil Rights |  | <b>1-800-421-3481</b><br><a href="http://www2.ed.gov/about/offices/list/ocr/index.html">http://www2.ed.gov/about/offices/list/ocr/index.html</a> |

#### 4.6. Prevention of Sex Discrimination

The University engages in comprehensive, intentional, and integrated programming, initiatives, strategies, and campaigns intended to end Sex Discrimination that:

- Are culturally relevant, inclusive of diverse communities and identities, sustainable, responsive to community needs, and informed by research, or assessed for value, effectiveness, or outcome; and
- Consider environmental risk and protective factors as they occur on the individual, relationship, institutional, community and societal levels.

Educational programming consists of primary prevention and awareness programs for all incoming students and new employees, and ongoing awareness and prevention campaigns for students and employees that:

- Identifies Sex Discrimination as prohibited conduct;
- Defines using definitions provided both by the Department of Education as well as state law what behavior constitutes Sex Discrimination;
- Defines what behavior and actions constitute consent to sexual activity in the State of Ohio and/or using the definition of consent found in the HCAP and Student Code of Conduct if state law does not define consent;
- Provides a description of safe and positive options for bystander intervention. Bystander intervention means safe and positive options that may be carried out by an individual or individuals to prevent harm or intervene when there is a risk of dating violence, domestic violence, sexual assault or stalking. Bystander intervention includes recognizing situations of potential harm, understanding institutional structures and cultural conditions that facilitate violence, overcoming barriers to intervening, identifying safe and effective intervention options, and taking action to intervene;
- Information on risk reduction. Risk reduction means options designed to decrease perpetration and bystander inaction, and to increase empowerment for victims in order to promote safety and to



help individuals and communities address conditions that facilitate violence;

- Provides an overview of information contained in the Annual Security Report in compliance with the Clery Act.

The University has developed an annual educational campaign consisting of presentations that include distribution of educational materials to new students; participating in and presenting information and materials during new employee orientation; and presentations, activities and other programming initiatives on an ongoing basis to employees and students.

#### 4.7 Sex Discrimination Complaint Resolution Process

The Title IX Coordinator, Affirmative Action Officer, and other applicable campus administrators will respond efficiently and effectively when Sex Discrimination is reported. Xavier has established the following guidelines pertaining to how Xavier responds to Sex Discrimination:

| Incident Being Reported: | Procedure Xavier University Will Follow:   |
|--------------------------|--|
| <b>Sexual Assault</b>    | <ol style="list-style-type: none"> <li>1. Depending on when reported (immediate vs delayed report), Xavier will provide Complainant with access to medical care</li> <li>2. Xavier will assess immediate safety needs of Complainant</li> <li>3. Xavier will provide Complainant with contact information for the local police department AND if Complainant requests assist them with contacting local police</li> <li>4. Title IX Coordinator will initiate Title IX investigation and facilitate (with other relevant personnel) Xavier’s complaint resolution process.</li> <li>5. Xavier will assess need to implement interim or long-term protective measures, such as housing changes, change in class schedule, “No Contact” directives</li> <li>6. Xavier will provide a “No Contact Notice” directive to accused party if deemed appropriate</li> <li>7. Xavier will provide a copy of the applicable Sex Discrimination Policy (HCAP if employee accused, Student Handbook if student is accused) to Complainant and inform the Complainant regarding timeframes for inquiry, investigation and resolution</li> <li>8. Xavier will inform the Complainant of the outcome of the investigation, whether or not the accused will be administratively charged and if the accused is charged what the outcome of the hearing is</li> </ol> |

|                          |  |
|--------------------------|--|
|                          | <ol style="list-style-type: none"> <li>9. Xavier will enforce the anti-retaliation policy and take immediate and separate action against parties that retaliate against a person for complaining of Sex Discrimination or for assisting in the investigation</li> </ol>  |
| <b>Stalking</b>          | <ol style="list-style-type: none"> <li>1. Xavier will assess immediate safety needs of Complainant</li> <li>2. Xavier will assist Complainant with contacting local police if complainant requests AND Complainant provided with contact information for local police department</li> <li>3. Title IX Coordinator will initiate Title IX investigation and facilitate (with other relevant personnel) Xavier’s complaint resolution process.</li> <li>4. Xavier will provide written instructions on how to apply for Protective Order</li> <li>5. Xavier will provide written information to Complainant on how to preserve evidence (verbal when a police report is filed)</li> <li>6. Xavier will assess need to implement interim or long-term protective measures to protect the Complainant, if appropriate</li> <li>7. Xavier will provide a “No Contact Notice” directive to Respondent if deemed appropriate</li> </ol> |
| <b>Dating Violence</b>   | <ol style="list-style-type: none"> <li>1. Xavier will assess immediate safety needs of Complainant</li> <li>2. Xavier will assist Complainant with contacting local police if Complainant requests AND Complainant provided with contact information for local police department</li> <li>3. Title IX Coordinator will initiate Title IX investigation and facilitate (with other relevant personnel) Xavier’s complaint resolution process.</li> <li>4. Xavier will provide written information to Complainant on how to preserve evidence (verbal when a police report is filed)</li> <li>5. Xavier will assess need to implement interim or long-term protective measures to protect the Complainant, if appropriate</li> <li>6. Xavier will provide a “No Contact Notice” directive to Respondent if deemed appropriate</li> </ol>   |
| <b>Domestic Violence</b> | <ol style="list-style-type: none"> <li>1. Xavier will assess immediate safety needs of Complainant</li> <li>2. Xavier will assist Complainant with contacting local police if Complainant requests AND Complainant provided with contact information for local police department</li> <li>3. Title IX Coordinator will initiate Title IX investigation and facilitate (with other relevant personnel) Xavier’s complaint resolution process.</li> <li>4. Xavier will provide written instructions on how to apply for Protective Order (verbal if police report is filed)</li> <li>5. Xavier will assess need to implement interim or long-term</li> </ol>   |

protective measures to protect the Complainant, if appropriate

6. Xavier will provide a “No Contact Notice” (directive to Respondent if deemed appropriate)

Once on notice of potential Sex Discrimination, the University will initiate appropriate Title IX investigation and complaint resolution processes promptly and equitably (see Section 4.7 for details) as well as disciplinary procedures to those determined to have violated this policy. While the investigation and complaint resolution process are pending, the University will provide resources, on campus off campus or both, to include medical, health, counseling, legal assistance, victim advocacy, and visa and immigration assistance to the Complainant. These resources will be provided regardless of whether the Complainant decides to pursue and/or participate in a Title IX investigation and/or report to law enforcement.

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 the complaint resolution process will be completed within 60 calendar days of the date the investigation is started. This 60 day timeline does not include appeal. 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.

If a report of Sex Discrimination is reported to the University, below are the procedures that the University will follow. The standard of evidence that will be used during any hearing or administrative decision on campus arising from such a report is preponderance of the evidence, which means it is more likely than not that the misconduct occurred.

The procedures are intended to afford a prompt response to complaints of Sex Discrimination, to maintain confidentiality and fairness consistent with applicable legal requirements, and to impose appropriate sanctions on violators of this policy.

Full description of Xavier University’s complaint resolution process is in Section 5 of this HCAP and Sections 2 and 3 of the Xavier Student Handbook

#### **4.7.1 Role of the Title IX Coordinator – Sex Discrimination Reports Only**

The Title IX Coordinator is responsible for overseeing all of Xavier’s Title IX compliance efforts. Matters of Sex Discrimination

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 Deputy Title IX Coordinator in Human Resources to oversee the HCAP process – from complaint to resolution – of any allegation that, if proven true, would constitute Sex Discrimination. This includes conducting a fair, impartial, thorough investigation of the complaints, producing an investigation report, and providing the report and collected materials to the Affirmative Action Officer (or the whoever is acting as AAO in the case of Section 5.6 Pattern of Harassment), and monitoring Interim Measures and sanctions. These tasks will usually be completed by the Title IX Coordinator for reports filed by students, and by the Deputy Title IX Coordinator in Human Resources for allegations made by an employee against an employee.

#### **4.7.1.1 Fact-Finding Investigation**

The Title IX Coordinator or Deputy Title IX Coordinator will promptly investigate all complaints of Sex Discrimination. Under Title IX, this investigation must be adequate, reliable and impartial. The Title IX Coordinator plays a neutral, fact-finding role as an investigator. 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 the investigation and complaint resolution process will be completed within 60 calendar days of the date the investigation is started. This 60 day timeline does not include any appeal. 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.

In matters involving allegations of Sex Discrimination, the Complainant and Respondent have the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice. The advisor may help the Complainant or Respondent prepare his/her position but may not present it or speak for or on behalf of the Complainant or Respondent in

the meeting or proceeding.

#### **4.7.1.2 Threshold Assessment**

In cases of Sex Discrimination, the Title IX Coordinator (or Deputy) will conduct a preliminary investigation of the complaint to make a threshold assessment using the definitions above. If the Title IX Coordinator determines there is reasonable cause to believe a HCAP Sex Discrimination policy may have been violated, the Title IX Coordinator will continue the investigation. If the Coordinator does not find there is reasonable cause, she or he will notify the Complainant (and Respondent if applicable) that the Title IX investigation has been concluded and file closed. The Title IX Coordinator will notify the Complainant that she or he still retain the right to file a complaint under the HCAP in this circumstances.

Reasonable cause is defined as some credible information to support each element of the offense, even if that information is merely a credible witness or a victim's statement.

#### **4.7.1.3 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 Affirmative Action Officer who facilitates the complaint resolution process under the HCAP. The Title IX Coordinator is charged with ensuring that the process is compliant with the HCAP and Title IX through its conclusion.

If upon completing her or his investigation the Title IX Coordinator concludes that the facts of the allegation do not meet and/or rise to the level of meeting the definition of any form of Sex Discrimination under this policy, she or he will notify the Complainant of this conclusion, review other options (for example, to pursue his or her complaint under the general Harassment provisions of the HCAP rather than the Sex Discrimination provisions or to seek assistance from Human Resources to address his or her concerns outside of the HCAP), and provide other relevant resources.

#### **4.7.2 Compliance With Law Enforcement**

To the extent consistent with Xavier's obligation under Title IX and laws, 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.

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>.

#### **4.8 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 an individual has any questions about the application or effect of this policy to an existing or potential relationship, it is their duty to consult with their 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. If the relationship in questions does not constitute Harassment under the HCAP, the Affirmative Action Officer will take appropriate action under other relevant University policies.

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 grounds for dismissal of a tenured or untenured faculty member. See [Xavier University Faculty Handbook](#).

#### **4.9 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.

#### **4.10 Reprisals**

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

##### **4.4.1. 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. Retaliation against an individual making a complaint of Sex Discrimination is a separate violation of Title IX and this HCAP, and will be investigated and resolved as such.

#### **4.4.2. 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.

#### **4.4.3. 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.

#### **4.4.4. 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 strive 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.

#### **4.4.5. 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 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. Any 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 the Student Handbook.

#### **4.11 Sex Offender Registration**

The Federal Campus Sex Crimes Prevention Act, enacted on October 28, 2000, requires institutions of higher education to issue a statement advising the campus community where law enforcement agency information provided by a State concerning registered sex offenders may be obtained. It also requires sex offenders, already required to register in a State, to provide notice, as required under State law, of each institution of higher education in that State at which the person is employed, carries on a vocation, volunteers services, or is a student.

In Ohio, information on registered sex offenders can be accessed using the website for the Ohio Office of the Attorney General, which is here: [http://www.communitynotification.com/cap\\_main.php?office=55149](http://www.communitynotification.com/cap_main.php?office=55149).

### **5. HARASSMENT POLICY**

#### **5.1 Introduction to Procedures**

The Xavier University Harassment Code and 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.

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 Employees and Students**

The Xavier University Harassment Code and 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.

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 – 5.14., 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 5.8).

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 5.8.).

#### **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 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, Title IX Coordinator, Dean of Students, Chief Diversity and Inclusion Officer, Center for Diversity and Inclusion, Health and Counseling, Psychological Services, Xavier University 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 his HCAP.

For resources regarding Sex Discrimination see Sections 4.4. and 4.5.

#### **5.4. Procedure for Reporting Harassment**

An initial course of action for any Xavier employee, 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 facilitate all concerns being 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:

- If the situation is an off-campus emergency, call 911;
- Xavier University Police- (513)-745-1000 (on or near campus emergencies), (513)-745-2000 (non-emergencies), Flynn Hall, 1648 Herald Avenue;
- If the matter may constitute Sex Discrimination: Title IX Coordinator- 513-745-3046, 332 Gallagher Student Center;

- Human Resources – (513)-745-3638 Alumni Center, Room 132,
- Residence Life- (513)-745-3203, Rm. 009D Musketeer Mezzanine, Fenwick Place;  
Dean of Students- (513)-745-3166, Gallagher Student Center, Suite 300, 3815 Ledgewood Avenue;
- Xavier Advocacy Services - (513)-745-1000;
- Anonymous Reporting Hotline – (855)-481-6238; to submit a report online, follow the link on the Audit & Risk Management’s website:  
<http://www.xavier.edu/controller/hotline.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 may be submitted in writing to the Affirmative Action Officer or, in Sex Discrimination cases, the Title IX Coordinator. An oral complaint may also be made to these individuals and she or he will document the facts of the complaint in writing.

**5.4.4. Policy on Amnesty**

Xavier University is committed to promoting the health, wellbeing and safety of all members of our community. At times, students on and off-campus may need emergency assistance from University officials. In accordance with our Jesuit values, Xavier University encourages students to offer help and assistance to others in need. Xavier University recognizes that at times students may be hesitant to call for assistance, for fear of negative consequences related to their own behavior (for example, an underage student who has consumed alcohol might hesitate to request medical attention for an intoxicated student or help take a sexual assault victim

to Xavier University Police Department).

Xavier's Policy on Amnesty is designed to encourage a student to seek emergency assistance for oneself or a fellow student during an alcohol, drug or other medical emergency. The Amnesty Policy encourages a bystander or an impaired student to call for immediate medical assistance by eliminating the sanctions typically applied under Xavier's Alcohol and Other Drug Policy. Students who qualify for Amnesty will receive educational interventions rather than formal conduct charges and sanctions.

To qualify for Amnesty, students must do the following:

1. Contact and obtain assistance from Residence Life Staff, Title IX Coordinator, Xavier University Police Department, medical professionals and/or local law enforcement;
2. Cooperate with all directives of the University officials or local law enforcement personnel responding to the incident.
3. Meet with a Residence Life staff member and/or the Dean of Students or designee to discuss educational options and comply with all assigned educational interventions.

The Xavier University Policy on Amnesty is not intended to shield or protect those students who repeatedly violate the Xavier University Code of Student Conduct. In cases where repeated violations of the Xavier University Code of Student Conduct occur, the University reserves the right to take student conduct action on a case by case basis regardless of the manner in which the incident was reported.

#### **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, Dean of Students (students only), Director of Residence Life (students only), Title IX Coordinator (in matters involving Sex Discrimination 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. Requests for Interim Measures should be directed to these individuals. The following is a list of Interim Measures that may be implemented, if appropriate.

### **5.5.1. No Contact Notice**

A No Contact Notice can be issued to prevent a person from contacting another person. Note that confidentiality of the requesting party's identity cannot be maintained when a No Contact Notice 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. Externally Issued Protective Orders**

Xavier University encourages any person who obtains an order of protection from any U.S. state to provide a copy to the Xavier University Police Department and the Title IX Coordinator. That person may then meet with Xavier University Police Department and/or the Title IX Coordinator to develop a Safety Action Plan intended to reduce risk of harm to the individual while on campus or coming and going from campus. This plan may include, but is not limited to escorts; providing a temporary cellphone; changing classroom location, supervisor or work location; or allowing a student to complete assignments from home.

Upon receiving notice and a copy of an externally issued protective order from a court of competent jurisdiction, Xavier University Police Department will assist in the enforcement of the order, including responding to reported violations of the protective order. While alerting the Xavier University Police Department to the existence of a Civil Protection Order (CPO) and/or seeking assistance from Xavier Police regarding a potential violation of a CPO, these actions will not necessarily trigger Xavier Police having to initiate an investigation (particularly if the individual expresses her or his preference that Xavier Police not do so), but individuals should know that contacting Xavier Police regarding a CPO may put them on notice that Sex Discrimination may have occurred and Xavier Police will then be required to report that information to the Title IX Coordinator. For more information on the Title IX Coordinator's response to reports of Sex Discrimination, see Section 4.3 - 4.5 and Section 4.7 of this HCAP.

The University cannot apply for a legal order of protection for the victim from the applicable jurisdiction(s). The victim is required to apply directly for these services. For access to all required forms related to orders of protection, visit the Hamilton County Clerk of the Courts page at [https://www.courtclerk.org/cp\\_civil\\_forms.asp](https://www.courtclerk.org/cp_civil_forms.asp).

### ➤ **Types of Protection Orders in Ohio**

There are different kinds of Protection Orders available to victims of domestic violence, sexual assault and stalking. Depending on who the perpetrator is, what happened, and other factors, there are differences in where, when and how you seek these orders, what they do, and how long they last. Xavier's Annual Security Report provides basic information on each, and then detailed information follows. Ohio has jurisdiction over these cases as long as some of the acts occurred in Ohio, regardless of where the perpetrator lives. In Protection Order cases, the person who files the motion for the Protection Order is the "Petitioner" and the accused perpetrator is the "Respondent."

For more information on the types of Protective Orders, please see Xavier's Annual Security Report at <http://www.xavier.edu/clery/documents/2014-15ASR.pdf>.

#### **5.5.3. 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, activity, office, to/from his or her vehicle, etc.).

#### **5.5.4. Added Police Presence**

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

#### **5.5.5. Making Adjustments to On-Campus Living and Working Arrangements**

Adjustments may be made to a Complainant's on-campus living arrangements, if space allows, and to her or his work arrangements where possible. 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 individual alleged to have violated the HCAP.

#### **5.5.6. Making Adjustments to Class Schedules, Employment, 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. Similarly, adjustments can be made to an employee's work schedule and arrangement pending the resolution of an HCAP matter.

#### **5.5.7. 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.

#### **5.5.8. 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 Dean of Students (with respect to students), based on the facts and circumstances of a particular situation.

#### **5.5.9. 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 Dean of Students (with respect to students).

## **5.6. 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.

If the Affirmative Action Officer files a complaint under this provision, the individual who reported experiencing the harassment has the right to pursue his or her own complaint concurrently or at any time within this policy's time limits (see Section 5.7.1.). If the individual who reported the harassment chooses not to pursue her or his own complaint in this context, she can elect for the Affirmative Action Officer to include his or her complaint into the complaint of harassment filed by the Affirmative Action Officer under the Pattern of Harassment provision either with or without identifying information.

If a formal hearing is scheduled to determine whether a Respondent is responsible for violating the HCAP under this provision, the Affirmative Action Officer will provide the Hearing Panel member with a redacted history of prior relevant complaints and subsequent related actions. Relevancy of prior complaints to the current matter will be determined by the Affirmative Action Officer.

## **5.7. 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 4.4 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 Imposition, Sexual Assault and Rape, 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.

#### **5.7.1. 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.

### **5.8. 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 Imposition, Sexual Assault and Rape, 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 5.9.

#### **5.8.1. 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
  - Dean of Students
  - Center for Diversity and Inclusion
  - Health and Counseling
  - Psychological Services
  - Campus Police

#### **5.8.2. 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 5.8.

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.

### **5.8.3. 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 so that 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 5.8.3 or Section 5.9.

### **5.8.4. 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.

#### **5.8.5. 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 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 5.8.3 or Section 5.9.

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 5.8.5 to determine the responsible official.

## **5.9. 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 Imposition, Sexual Assault, Rape 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 promote 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 – 5.10, 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.

### **5.9.1. 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. A complaint requiring use of the formal process will be resolved either through mediation or by a formal hearing. Mediation is not appropriate and will not be offered in matters involving allegations of Sexual Imposition, Sexual Assault, Rape, or in cases of complaints alleging conduct so serious as to warrant an immediate use of the formal procedures. The Affirmative Action Officer has sole discretion to determine whether the alleged conduct is so serious as to warrant immediate use of a formal hearing. In such matters, formal hearing procedures

will be initiated promptly.

The Complainant and Respondent have five business days from when they receive written notice from the Affirmative Action Officer that the formal procedures will be initiated to indicate to the Affirmative Action Officer in writing the procedure (mediation or a formal hearing) that they wish to use to resolve the complaint.

If either the Complainant or the Respondent or both request a formal hearing, the formal hearing procedures will be initiated after the conclusion of the five day period.

If neither party requests a formal hearing within the five business days and mediation is allowable under the terms of this HCAP, the Affirmative Action Officer will notify the Complainant and Respondent that mediation will be initiated at the conclusion of the five day period.

The Affirmative Action Officer will designate a mediator within ten business days of receipt of such request.

#### **5.9.2. 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 so that the parties are fully informed of 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 5.8.3. or Section 5.9.

### **5.9.3. Initiation of the Formal Hearing Process**

A formal hearing process is initiated 1) once the Affirmative Action Officer has been notified by either the Complainant or Respondent or both of their desire to proceed with a formal hearing; 2) instances in which where mediation is not permitted; 3) where mediation was attempted and the matter was not resolved; and 4) once the Affirmative Action Officer notifies the Respondent that she or he will proceed as the Complainant under Section 5.6 Pattern of Harassment.

Where mediation was attempted and the matter was not resolved, 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.

### **5.9.4. 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 Hearing 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 Hearing Panel members (whether changed or not) within five business days after receiving the last objection.

The Affirmative Action Officer will notify the Complainant and Respondent of the hearing date, time and place, which shall be set for no less than 10 but no more than 21 business days after the date the Hearing Panel members are finalized. 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.

At least 5 business days before the hearing the Complainant and Respondent will be provided with the documents gathered to date to be presented to the Hearing Panel (including the Title IX Investigation Report in matters of Sex Discrimination). FERPA protected information may be redacted.

At least three business days before the hearing, the Complainant and Respondent must submit to the AAO any additional documents or other materials they want considered in the hearing as well as a written list of witnesses they want to testify at the hearing.

At least three business days before the hearing the Complainant and Respondent will be provided a list of all witnesses who will be called at the hearing, including witnesses submitted by the Respondent, Complainant, and Xavier.

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.

#### **5.9.5. Composition of Harassment Hearing Board**

The Harassment Hearing Board consists of 24 members and are selected and serve as described in Xavier University Committees. For employee committee membership, see <http://www.xavier.edu/employees/committee-groups.cfm>. For student committee membership, see

<http://www.xavier.edu/student-involvement/sga/University-Committees.cfm>.

#### **5.9.6. Selection of a Harassment Hearing Panel**

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

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 Hearing Panel will be selected from the remaining members of the Harassment Hearing Board so long as one member of each of the following four groups is represented on each Hearing Panel: faculty, non-exempt employee, exempt employee, and 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.

#### **5.9.7. 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.
- 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.
- The Complainant, Respondent, and Xavier may identify witnesses to be called at the hearing. Only witnesses with knowledge directly related to the pending allegation will be allowed to testify at the hearing. Witnesses may be dismissed from the hearing if testimony is based on opinion or perceived character alone. A Hearing Panel may reasonably limit the scope and time devoted to each case or item of discussion during the hearing, including the number of people testifying or providing information. Specifically, corroboration provided by witnesses shall be allowed where appropriate, but repetitive, discussion, or witness material may be limited.
- The Complainant and Respondent may each have one written statement on his or her own character which will be read at the hearing.
- In matters involving Sex Discrimination the Title IX Coordinator or Deputy Title IX Coordinator will serve as a witness in the hearing and will answer questions from the parties and/or Hearing Panel members related to the investigation report only. She or he will not offer an opinion or conclusion as to whether she or he believes the Respondent is responsible for violating any provisions of this HCAP.
- Both parties have the right to question all witnesses.
- In matters involving Sex Discrimination, 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 communicate with each other without being in close proximity to one another.

- In matters involving allegations of Sex Discrimination, Complainants and Respondents have the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, including an attorney. The advisor may help a party prepare his/her position but may not present it or speak for or on behalf of the party at the meeting or proceeding.
- Using a general measure of relevance and credibility to the complaint being heard, the Hearing Panel will determine what testimony will be permitted at the hearing.
- In matters involving Sex Discrimination, other than those complaints brought by the Affirmative Action Officer alleging a Pattern of Harassment under Section 5.6, 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.
- At the Affirmative Action Officer's discretion, multiple incidents involving the same individual may be considered in one hearing.
- Hearing Panel proceedings are not governed by the rules of evidence used by the courts.
- 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. In matters involving allegations of Sex Discrimination, the Complainant and Respondent have the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice. The advisor may help the Complainant or Respondent prepare his/her position but may not present it or speak for or on behalf of the Complainant or Respondent in the meeting or proceeding.
- Hearings will be audio tape recorded by the University. No audio or video recording of any nature may be taken by parties or witnesses.

#### **5.9.8. Standard of Proof**

To find a violation of Xavier University's HCAP the Complainant has the burden of showing that the evidence establishes that it is more likely than not that the Respondent harassed the Complainant in violation of the HCAP. This standard is known as "preponderance of the evidence." While the Hearing 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.

#### **5.9.9. 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.

#### **5.9.10. Sanctioning**

If the Hearing 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 the outcome of that complaint;
- 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 made by the same or a different Complainant (whose name will be redacted) against this same Respondent and the outcome

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

Examples of the types of sanctions that the Hearing 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.

#### **5.9.10.1 Benchmark Sanctions for Sex Discrimination**

If an employee is found "responsible" for violating the Sex Discrimination provisions of the HCAP, the following benchmark sanctions are a starting point for determining the appropriate sanction. Actual sanctions imposed are determined on a case-by-case basis and may be greater or lesser than the benchmark sanctions. These benchmark sanctions are intended to offer guidance to the individuals and panels imposing and recommending

sanctions, and to alert the Xavier community of the serious nature of certain violations. Although benchmarks are only provided for certain violations, sanctions may be imposed for violations which are not included in this list.

*Sexual Harassment.* Given the potential range of behaviors that constitute Sexual Harassment (see definition at Section 4.2.2.1.) sanctions may range from a letter of reprimand to termination.

*Public Indecency.* The benchmark sanction for an employee who is found responsible for public indecency is termination.

*Voyeurism.* The benchmark sanction for an employee who is found responsible for voyeurism is termination.

*Rape.* The benchmark sanction for rape is termination.

*Sexual Assault.* The benchmark sanction for sexual assault is termination.

*Sexual Imposition.* The benchmark sanction for sexual imposition is termination.

*Non-disclosure of known positive HIV status or STD.* The benchmark sanction for an employee who is found responsible for failing to disclose a known positive HIV status or STD is from Letter of Reprimand up to and including Termination.

*Domestic Violence.* Given the potential range of behaviors that constitute Domestic Violence (see definition) sanctions may include any sanction from Letter of Reprimand up to and including Termination.

*Dating Violence.* Given the potential range of behaviors that constitute Dating Violence (see definition) sanctions may include any sanction from Letter of Reprimand up to and including Termination.

*Stalking.* Given the potential range of behaviors that constitute Stalking (see definition) sanctions may include any sanction from Letter of Reprimand up to and including Termination.

*Sexual Exploitation.* Given the potential range of behaviors that constitute Stalking (see definition) sanctions may include any sanction from Letter of Reprimand up to and including Termination.



*Other Gender-Based and Sexual Misconduct.* Sanctions for an employee who is found responsible for other gender-based and sexual misconduct may range from Letter of Reprimand to Termination.

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 Affirmative Action Officer then notifies 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 for use only in connection with the duties of a member of the Hearing Panel.

The Hearing 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 Affirmative Action Officer under 12.9.7, the Panel's findings and sanctions shall be final and binding.

#### **5.9.11. Notification of Outcome**

In cases of Sex Discrimination, the Affirmative Action Officer will provide the Complainant and Respondent simultaneous written notification of the outcome of the hearing.

### **5.10. Appeal**

#### **5.10.1. 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 Affirmative Action Officer delivers the Hearing Panel's decision to the appropriate individuals.

#### **5.10.2. 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

Hearing 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.

The recording of the original 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.

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 5.10.2, 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 Affirmative Action Officer and the Hearing Panel Chairperson. The Affirmative Action Officer will notify the Complainant and Respondent of the President's decision within two business days of receiving the President's decision, including the information that 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 5.10.2. 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 affirm, reverse, or modify its original decision and/or sanction. Within three business days the Hearing Panel the Chairperson shall provide written notice of the Hearing Panel's decision to the Affirmative Action Office. Within two business days after receipt the Affirmative Action Office shall deliver the decision in writing to the Complainant, Respondent, and the President or his designee, including the information that 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. If the President modifies the Hearing Panel decision he or she will notify the Affirmative Action Officer within two business days of making that modification. The Affirmative Action Officer will notify in writing the Complainant, Respondent, and Hearing Panel members of the President's modification within two business days of receipt, with the information that the President's decisions are final and binding.

### **5.10.3. 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 5.10.3, 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 facilitate 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 5.10.3. 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 affirm, reverse, or modify its original decision and/or sanction. Within three business days the Chair shall provide written notice of the Hearing Panel's decision to the Affirmative Action Office.

Within two business days after receipt the Affirmative Action Office shall deliver the decision in writing to the Complainant, Respondent, , and the President or his designee, including the information that 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. If the President modifies the Hearing Panel decision he or she will notify the Affirmative Action Officer within two business days of making that modification. The Affirmative Action Officer will notify in writing the Complainant, Respondent, and Hearing Panel members of the President's modification within two business days of receipt, with the information that the President's decisions are final and binding.

#### **5.11. 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 Hearing 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 serves, as the immediate supervisor.
- In cases in which the Respondent is a non-faculty staff member, the responsible official is the appropriate Senior Executive Team member 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.

#### **5.12. 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.

#### **5.13. 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 Action 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.

#### **5.14. 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.