

TITLE IX, CLERY ACT, AND VAWA POLICY

Policy. It is the policy of Johnson University that sexual misconduct is unacceptable and will not be tolerated; therefore, sexual misconduct committed by or upon a Johnson University student or employee is strictly prohibited. Reported violations of this policy will be investigated thoroughly and resolved promptly.

Rationale. Relationships between men and women at Johnson University are guided by biblical principles of respect for other's feelings, rights, and responsibilities. The university is committed to its moral, educational, and legal obligations to provide policies, procedures, and programs that protect students and employees from sexual misconduct (both on and off campus) and to establish an environment in which unacceptable behavior will not be tolerated. This policy complies with the following federal laws:

- Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. Sec. 1681, *et seq.*, which prohibits discrimination on the basis of sex in any federally funded education program or activity
- Jeanne Clery Disclosure of Campus Security and Campus Crime Statistics Act (Clery Act), 20 U.S.C. Sec. 1092(f), originally enacted as the Crime Awareness and Campus Security Act of 1990 (Title II of Public Law 101-542)
- Violence Against Women Reauthorization Act of 2013 (VAWA), an amendment to the federal Clery Act and companion to Title IX

History of Title IX Legislation and Regulations. The list below outlines the sequence of legislation and regulations relating to Title IX, the Clery Act, and VAWA:

1972: Title IX was passed as part of the Education Amendments. It prohibited sex discrimination by recipients of federal funds, which includes most colleges, universities, and public elementary and secondary schools.

1975: The U.S. government published Title IX Implementing Regulations.

1990: The Clery Act was passed, requiring institutions of higher education to enhance campus safety efforts.

1997: Sexual Harassment Guidance was published.

2001: The [Revised Sexual Harassment Guidance](#) was published.

April 4, 2011: The Office of Civil Rights (OCR) of the U.S. Department of Education released its "Dear Colleague Letter," which ushered in a new era of federal enforcement.

March 7, 2013: The Violence Against Women Reauthorization Act (VAWA) amended the Clery Act.

April 29, 2014: The OCR released Questions and Answers on Title IX and Sexual Violence.

October 20, 2014: The U.S. Department of Education issued final negotiated rules implementing VAWA, which took effect on July 1, 2015.

April 2015: The U.S. Department of Education published the Title IX Coordinator Guidance and Resource Guide.

June 2016: The Revised Clery Handbook was released.

September 22, 2017: The U.S. Department of Education rescinded the 2011 Dear Colleague Letter and 2014 Questions and Answers. It released a new set of [Questions and Answers](#).

November 2018: The U.S. Department of Education provided Notice of Proposed Rulemaking for implementation of Title IX.

On May 6, 2020, the U.S. Department of Education released [final regulations](#) governing how institutions that receive federal financial assistance covered by Title IX of the Education Amendments of 1972 (Title IX) must respond to allegations of sexual harassment. The regulations were published on May 19, 2020, in the *Federal Register*. This is the first time the Title IX regulations have been updated since the first regulations were issued in 1975. These regulations require institutions that receive Title IV funds to address sexual harassment as a form of prohibited sex discrimination in education programs or activities

under Title IX, and it is the first time that protections against sexual harassment have been enshrined into federal education regulations. The regulations spell out the requirements for providing procedural due process to both complainants and respondents. These final regulations represent the U.S. Department of Education's interpretation of a university's legally binding obligations; therefore, they focus on precise legal compliance regulations rather than best practices, recommendations, or guidance. The following policy was developed to meet the requirements of these regulations.

Scope. This policy applies to locations and events where Johnson University exercises substantial control over the respondent and the context in which the sexual harassment occurred. These locations and events can include activities held off campus that were funded, promoted, or sponsored by the University, but they do not include actions that may occur in a private, off-campus apartment or dwelling or off-campus conduct that may occur during summer or school breaks. The policy also applies to incidents that may occur in any building owned or controlled by a student organization that is officially recognized by the University. Respondents potentially include students (including campus residents, commuters, and online students), employees, applicants for admission or employment, contractors, and volunteers. Because the Title IX regulations apply only in the United States, trips or events outside the country, such as study abroad or mission trips, are not covered by the policy. The policy also covers employee-to-employee sexual misconduct. For a complaint to be considered, the complainant must be participating in, or attempting to participate in, the University's education program or activity at the time of filing a formal complaint. This includes students who are attending the University, are on leave from the University, or have graduated but have plans to return for another program or degree. Complainants may also be employees, applicants for admission or employment, alumni participating in alumni events, and guests or visitors participating in school activities such as sporting events. Allegations of sexual assault, domestic violence, dating violence, or stalking may fall under VAWA regulations regardless of the location of the alleged conduct.

Non-Discrimination Policy. Johnson University is a Christian university affiliated with Christian churches and churches of Christ. Its mission is to educate students for "Christian ministries and other strategic vocations framed by the Great Commission in order to extend the kingdom of God among all nations." Accordingly, Johnson University seeks to hire and educate individuals who share its vision and core values to carry out that mission. Johnson University does not unlawfully discriminate in admissions, educational programs, or employment practices.

Johnson University does not discriminate on the basis of race, sex, color, national origin, age, veteran status, genetic information, political affiliation, or handicap—if such disability may be accommodated without undue hardship—in provision of educational opportunities, programs and activities, or employment opportunities and benefits, pursuant to the requirements of Title VI of the Civil Rights Act of 1964 and subsequent amendments to that act, Title IX of the Educational Amendments of 1972 and subsequent re-authorization of that act, Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act of 1990 and subsequent amendments to that act.

The University, however, reserves the right under those provisions to make certain employment decisions on the basis of religion, marital status, or sex consistent with the University's religious beliefs when establishing qualifications for certain positions. Further, as a Christian ministry, the University retains the right to select those who serve in ministerial positions, as that term has been defined by the courts in the context of the First Amendment to the United States Constitution, based on criteria established by the University without regard to Title VII, Title IX, or any other federal, state, or local law governing the employment relationship.

For the Tennessee and Online campuses and for the various extension sites, direct questions concerning the non-discrimination policy in regards to Title IX or inquiries related to Title IX to the lead Title IX Coordinator, Ms. Emili Williams, Director of Institutional Effectiveness, Johnson University, 7900 Johnson Drive, Box 1639, Knoxville, TN 37998. telephone: 865-251-2373. email: ewilliams@JohnsonU.edu.

Other inquiries related to Title IX may be referred directly to the U.S. Department of Education's

Office for Civil Rights at 800-421-3481 or ocr@ed.gov.

Title IX Coordinator. Each campus has a designated employee who ensures that the University's response to sex discrimination complies with federal law. For the Tennessee and Online campuses and for the various extension sites, the lead Title IX Coordinator is Ms. Emili Williams, Director of Institutional Effectiveness, Johnson University Tennessee, 7900 Johnson Drive, Knoxville, TN 37998, telephone: 865-251-2373, email: ewilliams@johnsonu.edu. For the Florida campus, the branch Title IX Coordinator is Dr. Garrett Thompson, Assistant Director of Academic Support and Career Services, Johnson University Florida, 1011 Bill Beck Boulevard, Kissimmee, FL 34744, telephone: 407-569-1340, email: gthompson@johnsonu.edu

Core responsibilities of the lead Title IX Coordinator include overseeing the university's response to Title IX reports and complaints, effectively implementing supportive measures and remedies for victims of sexual harassment, identifying and addressing any pattern or systemic problem revealed by such reports and complaints, and evaluating an alleged victim's confidentiality request, if one is made. Core responsibilities of the branch Title IX Coordinator include overseeing the university's response to Title IX reports and complaints made on the Florida branch campus, effectively implementing supportive measures and remedies for victims of sexual harassment, and evaluating an alleged victim's confidentiality request, if one is made.

The University will notify applicants for admission and employment, students, and employees of the name or title, office address, email address, and telephone number of the Title IX Coordinator. The identity and contact information for the Title IX Coordinators will be prominently displayed on the University's website.

Categories of Sexual Harassment. Government regulations have identified three categories of sexual harassment that are covered by Title IX. The regulations state that the phrase "on the basis of sex" does not require an inquiry into the subjective motive of the respondent. Where conduct is sexual in nature or where conduct references one sex or another, such facts are sufficient to determine that the conduct is "on the basis of sex."

(1) *Quid pro quo.* This term refers to situations where educational aid or an educational benefit or service is conditioned on unwelcome sexual misconduct by an employee. Students who may commit quid pro quo offenses are not subject to the Title IX process but may be subject the disciplinary process under the student code of conduct. Quid pro quo offenses do not need to meet the standards of severity, pervasiveness, offensiveness, or denial of equal education access that are required to determine "unwelcome conduct." Even if it occurs once, such conduct is objectively sufficiently serious to deprive a person of equal access to education.

(2) *Unwelcome Conduct.* This term refers to conduct of a sexual nature or on the basis of sex that a reasonable person would determine so severe, pervasive, and objectively offensive that it would effectively deny a person equal access to an educational program or activity. Sexual harassment is unwelcome conduct of a sexual nature, including unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature. Sexual harassment is a form of sex discrimination which is illegal under Title VII of the Civil Rights Act of 1964 for employees and under Title IX of the Education Amendments of 1972 for students. The Title IX definition differs from Title VII, which says that sexual harassment may be severe or pervasive or objectively offensive. The Title IX definition requires that all three criteria be met.

(3) *Sexual Assault.* Sexual assault means coerced or non-consensual sexual intercourse, sexual activity, sexual contact, or sexual conduct against the victim's will. Sexual assault includes rape, sexual battery, sexual coercion, intentional sexual touching, and sexual exploitation. For Clery Act purposes, sexual assault is defined as an offense that meets the definition of rape, fondling, incest, statutory rape, sodomy, or sexual assault with an object as used in the FBI's Uniform Crime Reporting (UCR) program. The 2020 Title IX regulations include the categories of dating violence, domestic violence, and stalking on the basis of sex under the broader category of "sexual assault," and those terms are defined in line with the Clery Act and

the VAWA. Sexual assault offenses do not need to meet the standards of severity, pervasiveness, offensiveness, or denial of equal education access that are required to determine “unwelcome conduct.” Such conduct, even when it occurs only once, is objectively sufficiently serious to deprive a person of equal access to education.

(3)(a) *Sexual Violence*. Sexual violence is a form of sexual harassment. Sexual violence means any incident of rape; sexual battery; lewd or lascivious act committed upon or in the presence of a person younger than 16 years of age; luring or enticing a child under the age of 12 into a structure, dwelling, or conveyance for other than a lawful purpose; sexual performance by a child; or any other forcible felony wherein a sexual act is committed or attempted, regardless of whether criminal charges based on the incident were filed, reduced, or dismissed by prosecuting authorities.

(3)(b) *Stalking on the Basis of Sex*. Stalking is any course of conduct directed at a specific person on the basis of sex that would cause a reasonable person to fear for his or her safety or the safety of others, or any conduct that would cause a reasonable person to suffer substantial emotional distress. This definition includes stalking that occurs online or through messaging platforms, commonly known as “cyberstalking,” when it occurs in the University’s education program or activity.

(3)(c) *Dating Violence*. Dating violence means violence between individuals who have or have had a continuing and significant relationship of a romantic or intimate nature. For Clery purposes, dating violence is defined as violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.

(3)(d) *Domestic Violence*. Domestic violence means any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member. For Clery Act purposes, domestic violence is defined as a felony or misdemeanor crime of violence committed (a) by a current or former spouse or intimate partner of the victim; (b) by a person with whom the victim shares a child in common; (c) by a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner; (d) 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 (e) 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. A single incident of dating/domestic violence or stalking may qualify as sexual harassment.

Other Related Definitions.

(1) *Complainant*. An individual who is alleged to be the victim of conduct that could constitute sexual harassment, which includes students, employees, applicants for admission or employment, alumni participating in alumni events, and guests or visitors participating in school activities such as sporting events.

(2) *Respondent*. An individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment, including students, employees, applicants for admission, and applicants for employment.

(3) *Formal Complaint*. A document or electronic submission filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the University investigate the allegation of sexual harassment.

(4) *Consent*. Consent is a voluntary, verbal agreement to engage or participate in sexual activity. Someone who is incapacitated cannot consent. Incapacitation may occur due to the use of drugs or alcohol, when a person is asleep or unconscious, or because of an intellectual or other disability that prevents the person from having the capacity to actively give consent. Past consent does not imply future consent. Silence or an absence of resistance does not imply consent. Consent to engage or participate in sexual activity with one person does not imply consent to engage or participate in sexual activity with another. Consent can be withdrawn at any time. Coercion, force, or threat of either invalidates consent.

Confidentiality. The University will keep confidential the identity of complainants, respondents, and witnesses, except as permitted by FERPA, or as required by law, or as necessary to carry out a Title IX proceeding. Confidentiality and anonymity may have to give way to the university's obligation to investigate and take appropriate action, especially if the university is required to provide a timely warning of a Clery-reportable campus crime or an immediate threat to the health or safety of students or employees. When necessary, university officials will make a timely warning to the campus community (as required by federal regulations) unless issuing the notification will, in the professional judgment of responsible university officials, compromise efforts to assist a victim or to contain, respond to, or otherwise mitigate the emergency (as permitted by federal regulations).

The University encourages the professional or pastoral counselors among the faculty and staff to inform persons they are counseling (when the counselor deems it appropriate) about procedures for confidential reporting so that Clery-reportable crimes may be included in the annual disclosure of crime statistics. Certain criteria must be met for complete confidentiality between a victim and a pastoral counselor or a professional counselor. There may be situations in which counselors are in fact under a legal obligation to report a crime. To be exempt from disclosing reported offenses, pastoral or professional counselors must be acting in the role of pastoral or professional counselors, as defined below. The following definitions apply to Title IX and Clery situations:

- Pastoral counselor: A person who is associated with a religious order or denomination, is recognized by that religious order or denomination as someone who provides confidential counseling, and is functioning within the scope of that recognition as a pastoral counselor.
- Professional counselor: A person whose official responsibilities include providing mental health counseling to members of the institution's community and who is functioning within the scope of the counselor's license or certification.

Title IX and Clery Act Grievance Process

The Grievance Process is designed to meet the Title IX Implementing Regulations in the following ways:

- Both parties will be treated equitably.
- The respondent will be provided the presumption of non-responsibility until a determination regarding responsibility is made at the conclusion of the grievance process.
- The process will be carried out in a reasonably prompt time from with the possibility of extensions for good cause.
- Practitioners will be trained and free from conflict of interest and bias.
- The same standard of evidence will be used for both students and employees.
- The use of legally recognized privileged information will be restricted, unless the person holding such privilege has waived the privilege.
- All relevant evidence, including inculpatory and exculpatory evidence, will be evaluated objectively.
- Credibility determinations will not be based on a person's status.
- A range of supportive measures, remedies, and sanctions will be provided.
- Remedies will be implemented only following a finding of responsibility.
- Sanctions will be applied only after the conclusion of the grievance process.
- Grounds for appeal will be designated.

Reporting and Complaint Procedures. The University must have "actual knowledge" of sexual harassment allegations in order to respond deliberately and effectively. "Actual knowledge" means notice to the Title IX Coordinator at JUTN or the Branch Title IX Coordinator at JUFL. These are the only University officials with authority to institute corrective measures on behalf of the University for sexual

harassment.

Notice occurs whenever a Title IX coordinator: (1) witnesses sexual harassment; (2) hears about sexual harassment or receives sexual harassment allegations from a complainant or a third party (e.g., a complainant's parent, friend, or peer); (3) receives a written or verbal complaint about sexual harassment or sexual harassment allegations; or (4) receives notice by any other means. The person who reports does not need to be the complainant; rather, a report may be made by any person.

Any person who becomes aware of a possible Title IX infraction, including bystanders and parents, may report it to the Title IX coordinator by phone, mail, email, in person, online form, or other method at any time, day or night. If an informal report comes from a third party, the coordinator will contact the complainant confidentially, offer supportive measures, explain the option and process for filing a formal complaint, and carefully document the conversation. The following link may be used to report a Title IX incident:

<https://websurvey2.johnsonu.edu/cgi-bin/rws5.pl?FORM=JUGrievanceandTitleIXReporting>

Only the alleged victim (or their parent or guardian in some cases) may file a formal complaint, but a formal complaint may also be signed by the Title IX Coordinator without a submission of a formal complaint by another party. In such a case, the complainant is under no obligation to participate in the grievance process, and any statements by the complainant may be excluded. Individuals may not be pressured or coerced into filing, or not filing, a formal complaint or participating in, or not participating in, a grievance process. There is no time limit or statute of limitations on a complainant's decision to file a formal complaint.

If a victim or eyewitness desires to make an anonymous report, the university's ability to respond will be limited by the confidentiality request. In certain cases, strict confidentiality is not possible because of federal Clery Act requirements to report certain crimes, including but not limited to the more serious forms of sexual misconduct. Each reported Clery crime is evaluated on a case-by-case basis to determine whether the university must issue a timely warning to the campus community about that particular criminal incident. If confidentiality is requested, every effort will be made to keep the name and location of the alleged victim and/or witnesses confidential. Ultimately, confidentiality requests are decided by the Title IX Coordinator who may initiate a grievance process against the complainant's wishes only if it is not clearly unreasonable in light of the known circumstances.

The university is obligated under the federal Clery Act to report certain crimes that occur on campus, in a non-campus building or property, or on public property within the reasonably contiguous geographic area of the institution on its annual campus crime report provided to the U.S. Department of Education. The university is also obligated to issue timely warnings to the campus community about certain crimes that have already occurred but may continue to pose a serious or ongoing threat to students and/or employees.

Dismissal of Title IX Allegations. Dismissal of allegations will be reviewed at the beginning of the process, after a formal complaint has been received, and after the end of the investigation. Dismissal is mandatory if the allegations do not constitute actionable sexual harassment, or if the event took place outside the University's programs or activities, or if the event took place outside the United States. Discretionary dismissal of a formal complaint may occur if the complainant submits a written request to withdraw the complaint, if the respondent is no longer enrolled or employed, or if specific circumstances prevent gathering of evidence sufficient to reach a determination regarding the actions alleged in the formal complaint. Both parties must be simultaneously notified of the case dismissal, the reasons for the dismissal, and their right to challenge the dismissal on appeal. Dismissal of a complaint does not preclude the University from taking disciplinary measures for misconduct covered by the student code of conduct or that violates state law, even if the misconduct is not sexual harassment under Title IX.

Amnesty for Reporting. The University recognizes that some victims or witnesses of sexual harassment may be reluctant to report such incidents because they fear that they may be disciplined for

other conduct violations. Because sexual misconduct is a more serious matter than other conduct violations, the University wants to encourage reporting and promote safety. Therefore, the University will not conduct a disciplinary process for violations of the student or employee code of conduct in which a complainant or witnesses might have engaged in connection with the reported incident. This amnesty provision includes the use of alcohol or drugs, engaging in consensual sexual activity, and curfew violations. The University may require education or counseling related to these other violations to provide support and care for the individuals, but they will not be subject to disciplinary sanctions.

Supportive Measures. A victim or eyewitness of sexual misconduct by or upon a Johnson University student or employee must first go to a place of safety. Time is especially critical if a crime of dating violence, domestic violence, sexual assault, or stalking has occurred. In such a case, the victim should not bathe until physical evidence of the assault can be obtained by medical personnel or law enforcement officers. It is important to preserve all physical evidence for examination by a physician that may assist in proving that the alleged criminal offense occurred or may be helpful in obtaining a protection order, particularly if there were no witnesses. If such a crime has occurred, the university will take prompt and effective steps to end the violence, prevent its recurrence, and address its effects.

Upon the victim's request, a specially trained Student Services (in the case of a student) or Human Resources (in the case of an employee) staff member will assist the victim in notifying local law enforcement of the incident, if the victim so chooses; guide the victim through the available options; and support the victim in his or her decisions related to the incident.

When the Title IX Coordinator receives notice of an allegation of sexual harassment, the Coordinator will promptly contact the complainant to discuss supportive measures, consider the complainant's wishes regarding supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the complainant the option and process for filing a formal complaint. If the complainant chooses not to file a formal complaint, he or she is still eligible to receive supportive measures.

The goal of supportive measures is to restore or preserve the right to equal access to education without unreasonably burdening the respondent or any other person. Also, supportive measures protect the safety of all parties and deters sexual harassment. However, supportive measures may not affect the respondent's presumption of innocence throughout the investigation and grievance process. Such measures will be available to both parties without fee or charge, and they will be nondisciplinary, nonpunitive individualized services.

Supportive measures may include moving a complainant or respondent's seat in a class, modified work schedules, revised class schedules, mutual restrictions on contact between the parties, campus escorts, counseling, deadline extensions, course-related adjustments (such as the opportunity to retake classes or exams), alternative housing arrangements, leaves of absence, and increased security. Supportive measures provided by the University will be kept confidential to the extent that confidentiality does not impair the University's ability to provide the supportive measures. The Title IX Coordinator is responsible for implementing the supportive measures.

If the University conducts an individualized safety and risk analysis that concludes that the respondent poses an immediate threat to the physical health and safety of anyone, the University has the right to remove the respondent on an emergency basis from the educational program or activity. If the respondent is an employee, the University may place the employee on administrative leave during the investigation. The respondent may challenge the removal immediately, but the University will determine the scope and duration of the removal. Removal does not eliminate the University's obligation to continue the grievance process.

Notice of Allegations. A Title IX investigation begins with the initial report of sexual misconduct made to the Title IX Coordinator. The grievance process will treat complainants and respondents equitably in a predictable process, which presumes the respondent is not responsible for the alleged conduct and does not have to prove innocence. No disciplinary sanctions will be imposed before the grievance process is

completed.

The Title IX Coordinator will provide a written description to both parties in advance about the allegations of sexual harassment, including date, location, identities of parties (if known), and the alleged misconduct that constitutes sexual harassment. The notice will include a statement that the respondent is presumed not responsible for the conduct alleged and that a determination regarding responsibility will be made at the end of the grievance process. The notice to the parties will also include a description of the grievance process (including the possibility of informal resolution), standard of evidence, summary of possible sanctions, each party's right to select an advisor, each party's right to inspect and review evidence, appeal rights, and supportive measures. The notice will not disclose medical information or any other sensitive information of the complainant without voluntary, written consent. The notice will include sufficient details known at the time and with sufficient time (at least 10 days) to allow the parties to prepare a response before any initial interview. The notice will also inform the recipients of any code of conduct policies that prohibit knowingly making false statements or submitting false information during the grievance process.

Informal Resolution. If a formal complaint has been filed, an informal resolution process (e.g., mediation) may be used only if all parties agree to participate in an informal resolution process that does not involve a full investigation and adjudication. Both parties must provide voluntary, written consent without any conditions on enrollment or continuing enrollment or employment or continuing employment or enjoyment of any other right. Any party may decline or terminate an informal resolution process at any time prior to agreeing to a resolution, without penalty. In such cases, the facilitator of the informal resolution process will not be allowed to serve as a witness in the formal grievance process.

Before using any informal process, the Title IX Coordinator will notify those involved of the advantages and disadvantages of the informal resolution process and will establish and notify those involved about reasonable timeframes for the informal process. If all parties voluntarily choose an informal resolution process, the Title IX Coordinator will provide both parties in writing the allegations, requirements of the informal resolution process including whether the process is confidential, the circumstance under which it precludes the parties from resuming the formal complaint, assurances that either party may withdraw from the process at any time before its conclusion, and any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.

The Title IX Coordinator will appoint a facilitator who is free from conflicts of interest or bias and who has received special training for the role. The Title IX Coordinator will record the use, timeliness, and outcome(s) of the informal process, without disclosing the parties' names. In the case of alleged sexual assault or sexual misconduct, it is unnecessary and, most likely, inappropriate for an alleged victim to attempt informal resolution with the alleged perpetrator. Also, informal resolutions are not available when a student-complainant alleges sexual harassment by an employee-respondent. In these cases, the formal grievance procedure should be initiated immediately.

Investigation Procedures. If the parties decline an informal resolution process, reported sexual misconduct of any kind will be adequately, reliably, and thoroughly investigated, regardless of whether the incident is the subject of a separate criminal investigation. A victim of sexual misconduct has the right to file a criminal complaint with the appropriate local law enforcement agency, if they desire to do so. The filing of a criminal complaint will not replace or hinder the university's investigation of a sexual misconduct violation. A victim of sexual misconduct may elect to have the investigation proceed through the criminal justice system, the university's disciplinary process, or both.

Every formal complaint must be investigated. The University bears the burden of gathering evidence; therefore, the Title IX Coordinator will appoint an investigator (who may be the Title IX Coordinator himself or herself) who will thoroughly search for facts and evidence relevant to the claims made in the initial report or complaint. The investigator will be properly trained and free from conflicts of interest or bias. Throughout the course of an investigation, both parties will have an equal opportunity to discuss the allegations or gather evidence and to present the relevant evidence that they gather. The University will not

issue gag orders on respondents or complainants.

The investigator will gather information by interviewing both parties and other witnesses and by collecting additional evidence. The investigator will gather all evidence, inculpatory and exculpatory, directly related to the allegations whether the evidence is considered relevant or whether the investigator intends to rely on the evidence or include it in the final report. No information protected by a legal privilege, such as the attorney-client privilege or the doctor-patient privilege, can be used during an investigation unless the person holding that privilege has waived it. Neither a party or the University is allowed to seek, permit questions about, or allow the introduction of evidence that is protected by a recognized privilege.

Although advisors of the parties may be present during an interview, the parties themselves, rather than their advisors, must personally answer, or refuse to answer, questions posed by an investigator. The investigator will provide written notice in advance to parties who will be interviewed or requested to attend a meeting with sufficient time for the parties to prepare to participate. This written notice will include date, time, location, participants, and purpose of the interview or meeting. If the allegations fall under VAWA regulations, then notice will be given to the other party if a meeting will be held with a complainant or respondent. If the investigation identifies other potential Title IX violations not included in the original report or complaint, the Title IX Coordinator will provide written notice to the parties involved that those subsequent allegations will also be investigated.

At the conclusion of the investigation, the parties will be allowed a period of 10 days to inspect and review copies of any evidence directly related to the allegations. Examples of such evidence are text messages, emails, social media posts and messages, photos and videos, police reports, security footage, WiFi access point records, and audio recordings or transcripts of interviews (with evidence that is not directly related to the allegations redacted). Information that is not directly related to the allegations or falls under legally protected privileges will be redacted, but information that is confidential, sensitive, or prejudicial may not be redacted if it is directly related to the allegations. The Title IX Coordinator will assist the investigator in making these determinations. The investigator will maintain records of any information withheld and the rationale for doing so. Evidence does not include notes made by the investigator. The parties and their advisors will be required to sign a non-disclosure agreement stating that they will use the evidence only for purposes of the grievance process and that they will not disseminate or disclose the materials to other people. The parties may submit a written response to the investigator. The investigator must consider the written response prior to completing the final report.

The investigator will then prepare a written investigative report that fairly summarizes all directly related and relevant evidence, including inculpatory and exculpatory evidence. The investigator will simultaneously provide both parties with a copy of the investigative report, and they will have at least 10 days before a hearing where a responsibility will be determined to review the report and respond in writing.

At the investigation's conclusion, the investigator must either dismiss the allegations or determine if there is sufficient evidence to conclude that a Title IX violation may have occurred and that a hearing should be held. The investigator may not make a determination regarding responsibility. Only a decision-maker can make such a determination after a live hearing.

Investigations will be conducted promptly. A typical complaint may take up to 90 days to complete the investigation and the hearing. The actual amount of time needed for each stage of the process will be determined by the facts of a particular case. This time frame may be temporarily delayed or extended for good cause such as absence of a party, advisor, or witness; law enforcement proceedings; or the need to provide accommodations. Both parties will receive written notice of the delay or extension and its reason.

Hearing Procedures. If the investigation has concluded that sexual harassment may have occurred, the University will initiate the grievance process outlined in this policy. If the Title IX Coordinator determines that a hearing is necessary, a time shall be set for a Title IX hearing not less than 10 days after the written notice has been made to both the complainant and respondent.

(1) *Decision-maker.* A decision-maker who is not the Title IX coordinator or investigator will preside over the hearing. The University may choose to appoint a hearing panel to serve as the decision-maker. The decision-maker must have extensive training in Title IX procedures as well as all applicable evidentiary

requirements, issues of relevance, standards of proof, and relevant state and local laws, and this training must be made available to the public. The decision-maker is under an independent obligation to objectively evaluate relevant evidence. Only the decision-maker can make a finding of responsibility and only after a live hearing is conducted.

(2) *Pre-hearing Procedures.* Both parties will receive a copy of the final investigative report at least 10 days before a hearing. In preparation for the hearing, the decision-maker will review the complaint, notice to the parties, the investigative report, and the parties' responses to the investigative report. The decision-maker will identify witnesses who are relevant to the decision and make sure they are available for cross-examination at the hearing.

(3) *Process Meeting.* The decision-maker may provide rules of conduct and decorum to ensure that all participants are treated with respect at live hearings. These rules will apply equally to both parties and will comply with the Title IX Implementing Regulations. If a party's advisor of choice refuses to comply with a recipient's rules of decorum, the decision-maker may require the party to use a different advisor or appoint a different advisor to conduct cross-examination on behalf of that party. A process meeting will be held in advance of the hearing to discuss rules of decorum, policy, and procedures. Only the parties and their advisors may attend this meeting.

(4) *Hearing Procedures.* A Title IX hearing will be conducted in private and will be closed to the public. The University may appoint a Hearing Coordinator (who may be the Title IX Coordinator) who will ensure that proper procedures and rules of decorum are followed. Only the parties and their advisors will be allowed to attend the hearing, unless another party is required by law, such as a language interpreter or a person assisting someone with a disability. Hearings must be conducted in a live setting in real time. Typically, hearing will be conducted by videoconference with the parties watching and listening in separate locations. At all times, all participants, including the parties, advisors, witnesses, and decision-maker, must be able to see and hear each other. If a participant does not possess the proper videoconference technology or equipment, the University will provide a location and/or equipment to facilitate participation. No one will be allowed to participate only by telephone. However, an in-person hearing may be held if both parties agree to it. An audio or audiovisual recording, or a transcript, of any live hearing will be created and made available for inspection and review by either party.

(5) *Advisors.* Both the complainant and respondent have the same opportunity to have an advisor of choice, who may or may not be a lawyer, present during all meetings in the Title IX grievance process. Participating as a witness in the hearing does not prevent someone from serving as an advisor. The parties must inform the Title IX Coordinator in advance of a hearing whether they intend to bring an advisor of choice to a hearing. If a party does not have an advisor for the hearing, the University will provide one who is competent to participate without fee or charge. The University will not require training of selected advisors or provide training for assigned advisors since they only need to present factual questions that advance the perspective of the party being advised. A party cannot dismiss an assigned advisor during a hearing, but if the party correctly asserts that the assigned advisor is refusing to conduct cross-examination on the party's behalf, then the decision-maker must counsel the assigned advisor to perform that role or stop the hearing to assign a different advisor.

(6) *Evidence.* Evidence gathered during the investigation that has been subject to the parties' inspection and review will be made available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.

(7) *Witnesses.* Both parties may call a limited number of witnesses at the hearing at the discretion of the decision-maker, but all witnesses must have been previously identified during the investigation.

(8) *Time Limits.* The decision-maker may set a time limit for the hearing and/or time limits for each party's cross-examination.

(8) *Opening and Closing Statements.* The decision-maker may permit the parties or their advisors to make opening and/or closing statements.

(9) *Cross-examination of Witnesses.* Advisors of both parties (but not the parties themselves) may conduct direct, oral, and real-time cross-examination of parties and other witnesses. The decision-maker must allow each party's advisor to ask the other party and any witnesses all relevant questions and follow-

up questions, including those challenging credibility. Cross-examination consists simply of posing questions intended to advance the asking party's perspective with respect to the specific allegations at issue. The only time advisors may speak during a hearing is to make an opening or closing statement or to ask questions of parties or witnesses. A party's advisor may appear and conduct cross-examination even when the party being advised does not appear. Advisors will be encouraged, but not required, to submit cross-examination questions in advance so that the decision-maker can review them and evaluate them for relevance. Advisors may be allowed to ask all their questions at the hearing, and the decision-maker can explain reasons for excluding any of them as irrelevant.

(10) *Determination of Relevance.* After an advisor asks a question on cross-examination, and before the party to whom it is directed answers it, the decision-maker must determine if the question calls for relevant information. All relevant evidence must be admitted, but the decision-maker must exclude evidence based on legally recognized privileges; the complainant's prior sexual history (with limited exceptions); any party's medical, psychological, or similar records (without their voluntary, written consent); and party or witness statements that have not been subjected to cross-examination at a live hearing. Relevant evidence cannot be excluded because it may be unduly prejudicial, concern prior bad acts, or constitute character evidence. Questions that are misleading or assume facts not in evidence may be considered relevant. Advisors may not ask about a complainant's sexual predisposition or prior sexual behavior, unless such questions about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent. Questions concerning prior or subsequent sexual misconduct may be asked of the respondent if the decision-maker determines that they are relevant to provide evidence of a pattern of inappropriate behavior by the alleged harasser. Questions that are duplicative or repetitive or that are not probative of any material fact concerning the allegations may be deemed not relevant and therefore excluded. The decision-maker must explain to the party proposing the questions any decision to exclude a question as not relevant. Parties and advisors may not challenge the relevance determination during the hearing.

(11) *Statements Not Subject to Cross-Examination.* The decision-maker must not rely on any statements by a party or witness that were not subjected to cross-examination, but they may consider statements that would not require cross-examination. Failure by a party or witness to answer even one question posed by an advisor means that the decision-maker cannot rely on any statements from that party or witness in making a finding of responsibility. Such statements would include those included in the investigation report or any other sources, such as a police report, medical exam, text messages, witness accounts, etc. Statements allegedly made by a respondent that constitute part of the alleged sexual harassment at issue can be considered even if they are not subjected to cross-examination. Statements by respondents that cannot be relied upon if not subject to cross-examination involve the making of factual assertions to prove or disprove the allegations of sexual harassment. Also, the decision-maker cannot draw inferences about a determination regarding responsibility based on a party's failure or refusal to appear at a hearing or answer cross-examination questions.

(12) *Standard of Evidence.* The decision-maker's determination of responsibility shall be made using a preponderance of evidence standard (for both students and employees) on the basis of whether it is more likely than not that the respondent violated Title IX. The decision-maker must evaluate all relevant evidence under this standard without making credibility determinations based on a party's status as a complainant or respondent or based on their sex. None of the following rules of evidence apply during a Title IX hearing: the federal rules of evidence, the Tennessee rules of evidence, the Florida rules of evidence, common-law principles of evidence, or any other formal law or rule of evidence.

(13) *Sanctions and Remedies.* If the decision-maker makes a finding of responsibility for sexual harassment, the decision-maker will provide sanctions against the respondent (which are listed below) and remedies to the complainant designed to restore or preserve equal access to the school's education program or activity. These remedies can be punitive or disciplinary against the respondent. The Title IX Coordinator

will be responsible for implementing any disciplinary sanctions against the respondent and any remedies provided to the complainant.

(14) *Written Determination.* Following the hearing, the decision-maker will issue a written determination simultaneously to both parties, which will include the following information:

- a. Identification of the portion of the University's policies that was violated;
- b. A description of the procedural steps taken from receipt of the formal complaint through the determination regarding responsibility;
- c. Findings of fact supporting the determination;
- d. Conclusions regarding the application of the code of conduct and/or applicable policies to the factual findings;
- e. A statement and rationale for the ultimate determination regarding responsibility for each allegation;
- f. Any disciplinary sanctions imposed on the respondent;
- g. A statement and rationale for any remedies that will restore or preserve equal access provided to the complainant, which may be the same as the supportive measures provided and may burden the respondent if responsibility has been determined;
- h. Information about the appeals process, including a reasonable time frame within which an appeal must be filed.

The decision becomes final if the parties do not appeal or at the conclusion of the appeal process if either party files an appeal.

Possible Disciplinary Sanctions. Following a disciplinary hearing, a student or employee determined to have committed sexual misconduct will be subject to disciplinary action up to and including expulsion from school for a student or termination of employment for an employee.

Possible disciplinary sanctions for a student include the following:

- Issuance of verbal or written warning, and/or monetary fine
- Mandatory meeting with Dean of Students or his/her designee
- Mandatory counseling or other professional intervention
- Discretionary sanctions (i.e., revocation of any student privilege, community service, disqualification from awards or representing the university, loss of institutional financial aid, etc.)
- Housing suspension or expulsion
- Disciplinary probation for a specified period of time
- Institutional suspension, administrative withdrawal, or expulsion

Possible disciplinary sanctions for an employee include the following:

- Issuance of verbal or written warning, recorded in the personnel file
- Mandatory meeting with the appropriate university administrator or his/her designee
- Mandatory counseling or other professional intervention
- Discretionary sanctions (i.e., revocation of any employee privilege, campus housing suspension or expulsion, community service, disqualification from awards or representing the university, etc.)
- Employment probation for a specified period of time
- Suspension from or termination of employment

Appeal Procedures. Either party may appeal a decision to dismiss allegations, whether mandatory or discretionary. Findings of responsibility reached at the end of the grievance process may also be appealed by either party. Grounds for appeal include procedural irregularities (including erroneous relevance determinations), newly discovered evidence that was not available at the time of the determination of responsibility or dismissal, or conflict of interest or bias on the part of the investigator, Title IX Coordinator, or decision-maker. However, these matters will be considered only if they affected the outcome. Appeals

based solely on the severity of the sanctions will not be allowed. The party should follow the grievance procedures that can be found at the end of Unit Six of the *Student Handbook*. A Title IX appeal would begin with submission of an online grievance form, which may be accessed by using the following link on the university website:

<https://websurvey2.johnsonu.edu/cgi-bin/rws5.pl?FORM=JUGrievanceandTitleIXReporting>

After the online grievance complaint form is submitted, the administrator who handles grievances will notify both parties in writing of the appeal. In line with the grievance policy and procedures, that person will appoint a grievance committee to consider the appeal. Since the Title IX Coordinator, investigator, and decision-maker were closely involved in the resolution of the initial sexual misconduct complaint, they will be recused from service on the grievance committee assigned to a Title IX appeal. The parties will be allowed to submit a written statement supporting or challenging the outcome. After considering the parties' written statements, the grievance committee will issue a written decision and send it to the parties simultaneously.

Prohibition of Retaliation. The University prohibits any person from intimidating, threatening, coercing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by Title IX, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in a Title IX investigation, proceeding, or hearing. Charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX, constitutes retaliation. Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding does not constitute retaliation, provided that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a bad faith materially false statement. The exercise of rights protected under the First Amendment does not constitute retaliation. Complaints alleging retaliation may be filed according to the University's grievance procedures.

Records Maintenance. For a period of at least seven years from the date of creation, the university will maintain documentation and records regarding alleged violations of the Title IX Policy and their resolution in a manner that protects the confidentiality of the parties involved, complies with the Family Educational Rights and Privacy Act (FERPA), and to the extent possible excludes personally identifiable information of victims of sexual assault, domestic violence, dating violence, and stalking, unless disclosure of someone's identity is required under other laws or is necessary in order to conduct the grievance process. For each investigation, the Title IX Coordinator will maintain all files relating to the initial report or complaint, supportive measures, informal resolutions, investigation, final investigative report including determination of responsibility or dismissals, audio or audiovisual hearing record or transcript, disciplinary sanctions imposed on the respondent, remedies provided to the complainant, and appeals of a Title IX case and the result. With respect to supportive measures, the University's records should include its basis for belief that it was not deliberately indifferent and that it took measures designed to restore or preserve equal access to its education program or activity. The University will also maintain training materials and records for Title IX coordinators, investigators, decision-makers, and informal resolution facilitators. The parties may have access to records relevant to their case such as allegations raised in the formal complaint, copies of evidence, investigative report, and written determination and reports provided in the course of the formal grievance process, but they may not have access to supportive measures provided to the other party. If a student is found responsible for violating the Title IX Policy, this finding remains a part of that student's conduct record.

Training. The University will ensure that Title IX Coordinators, investigators, decision-makers, and

facilitators of the informal resolution process receive training on the following:

- The definition of sexual harassment in § 106.30
- The scope of the University's education program or activity
- How to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable
- How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.

The University will ensure that Title IX Coordinators, investigators, decision-makers, and facilitators of the informal resolution process receive training on the following:

- Any technology to be used at a live hearing
- Issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant

Training materials cannot rely on sex stereotypes, and they must promote impartial investigations and adjudications. They must also be posted on the University's website.

Annual training will also be provided to all employees and students on issues related to Title IX. The primary sources of Title IX training on the Tennessee campus, Online campus, and various extension sites are the lead Title IX Coordinator and the Vice President for Student Services. The primary sources of Title IX training on the Florida campus are the branch Title IX Coordinator and the Associate Dean of Students. These designated university officials should have the most current knowledge of federal and state laws, regulations, and policies relating to Title IX. Since these university officials are the most informed members of the university community with regard to the university's Title IX responsibilities, they are best prepared to train others in the appropriate responses to a Title IX complaint or potential sex discrimination situation that needs special attention and/or corrective action.

Awareness and Prevention Programs. The university offers an educational program for students and employees that promotes awareness and prevention of sexual harassment, promotes both individual and community safety, and reduces the perpetration of violent crimes. The university works to create and maintain a campus community culture designed to prevent sexual harassment; rape; acquaintance or date rape; dating violence, domestic violence, or stalking; other sex offenses, forcible or non-forcible, heterosexual or homosexual; and other Title IX offenses. Ultimately, the foundation for such a program comes from the university's mission, Christian perspective, and core values.

The university's initial Title IX awareness and prevention program begins with a new-student orientation session during Genesis Weekend, which is held on both Tennessee and Florida campuses. The same awareness and prevention information is also provided during the orientation process for new distance-education students and new employees.

The university's ongoing Title IX awareness and prevention program continues with additional educational activities on both campuses offered to both students and employees. These ongoing educational activities include, but are not limited to: (1) safety awareness and violence prevention articles published in the *Johnson University Royal Scribe* (royalscribe.net), a student publication for the entire university community; (2) educational materials available on the university's website and employee portal; and (3) special events or activities during Sexual Assault Awareness Month in April.

Victim Services and Resources. Local and referral help is available for victims of sexual misconduct from the university's Health Services department and counseling center (available only on the TN campus), as well as the Student Services department. Local community and state victim services organizations are listed below for both Tennessee and Florida campuses. Many of these resources have websites and toll-free

telephone numbers that would be helpful for online students.

In Knox County, Tennessee:

Knox County Sheriff's Office – Family Crisis Unit

www.knoxsheriff.org/family/index.php

Emergency Phone: 9-1-1

24-hour Helpline: 865-521-6336

Office Phone: 865-215-6820

Family Justice Center, 400 Harriet Tubman St., Knoxville, TN 37915

The Family Crisis Unit is responsible for investigating incidents of domestic violence, child abuse, and elder abuse. In addition to investigating these incidents, the unit also provides immediate safety crisis counseling information and support to victims of these crimes.

Sexual Assault Crisis Center of East Tennessee

<https://mcnabbcenter.org/our-locations/sexual-assault-center-of-east-tennessee-knoxville/>

24-hour Crisis Line: 865-522-7273

2455 Sutherland Avenue, Building B, Knoxville, TN 37919

YWCA of Knoxville, Victim's Advocacy Program

<https://ywcaknox.com/domestic-violence>

Office Phone: 865-523-6126

Advocates for victims of domestic violence.

Tennessee Domestic Violence Hotline

1-800-356-6767

In Osceola County, Florida

Please refer to the Annual Campus Security and Fire Safety Report for this location: <https://johnsonu.edu/public-disclosures/>