



**NEW ORLEANS**  
BAPTIST THEOLOGICAL SEMINARY



**LEAVELL**  
COLLEGE

## **NOBTS/Leavell College Policy on Equal Opportunity, Harassment, and Non-discrimination**

BASED ON THE ATIXA 2022 ONE POLICY, TWO PROCEDURES MODEL.  
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## POLICY: EQUAL OPPORTUNITY, HARASSMENT, AND NONDISCRIMINATION

### 1. Glossary

- **Advisor** means a person chosen by a party or appointed by the institution to accompany the party to meetings related to the Resolution Process, to advise the party on that process, and to conduct questioning for the party at the hearing, if any.
- **Appeal Decision-maker** means the person or panel who accepts or rejects a submitted appeal request, determines whether an error occurred that substantially affected the investigation or original determination, and directs corrective action, accordingly.
- **Complainant** means an individual who is alleged to be the victim of conduct that could constitute harassment or discrimination based on a protected characteristic, or retaliation for engaging in a protected activity.
- **Confidential Resource** means an employee who is not a mandated reporter of notice of harassment, discrimination, and/or retaliation (irrespective of Clery Act Campus Security Authority status).
- **Day** means a business day when NOBTS is in normal operation.
- **Decision-maker** means the person or panel who hears evidence, determines relevance, and makes the Final Determination of whether this Policy has been violated and/or assigns sanctions.
- **Directly Related Evidence** is evidence connected to the complaint, but which is neither inculpatory (tending to prove a violation) nor exculpatory (tending to disprove a violation) and cannot be relied upon by the Decision-maker(s). Compare to Relevant Evidence, below.
- **Education Program or Activity** means locations, events, or circumstances where NOBTS exercises substantial control over both the Respondent and the context in which the harassment, discrimination, and/or retaliation occurs and also includes any building owned or controlled by a student organization that is officially recognized by NOBTS.
- **Final Determination** is a conclusion by the standard of proof that the alleged conduct did or did not violate policy.
- **Finding** is a conclusion by the standard of proof that the conduct did or did not occur as alleged (as in a “finding of fact”).
- **Formal Complaint** means a document submitted or signed by a Complainant or signed by the Title IX Coordinator alleging a Respondent engaged in harassment or discrimination based on a protected characteristic or retaliation for engaging in a protected activity and requesting that NOBTS investigate the allegation(s).
- **Formal Grievance Process** means “Process A,” a method of formal resolution designated by NOBTS to address conduct that falls within the policies included below, and which

complies with the requirements of the Title IX regulations (34 C.F.R. § 106.45) and the Violence Against Women Act § 304.

- **Grievance Process Pool** includes any Investigators, Hearing Decision-makers, Appeal Decision-makers, and Advisors who may perform any or all of these roles (though not at the same time or with respect to the same complaint).
- **Informal Resolution** a complaint resolution agreed to by the Parties and approved by the Title IX Coordinator that occurs prior to a formal Final Determination being reached.
- **Investigator** means the person(s) authorized by NOBTS to gather facts about an alleged violation of this Policy, assess relevance and credibility, synthesize the evidence, and compile this information into an investigation report of Relevant Evidence and a file of Directly Related Evidence.
- **Mandated Reporter** means an NOBTS employee who is obligated by policy to share knowledge, notice, and/or reports of harassment, discrimination, and/or retaliation with the Title IX Coordinator [and/or their supervisor].<sup>1</sup>
- **Notice** means that an employee, student, or third party informs the Title IX Coordinator or other Official with Authority of the alleged occurrence of harassing, discriminatory, and/or retaliatory conduct.
- **Official with Authority (OWA)** means a NOBTS employee who has responsibility to implement corrective measures for harassment, discrimination, and/or retaliation on behalf of NOBTS.
- **Parties** means the Complainant(s) and Respondent(s), collectively.
- **Process A** means the Formal Grievance Process detailed below and defined above.
- **Process B** means the administrative resolution procedures detailed in [Appendix F](#) that only apply when Process A does not, as determined by the Title IX Coordinator.
- **Recipient** means a postsecondary education program that receives federal funding.
- **Relevant Evidence** is evidence that tends to prove (inculpatory) or disprove (exculpatory) an issue in the complaint.
- **Remedies** are post-Final Determination actions directed to the Complainant and/or the community as mechanisms to address safety, prevent recurrence, and restore access to NOBTS's education program.

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<sup>1</sup> Not to be confused with those mandated by state law to report child abuse, elder abuse, and/or abuse of individuals with disabilities to appropriate officials, though these responsibilities may overlap with those who have mandated reporting responsibility in this Policy.



- **Respondent** means an individual who has been reported to be the perpetrator of conduct that could constitute harassment or discrimination based on a protected characteristic, or retaliation for engaging in a protected activity under this Policy.
- **Resolution** means the result of an Informal Resolution or Formal Grievance Process.
- **Sanction** means a consequence imposed on a Respondent who is found to have violated this Policy.
- **Sexual Harassment** is an umbrella category including the offenses of sexual harassment, sexual assault, stalking, dating violence, and domestic violence. See [Section 17.B.](#) for greater detail.
- **Student** means any individual who has accepted an offer of admission, or who is registered or enrolled for credit or non-credit bearing coursework, and who maintains an ongoing educational relationship with NOBTS.
- **Title IX Coordinator** is at least one official designated by NOBTS to ensure compliance with Title IX and NOBTS's Title IX program. References to the Coordinator throughout this policy may also encompass a designee of the Coordinator for specific tasks.
- **Title IX Team** refers to the Title IX Coordinator, any deputy coordinators, and any member of the Grievance Process Pool.

## 2. Rationale for Policy

NOBTS is committed to providing a workplace and educational environment, as well as other benefits, programs, and activities, that are free from discrimination and harassment based on a protected characteristic, and retaliation for engaging in a protected activity.

NOBTS values and upholds the equal dignity of all members of its community and strives to balance the rights of the parties in the grievance process during what is often a difficult time for all involved.

To ensure compliance with federal, state, and local civil rights laws and regulations, and to affirm its commitment to promoting the goals of fairness and equity in all aspects of the education program or activity, NOBTS has developed policies and procedures that provide a prompt, fair, and impartial process for those involved in an allegation of discrimination or harassment on the basis of a protected characteristic, and for allegations of retaliation.

## 3. Applicable Scope

The core purpose of this policy is the prohibition of all forms of discrimination. Sometimes, discrimination involves exclusion from or different treatment in activities, such as admission, athletics, or employment. At other times, discrimination takes the form of harassment or, in the case of sex-based discrimination, it can encompass sexual harassment, sexual assault, stalking, sexual exploitation, dating violence, or domestic violence. When an alleged policy violation is

reported, the allegations are subject to resolution using NOBTS's "Process A" or "Process B," as determined by the Title IX Coordinator, and as detailed below.

When the Respondent is a member of NOBTS community, a Formal Complaint may be filed and a grievance process may be available regardless of the status of the Complainant, who may or may not be a member of NOBTS community. This community includes, but is not limited to, students, student organizations, faculty, administrators, staff, and third parties such as guests, visitors, volunteers, vendors, contractors, invitees, and campers. The procedures below may be applied to incidents, to patterns, and/or to the institutional culture/climate, all of which may be addressed and investigated in accordance with this Policy.

NOBTS recognizes that reports and/or Formal Complaints under this Policy may include multiple forms of discrimination and harassment as well as violations of other NOBTS policies; may involve various combinations of students, employees, and other members of the NOBTS community; and may require the simultaneous attention of multiple NOBTS departments. Accordingly, all NOBTS departments will share information, combine efforts, and otherwise collaborate, to the maximum extent permitted by law and consistent with other applicable NOBTS policies, to provide uniform, consistent, efficient, and effective responses to alleged discrimination and harassment or retaliation.

#### **4. Title IX Coordinator**

The Assistant Dean of Students for Student Affairs serves as the Title IX Coordinator and ADA/504 Coordinator and oversees implementation of NOBTS's policy on equal opportunity, harassment, disability compliance, and nondiscrimination. The Title IX Coordinator has the primary responsibility for coordinating NOBTS's efforts related to the intake, investigation, resolution, and implementation of supportive measures to stop, remedy, and prevent discrimination, harassment, and retaliation prohibited under this Policy.

All parties will be provided with a comprehensive electronic brochure detailing options and resources, which the Title IX Coordinator may also review with the parties in person.

#### **5. Independence and Conflict of Interest**

The Title IX Coordinator manages the Title IX Team and acts with independence and authority free from bias and conflicts of interest. The Title IX Coordinator oversees all resolutions under this Policy and these procedures. The members of the Title IX Team are vetted and trained to ensure they are not biased for or against any party in a specific complaint, or for or against Complainants and/or Respondents, generally.

To raise any concern involving bias, conflict of interest, misconduct, or discrimination by the Title IX Coordinator, contact the NOBTS President's Office located in the Frost Administrative building or call (504) 816-8236. Concerns of bias, misconduct, discrimination, or a potential

conflict of interest by any other Title IX Team member should be raised with the Title IX Coordinator.

## **6. Administrative Contact Information**

Complaints or notice of alleged policy violations, or inquiries about or concerns regarding this Policy and procedures, may be made internally to:

Name: Conner Hinton  
Title IX Coordinator  
Office of Spiritual Formation and Student Life  
Luter Student Center  
3939 Gentilly Blvd., New Orleans, LA 70126  
Phone: (504) 816-8072  
Email: [chinton@nobts.edu](mailto:chinton@nobts.edu)  
Web: <https://www.nobts.edu/student-services/title-ix.html>

Deputy Title IX Coordinators

- Rebekah Callahan, Associate Dean of Students, (504) 816-8320, [rcallahan@nobts.edu](mailto:rcallahan@nobts.edu)
- Shelly Cooper, Director of Human Resources, (504) 816-8045, [hr@nobts.edu](mailto:hr@nobts.edu)

NOBTS has determined that the following administrators/staff are Officials with Authority (OWAs) to address and correct harassment, discrimination, and/or retaliation. In addition to the Title IX Team members listed above, these OWAs may also accept notice or complaints on behalf of NOBTS:

- Title IX Coordinator and Deputy Coordinators
- President
- Vice Presidents and Associate Vice Presidents
- Academic Deans
- Human Resources Staff
- Campus Police Officers
- Assistant Deans of Students

NOBTS has also classified all employees as Mandated Reporters of any knowledge they have that a member of the community is experiencing harassment, discrimination, and/or retaliation. The section below on Mandated Reporting details their duties.

Inquiries may be made externally to:

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

For complaints involving employee-on-employee conduct: [Equal Employment Opportunity Commission](#) (EEOC)

## **7. Notice/Complaints of Discrimination, Harassment, and/or Retaliation**

Notice or complaints of discrimination, harassment, and/or retaliation may be made using any of the following options:

- 1) File a report or Formal Complaint with, or give verbal notice to, the Title IX Coordinator or deputy/deputies/Officials with Authority named above in section 6. Such a report or Formal Complaint may be made at any time (including during non-business hours) by using the telephone number or email address, or by mail, to the office listed for the Title IX Coordinator or any other official listed.
- 2) Report online, using the reporting form posted [here](#). Anonymous reports are accepted but can give rise to a need to investigate to determine if the parties can be identified. If not, no further formal action is taken, though measures intended to protect the community may be enacted. NOBTS tries to provide supportive measures to all Complainants, which may be impossible with an anonymous report that does not identify the Complainant. Because reporting carries no obligation to initiate a formal response, and because NOBTS respects Complainant requests to dismiss complaints unless there is a compelling threat to health and/or safety, the Complainant is largely in control and should not fear a loss of confidentiality by making a report that allows NOBTS to discuss and/or provide supportive measures.

As used in this Policy, the term “Formal Complaint” means a document or electronic submission (such as by electronic mail or through an online portal provided by NOBTS for this purpose) that contains the Complainant’s physical or digital signature, or otherwise indicates that the Complainant is the person filing the complaint, and requests that NOBTS investigate the allegations. If notice is submitted in a form that does not meet this standard, the Title IX Coordinator will contact the Complainant to ensure that it is filed correctly.

## **8. Supportive Measures**

NOBTS will offer and implement appropriate and reasonable supportive measures to the parties upon notice of alleged harassment, discrimination, and/or retaliation. Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate and as reasonably available. They are offered, without fee or charge to the parties, to restore or preserve access to NOBTS's education program or activity, including measures designed to protect the safety of all parties and/or NOBTS's educational environment and/or to deter harassment, discrimination, and/or retaliation.

The Title IX Coordinator promptly makes supportive measures available to the parties upon receiving notice or a complaint. At the time that supportive measures are offered, NOBTS will inform the Complainant, in writing, that they may file a Formal Complaint with NOBTS either at that time or in the future, if they have not done so already. The Title IX Coordinator works with the Complainant to ensure that their wishes are considered with respect to any planned and implemented supportive measures.

NOBTS will maintain the confidentiality of the supportive measures, provided that confidentiality does not impair NOBTS's ability to provide those supportive measures. NOBTS will act to ensure as minimal an academic/occupational impact on the parties as possible. NOBTS will implement measures in a way that does not unreasonably burden the other party.

These actions may include, but are not limited to:

- Referral to counseling, medical, and/or other healthcare services
- Referral to community-based service providers
- Visa and immigration assistance
- Student financial aid counseling
- Education to the institutional community or community subgroup(s)
- Altering campus housing assignment(s)
- Altering work arrangements for employees or student-employees
- Safety planning
- Providing campus safety escorts
- Providing transportation assistance
- Implementing contact limitations (no contact orders) between the parties
- Academic support, extensions of deadlines, or other course/program-related adjustments
- Trespass, Persona Non Grata (PNG), or Be-On-the-Lookout (BOLO) orders
- Timely warnings
- Class schedule modifications, withdrawals, or leaves of absence
- Increased security and monitoring of certain areas of the campus
- Any other actions deemed appropriate by the Title IX Coordinator

Violations of no contact orders or other restrictions may be referred to appropriate student or employee conduct processes for enforcement or added as collateral misconduct allegations to an ongoing complaint under this Policy.

## **9. Emergency Removal**

NOBTS can act to remove a student Respondent from its education program or activities—partially or entirely—on an emergency basis when an individualized safety and risk analysis has determined that an immediate threat to the physical health or safety of any student or other individual justifies removal. This risk analysis is performed by the Title IX Coordinator in conjunction with the Behavioral Intervention Team using its standard objective violence risk assessment procedures.

When an emergency removal is imposed, the student or employee will be given notice of the action and the option to request to meet with the Title IX Coordinator prior to such action/removal being imposed, or as soon as reasonably possible thereafter, to show cause why the action/removal should not be implemented or should be modified.

This meeting is not a hearing on the merits of the allegation(s), but rather is an administrative process intended to determine solely whether the emergency removal is appropriate. When this meeting is not requested in a timely manner, objections to the emergency removal will be deemed waived. A Complainant and their Advisor may be permitted to participate in this meeting if the Title IX Coordinator determines it equitable to do so. There is no appeal process for emergency removal decisions.

A Respondent may be accompanied by an Advisor of their choice when meeting with the Title IX Coordinator for the show cause meeting. The Respondent will be given access to a written summary of the basis for the emergency removal prior to the meeting to allow for adequate preparation.

The Title IX Coordinator has sole discretion under this Policy to implement or modify an emergency removal and to determine the conditions and duration. Violation of an emergency removal under this policy will be grounds for discipline within the student or employee conduct processes, which may include expulsion or termination.

NOBTS will implement the least restrictive emergency actions possible in light of the circumstances and safety concerns. As determined by the Title IX Coordinator, these actions could include, but are not limited to: removing a student from a residence hall, temporarily re-assigning an employee, restricting a student's or employee's access to or use of facilities or equipment, allowing a student to withdraw or take incomplete grades without financial penalty, authorizing an administrative leave, and suspending a student's participation in extracurricular activities, student employment, student organizational leadership, or intramural athletics.

At the discretion of the Title IX Coordinator, alternative coursework options may be pursued to ensure as minimal an academic impact on the parties as possible.

## **10. Promptness**

Once NOBTS has received notice or a Formal Complaint, all allegations are promptly acted upon. Complaints typically take 60-90 business days to resolve. There are always exceptions and extenuating circumstances that can cause a resolution to take longer, but NOBTS will avoid all undue delays within its control.

Any time the general timeframes for resolution outlined in NOBTS procedures will be delayed, NOBTS will provide written notice to the parties of the delay, the cause for the delay, and an estimate of the anticipated additional time that will be needed as a result of the delay.

## **11. Confidentiality/Privacy**

Every effort is made by NOBTS to preserve the confidentiality of reports.<sup>2</sup> NOBTS will not share the identity of any individual who has made a report or Formal Complaint of harassment, discrimination, or retaliation; any Complainant; any individual who has been reported to be the perpetrator of harassment, discrimination, or retaliation; any Respondent; or any witness, except as permitted by the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g; or its implementing regulations, 34 C.F.R. Part 99; or as required by law; or to carry out the purposes of 34 C.F.R. Part 106, including any investigation, hearing, or grievance proceeding arising under these policies and procedures.

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<sup>2</sup> For the purpose of this Policy, privacy and confidentiality have distinct meanings. **Privacy** means that information related to a complaint will be shared with a limited number of NOBTS employees who “need to know” in order to assist in the assessment, investigation, and resolution of the complaint. All employees who are involved in NOBTS’s response to notice under this Policy receive specific training and guidance about sharing and safeguarding private information in accordance with state and federal law. The privacy of student education records will be protected in accordance with the Family Educational Rights and Privacy Act (FERPA), as outlined in NOBTS’s FERPA Policy. The privacy of employee records will be protected in accordance with Human Resources policies. **Confidentiality** exists in the context of laws (including Title IX) that protect certain relationships, including those who provide services related to medical and clinical care, mental health providers, counselors, and ordained clergy. The law creates a privilege between certain health care providers, mental health care providers, attorneys, clergy, spouses, and others, with their patients, clients, parishioners, and spouses. NOBTS has designated individuals who have the ability to have privileged communications as Confidential Resources. For more information about Confidential Resources, see page 31. When information is shared by a Complainant with a Confidential Resource, the Confidential Resource cannot reveal the information to any third party except when an applicable law or a court order requires or permits disclosure of such information. For example, information may be disclosed when: (1) the individual gives written consent for its disclosure; (2) there is a concern that the individual will likely cause serious physical harm to self or others; or (3) the information concerns conduct involving suspected abuse or neglect of a minor under the age of 18, elders, or individuals with disabilities. Non-identifiable information may be shared by Confidential Resources for statistical tracking purposes as required by the federal Clergy Act. Other information may be shared as required by law.

NOBTS reserves the right to determine which NOBTS officials have a legitimate educational interest in being informed about incidents that fall under this Policy, pursuant to the Family Educational Rights and Privacy Act (FERPA).

Only a small group of officials who need to know will typically be told about the complaint, including but not limited to: Student Life, NOBTS Police, and the Behavioral Intervention/Threat Assessment Team. Information will be shared as necessary with Investigators, Decision-makers, witnesses, and the parties. The circle of people with this knowledge will be kept as tight as possible to preserve the parties' rights and privacy.

NOBTS may contact parents/guardians of students to inform them of situations in which there is a significant and articulable health and/or safety risk but will usually consult with the student first before doing so.

Confidentiality and mandated reporting are addressed more specifically below.

## **12. Jurisdiction of NOBTS**

This Policy applies to NOBTS's education program and activities,<sup>3</sup> to conduct that takes place on property owned or controlled by NOBTS, at NOBTS-sponsored events, and in buildings owned or controlled by NOBTS's recognized student organizations. The Respondent must be a member of NOBTS's community in order for this Policy to apply.

This Policy can also be applicable to the effects of off-campus misconduct that effectively deprives a person of access to NOBTS's education program or activities. NOBTS may also extend jurisdiction to off-campus and/or to online conduct when the Title IX Coordinator determines that the conduct affects a substantial NOBTS interest.

Regardless of where the conduct occurred, NOBTS will address notice/complaints to determine whether the conduct occurred in the context of its employment or education program or activity and/or has continuing effects on campus (including virtual learning and employment environments) or in an off campus sponsored program or activity. A substantial NOBTS interest includes:

- 1) Any action that constitutes a criminal offense as defined by law. This includes, but is not limited to, single or repeat violations of any local, state, or federal law.
- 2) Any situation in which it is determined that the Respondent poses an immediate threat to the physical health or safety of any student, employee, or other individual.
- 3) Any situation that significantly impinges upon the rights, property, or achievements of others, significantly breaches the peace, and/or causes social disorder.

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<sup>3</sup> Which includes NOBTS's employees' work environment.



- 4) Any situation that substantially interferes with the educational interests or mission of NOBTS.

If the Respondent is unknown or is not a member of NOBTS community, the Title IX Coordinator will assist the Complainant in identifying appropriate institutional and local resources and support options. If criminal conduct is alleged, NOBTS can assist in contacting local or institutional law enforcement if the individual would like to file a police report.

Further, even when the Respondent is not a member of NOBTS's community, supportive measures, remedies, and resources may be provided to the Complainant by contacting the Title IX Coordinator.

In addition, NOBTS may take other actions as appropriate to protect the Complainant against third parties, such as barring individuals from NOBTS property and/or events.

All vendors serving NOBTS through third-party contracts are subject to the policies and procedures of their employers.

When the Respondent is enrolled in or employed by another institution, the Title IX Coordinator can assist the Complainant in liaising with the appropriate individual at that institution, as it may be possible to pursue action under that institution's policies.

Similarly, the Title IX Coordinator may be able to assist and support a student or employee Complainant who experiences discrimination in an externship, study abroad program, or other environment external to NOBTS where sexual harassment or nondiscrimination policies and procedures of the facilitating or host organization may give the Complainant recourse.

### **13. Time Limits on Reporting**

There is no time limitation on providing notice/complaints to the Title IX Coordinator. However, if the Respondent is no longer subject to NOBTS's jurisdiction and/or significant time has passed, the ability to investigate, respond, and/or provide remedies may be more limited or impossible.

Acting on notice/complaints significantly impacted by the passage of time (including, but not limited to, the rescission or revision of policy) is at the discretion of the Title IX Coordinator, who may document allegations for future reference, offer supportive measures and/or remedies, and/or engage in informal or formal action, as appropriate.

When notice/complaint is affected by significant time delay, NOBTS will typically apply the policy in place at the time of the alleged misconduct and the procedures in place at the time of notice/complaint. Typically, this Policy is only applied to alleged incidents that occurred after August 14, 2023.

#### **14. Online Harassment and Misconduct**

NOBTS policies are written and interpreted broadly to include online manifestations of any of the behaviors prohibited below, when those behaviors occur in or have an effect on NOBTS's education program and activities or when they involve the use of NOBTS networks, technology, or equipment.

Although NOBTS may not control websites, social media, and other venues through which harassing communications are made, when such communications are reported to NOBTS, it will engage in a variety of means to address and mitigate the effects.

Members of the community are encouraged to be good digital citizens and to refrain from online misconduct, such as feeding anonymous gossip sites; sharing inappropriate content via social media; unwelcome sexual or sex-based messaging; distributing, or threatening to distribute, nude or semi-nude photos or recordings; breaches of privacy; or otherwise using the ease of transmission and/or anonymity of the Internet or other technology to harm another member of NOBTS community.

Any online posting or other electronic communication by students, including cyber-bullying, cyber-stalking, cyber-harassment, etc., occurring completely outside of NOBTS's control (e.g., not on NOBTS networks, websites, or between NOBTS email accounts) will only be subject to this Policy when such online conduct can be shown to cause a substantial in-program disruption or infringement on the rights of others.

Otherwise, such communications are considered speech protected by the First Amendment. Supportive measures for Complainants will be provided, but legally protected speech cannot be subjected to discipline.

Off-campus harassing speech by employees, whether online or in person, may be regulated by NOBTS only when such speech is made in an employee's official or work-related capacity.

#### **15. Policy on Nondiscrimination**

NOBTS adheres to all federal, state, and local civil rights laws and regulations prohibiting discrimination in higher education institutions.

NOBTS does not discriminate against any employee, applicant for employment, student, or applicant for admission on the basis of:

- Race
- Religion
- Hearing status
- Personal appearance

- Color
- Sex
- Pregnancy
- Political affiliation
- Source of income
- Place of business
- Residence
- Religion
- Creed
- Ethnicity
- National origin (including ancestry)
- Citizenship status
- Physical or mental disability (including perceived disability)
- Age
- Marital status
- Family responsibilities
- Veteran or military status (including disabled veteran; recently separated veteran; active-duty, wartime, or campaign badge veteran; and Armed Forces Service Medal veteran)
- Predisposing genetic characteristics
- Domestic violence victim status
- Height
- Weight
- or any other protected characteristic under applicable local, state, or federal law, including protections for those opposing discrimination or participating in any grievance process within the institution, with the Equal Employment Opportunity Commission, and/or other human/civil rights agencies

This Policy covers nondiscrimination in both employment and access to educational opportunities. Therefore, any member of the NOBTS community whose acts deny, deprive, or limit the educational or employment or residential and/or social access, benefits, and/or opportunities of any member of the NOBTS community, guest, or visitor on the basis of that person's actual or perceived protected characteristics listed above, is in violation of NOBTS's Nondiscrimination Policy.

When brought to the attention of NOBTS, any such discrimination will be promptly and fairly addressed and remedied by NOBTS according to the appropriate grievance process described below.

#### **16. Disability Discrimination and Accommodation Policy**

NOBTS is committed to full compliance with the Americans with Disabilities Act of 1990 (ADA), as amended, and Section 504 of the Rehabilitation Act of 1973, which prohibit discrimination

against qualified persons with disabilities, as well as other federal, state, and local laws and regulations pertaining to individuals with disabilities.

Under the ADA and its amendments, a person has a disability if they have a physical or mental impairment that substantially limits a major life activity.

The ADA also protects individuals who have a record of a substantially limiting impairment or who are regarded as disabled by NOBTS, regardless of whether they currently have a disability. A substantial impairment is one that significantly limits or restricts a major life activity such as hearing, seeing, speaking, breathing, performing manual tasks, walking, or caring for oneself.

The Assistant Dean of Students for Student Affairs has been designated as NOBTS's ADA/504 Coordinator responsible for overseeing efforts to comply with these disability laws, including responding to grievances and conducting investigations of any allegation of noncompliance or discrimination based on disability.

Grievances related to disability status and/or accommodations will be addressed using the procedures in [Appendix F](#). For details relating to disability accommodations in NOBTS's Resolution Process, see the relevant sections below.

#### **A. Students with Disabilities**

NOBTS is committed to providing qualified students with disabilities with reasonable accommodations and support needed to ensure equal access to NOBTS academic programs, facilities, and activities.

All accommodations are made on an individualized basis. A student requesting any accommodation should first contact the Assistant Dean of Students for Student Affairs, who coordinates services for students with disabilities.

The Assistant Dean of Students for Student Affairs reviews documentation provided by the student and, in consultation with the student, determines which accommodations are appropriate for the student's particular needs and academic program(s) in accordance with applicable NOBTS policies.

#### **B. Employees with Disabilities**

Pursuant to the ADA, NOBTS will provide reasonable accommodation(s) to all qualified employees with known disabilities when their disability affects the performance of their essential job functions, except when doing so would be unduly disruptive or would result in undue hardship to NOBTS.

An employee with a disability is responsible for submitting an accommodation request to the ADA/504 Coordinator and providing necessary documentation. The ADA/504

Coordinator will work with the employee's supervisor to identify which essential functions of the position are affected by the employee's disability and what reasonable accommodations could enable the employee to perform those duties in accordance with applicable NOBTS policies.

## **17. Discriminatory Harassment Policy**

Students, staff, administrators, and faculty are entitled to an employment and educational environment that is free of discriminatory harassment. This Policy is not meant to inhibit or prohibit educational content or discussions inside or outside of the classroom that include germane, but controversial, or sensitive subject matters protected by academic freedom.

The sections below describe the specific forms of legally prohibited harassment that are also prohibited under NOBTS Policy. When speech or conduct is protected by academic freedom and/or the First Amendment, it will not be considered a violation of NOBTS Policy, though supportive measures will be offered to those impacted.

### **A. Discriminatory Harassment**

Discriminatory harassment—defined as unwelcome conduct by any member or group of the community on the basis of actual or perceived characteristic protected by policy or law—is a form of prohibited discrimination under NOBTS policy.

NOBTS does not tolerate discriminatory harassment of any employee, student, visitor, or third party. NOBTS will act to remedy all forms of harassment when reported, whether or not the harassment rises to the level of creating a “hostile environment.” A hostile environment is one that unreasonably interferes with, limits, or effectively denies an individual’s educational or employment access, benefits, or opportunities.<sup>4</sup> This discriminatory effect results from harassing verbal, written, graphic, and/or physical conduct that is severe or pervasive and objectively offensive.

When discriminatory harassment rises to the level of creating a hostile environment, NOBTS may also impose sanctions on the Respondent through application of the appropriate grievance process.

NOBTS reserves the right to address offensive conduct and/or harassment that (1) does not rise to the level of creating a hostile environment, or (2) that is of a generic nature and not based on a protected characteristic. Addressing such conduct will not result in the imposition of discipline under NOBTS policy, but may be addressed through

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<sup>4</sup> This definition of hostile environment is based on Federal Register / Vol. 59, No. 47 / Thursday, March 10, 1994: [Department of Education Office for Civil Rights, Racial Incidents and Harassment Against Students at Educational Institutions Investigative Guidance](#).

respectful conversation, remedial actions, education, effective Alternative Resolution, and/or other Informal Resolution mechanisms.

For assistance with Alternative Resolution and other Informal Resolution techniques and approaches, employees should contact the Director of Human Resources, and students should contact the Assistant Dean of Students for Student Affairs.

## **B. Sexual Harassment**

The Department of Education's Office for Civil Rights (OCR), the Equal Employment Opportunity Commission (EEOC), and the State of Louisiana regard sexual harassment, a specific form of discriminatory harassment, as an unlawful discriminatory practice.

Acts of sexual harassment may be committed by any person upon any other person, regardless of the sex of those involved.

NOBTS has adopted the following definitions of sexual harassment in order to address the unique environment of an academic community. Two definitions are required by federal law. While they overlap, they are not identical, and they each apply as noted.

**Title VII/FHA Sexual Harassment** applies to situations where an employee is subjected to workplace sexual harassment or where a situation involves a residential Complainant in NOBTS-provided housing.

- a. Unwelcome verbal, written, graphic, and/or physical conduct;
- b. that is severe or pervasive and objectively offensive;
- c. on the basis of sex/gender, that
- d. unreasonably interferes with, limits, or effectively denies an individual's educational or employment access, benefits, or opportunities.

**Title IX Sexual Harassment**, as an umbrella category, includes the offenses of sexual harassment, sexual assault, domestic violence, dating violence, and stalking. This definition applies to all formal complaints that fall within Title IX jurisdiction as determined by the Title IX Coordinator. Sexual harassment includes:

Conduct on the basis of sex, or that is sexual in nature, that satisfies one or more of the following:

### **1) Quid Pro Quo:**

- a. an employee of NOBTS,
- b. conditions<sup>5</sup> the provision of an aid, benefit, or service of NOBTS,
- c. on an individual's participation in unwelcome sexual conduct.

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<sup>5</sup> Implicitly or explicitly.

**2) Sexual Harassment (Hostile Environment):**

- a. unwelcome conduct,
- b. determined by a reasonable person,
- c. to be so severe, and
- d. pervasive, and,
- e. objectively offensive,
- f. that it effectively denies a Complainant equal access to NOBTS's education program or activity.<sup>6</sup>

**3) Sexual Assault, defined as:**

- a. Any sexual act<sup>7</sup> directed against a Complainant,<sup>8</sup>
  - o without their consent, or

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<sup>6</sup> Unwelcomeness is subjective and determined by the Complainant (except when the Complainant is younger than the age of consent). Severity, pervasiveness, and objective offensiveness are evaluated based on the totality of the circumstances from the perspective of a reasonable person in the same or similar circumstances ("in the shoes of the Complainant"), including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced. This definition is broad enough to potentially encompass forms of sex-based disparate treatment, even if not harassing in nature.

<sup>7</sup> A "sexual act" is specifically defined by federal regulations to include one or more of the following:

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 their consent,
- including instances where they are incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity."

Sodomy:

- Oral or anal sexual intercourse with a Complainant,
- forcibly, and/or
- against their will (non-consensually), or
- not forcibly or against their will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

Sexual Assault with an Object:

- The use of an object or instrument to penetrate,
- however slightly,
- the genital or anal opening of the body of the Complainant,
- forcibly, and/or
- against their will (non-consensually), or
- not forcibly or against their will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

Fondling:

- The touching of the private body parts of the Complainant (buttocks, groin, breasts),
- for the purpose of sexual gratification,
- forcibly, and/or
- against their will (non-consensually), or
- not forcibly or against their will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

<sup>8</sup> This would include having another person touch you sexually, forcibly, and/or without their consent.

- instances in which the Complainant is incapable of giving consent.<sup>9</sup>

**b. Incest:**

- Non-forcible sexual intercourse,
- between persons who are related to each other,
- within the degrees wherein marriage is prohibited by Louisiana law.

**a. Statutory Rape:**

- Non-forcible sexual intercourse,
- with a person who is under the statutory age of consent of 17.

**4) Dating Violence, defined as:**

- a. violence,
- b. on the basis of sex,
- c. committed by a person,
- d. who is in or has been in a social relationship of a romantic or intimate nature with the Complainant.
  - i. The existence of such a relationship shall be determined based on the Complainant'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—
    - a) Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
    - b) Dating violence does not include acts covered under the definition of domestic violence.

**5) Domestic Violence,<sup>10</sup> defined as:**

- a. violence,
- b. on the basis of sex,
- c. committed by a current or former spouse or intimate partner of the Complainant,
- d. by a person with whom the Complainant shares a child in common, or

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<sup>9</sup> This definition set is not taken from NIBRS verbatim. ATIXA has substituted Complainant for "victim," has removed references to his/her throughout, has defined "private body parts," has removed the confusing and unnecessary term "unlawfully," and has inserted language clarifying that NOBTS interprets "against the person's will" to mean "non-consensually." These are liberties ATIXA thinks are important to take with respect to the federal definitions, but users should consult legal counsel before adopting them.

<sup>10</sup> To categorize an incident as Domestic Violence under this Policy, the relationship between the Respondent and the Complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.



- e. by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or
- f. by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of Louisiana, or
- g. by any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of Louisiana.

6) **Stalking**, defined as:

- a. engaging in a course of conduct,
- b. on the basis of sex,
- c. directed at the Complainant, that
  - i. would cause a reasonable person to fear for the person's safety, or
  - ii. the safety of others; or
  - iii. suffer substantial emotional distress.

For the purposes of this definition—

- Course of conduct means two or more acts, including, but not limited to acts in which the Respondent 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.
- Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.
- Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

NOBTS reserves the right to impose any level of sanction, ranging from a reprimand up to and including suspension or expulsion/termination, for any offense under this Policy.

**C. Force, Coercion, Consent, and Incapacitation<sup>11</sup>**

As used in the offenses above, the following definitions and understandings apply:

**Force:** Force is the use of physical violence and/or physical imposition to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent (e.g., "Have sex with me or I'll hit you," which elicits the response, "Okay, don't hit me. I'll do what you want.").

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<sup>11</sup> The Louisiana definition of consent may be found [here](#). Violation of this law is applicable to criminal prosecutions for sex offenses in Louisiana but may differ from the definition used by NOBTS to address policy violations.

Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Silence or the absence of resistance alone is not consent. Consent is not demonstrated by the absence of resistance. While resistance is not required or necessary, it is a clear demonstration of non-consent.

**Coercion:** Coercion is unreasonable pressure for sexual activity. Coercive conduct differs from seductive conduct based on factors such as the type and/or extent of the pressure used to obtain consent. When someone makes clear that they do not want to engage in certain sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

**Consent** is:

- knowing, and
- voluntary, and
- clear permission
- by word or action
- to engage in sexual activity.

Individuals may perceive and experience the same interaction in different ways. Therefore, it is the responsibility of each party to determine that the other has consented before engaging in the activity.

If consent is not clearly provided prior to engaging in the activity, consent may be ratified by word or action at some point during the interaction or thereafter, but clear communication from the outset is strongly encouraged.

For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Reasonable reciprocation can be implied consent. For example, if someone kisses you, you can kiss them back (if you want to) without the need to explicitly obtain *their* consent to being kissed back.

Consent can also be withdrawn once given, as long as the withdrawal is reasonably and clearly communicated. If consent is withdrawn, that sexual activity should cease within a reasonably immediate time.

Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). A current or previous intimate relationship is not sufficient to constitute consent. If an individual expresses conditions on their willingness to consent (e.g., use of a condom) or limitations on the scope of their consent, those conditions and limitations must be respected.

Proof of consent or non-consent is not a burden placed on either party involved in a complaint. Instead, the burden remains on NOBTS to determine whether its policy has

been violated. The existence of consent is based on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged misconduct occurred and any similar and previous patterns that may be evidenced.

Consent in relationships must also be considered in context. When parties consent to BDSM<sup>12</sup> or other forms of kink, non-consent may be shown by the use of a safe word. Resistance, force, violence, or even saying “no” may be part of the kink and thus consensual, thus NOBTS’s evaluation of communication in kink situations should be guided by reasonableness, rather than strict adherence to policy that assumes non-kink relationships as a default.

**Incapacitation:** A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drug consumption. As stated above, a Respondent violates this Policy if they engage in sexual activity with someone who is incapable of giving consent.

It is a defense to a sexual assault policy violation that the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated. “Should have known” is an objective, reasonable person standard that assumes that a reasonable person is both sober and exercising sound judgment.

Incapacitation occurs when someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the “who, what, when, where, why, and how” of their sexual interaction).

Incapacitation is determined through consideration of all relevant indicators of an individual’s state and is not synonymous with intoxication, impairment, blackout, and/or being drunk.

This Policy also covers a person whose incapacity results from a temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the consumption of incapacitating substances.

#### **D. Other Civil Rights Offenses**

In addition to the forms of sexual harassment described above, which are covered by Title IX, NOBTS additionally prohibits the following offenses as forms of discrimination that may be within or outside of Title IX when the act is based upon the Complainant’s actual or perceived protected characteristic.

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<sup>12</sup> Bondage, discipline/dominance, submission/sadism, and masochism.

1) **Sexual Exploitation**, defined as:

- a. an individual taking non-consensual or abusive sexual advantage of another
- b. for their own benefit or for the benefit of anyone other than the person being exploited, and
- c. that conduct does not otherwise constitute Sexual Harassment under this Policy.

Examples of Sexual Exploitation include, but are not limited to:

- Sexual voyeurism (such as observing or allowing others to observe a person undressing or using the bathroom or engaging in sexual acts, without the consent of the person being observed)
- Invasion of sexual privacy (e.g., doxxing)
- Knowingly making an unwelcome disclosure of (or threatening to disclose) an individual's sexual orientation, gender identity, or gender expression
- Taking pictures, video, or audio recording of another in a sexual act, or in any other sexually related activity when there is a reasonable expectation of privacy during the activity, without the consent of all involved in the activity; or exceeding the boundaries of consent (such as allowing another person to hide in a closet and observe sexual activity; or disseminating sexual pictures without the photographed person's consent), including the making or posting of non-consensual pornography
- Prostituting another person
- Engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or a sexually transmitted disease (STD) or infection (STI), without informing the other person of the virus, disease, or infection
- Causing or attempting to cause the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give consent to sexual activity, or for the purpose of making that person vulnerable to non-consensual sexual activity
- Misappropriation of another person's identity on apps, websites, or other venues designed for dating or sexual connections (e.g., spoofing)
- Forcing a person to take an action against that person's will by threatening to show, post, or share information, video, audio, or an image that depicts the person's nudity or sexual activity
- Knowingly soliciting a minor for sexual activity
- Engaging in sex trafficking
- Knowingly creating, possessing, or disseminating child pornography

- 2) **Harm/Endangerment**, defined as:
  - a. threatening or causing physical harm;
  - b. extreme verbal, emotional, or psychological abuse; or
  - c. other conduct which threatens or endangers the health or safety of any person or damages their property.
- 3) **Discrimination**, defined as:
  - a. actions that deprive, limit, or deny
  - b. other members of the community
  - c. of educational or employment access, benefits, or opportunities,
  - d. including disparate treatment.
- 4) **Intimidation**, defined as:
  - a. implied threats or
  - b. acts that cause the Complainant reasonable fear of harm.
- 5) **Hazing**, defined as:
  - a. acts likely to cause physical or psychological harm or social ostracism
  - b. to any person within the NOBTS community,
  - c. when related to the admission, initiation, pledging, joining, or any other group-affiliation activity.
- 6) **Bullying**, defined as:
  - a. repeated and/or severe aggressive behavior
  - b. that is likely to intimidate or intentionally hurt, control, or physically or mentally diminish the Complainant,
  - c. that is not speech or conduct that is otherwise protected by the First Amendment.

Violation of any other NOBTS policies may constitute a Civil Rights Offense when a violation is motivated by actual or perceived protected characteristic(s), and the result is a discriminatory limitation or denial of employment or educational access, benefits, or opportunities.

Sanctions for the above-listed Civil Rights Offenses range from warning through expulsion/termination.

## **18. Retaliation**

Protected activity under this Policy includes reporting alleged misconduct that may implicate this Policy, participating in the resolution process, supporting a Complainant or Respondent, assisting in providing information relevant to an investigation, and/or acting in good faith to oppose conduct that constitutes a violation of this Policy.

Acts of alleged retaliation should be reported immediately to the Title IX Coordinator and will be promptly investigated. NOBTS will take all appropriate and available steps to protect individuals who fear that they may be subjected to retaliation.

NOBTS and any member of NOBTS's community are prohibited from taking or attempting to take materially adverse action by intimidating, threatening, coercing, harassing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by law or policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this Policy and procedure.

Filing a complaint under Process B could be considered retaliatory if those allegations could be subject to Process A, when the Process B allegations are made for the purpose of interfering with or circumventing any right or privilege provided afforded within Process A that is not provided by Process B. Therefore, NOBTS carefully vets all complaints to ensure this does not happen, and to ensure that complaints are routed to the appropriate process.

The exercise of rights protected under the First Amendment does not constitute retaliation.

Pursuing a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this Policy and procedure does not constitute retaliation, provided that the determination of responsibility, by itself, is not sufficient to conclude that any party has made a materially false statement in bad faith.

## **19. Mandated Reporting**

All NOBTS employees (faculty, staff, administrators) are expected to report actual or suspected discrimination, harassment, and/or retaliation to appropriate officials immediately, although there are some limited exceptions.

To make informed choices, it is important to be aware of confidentiality and mandatory reporting requirements when consulting institutional resources. Within the institution, some resources may maintain confidentiality and are not required to report actual or suspected harassment, discrimination, or retaliation in a way that identifies the parties. They may offer options and resources without any obligation to inform an outside agency or institution official unless a Complainant has requested the information be shared.

If a Complainant expects formal action in response to their allegations, reporting to any Mandated Reporter can connect them with resources to report alleged crimes and/or policy violations, and these employees will immediately pass reports to the Title IX Coordinator (and/or police, if desired by the Complainant or required by law), who will act when an incident is reported to them.

The following sections describe NOBTS reporting options for a Complainant or third party (including parents/guardians when appropriate):

### **A. Confidential Resources**

If a Complainant would like the details of an incident to be kept confidential, the Complainant may speak with:

- On-campus licensed professional counselors and staff
- On-campus members of the clergy/chaplains working within the scope of their licensure or ordination
- Community-based (non-employees):
  - Licensed professional counselors and other medical providers
  - Local rape crisis counselors
  - Domestic violence resources
  - Local or state assistance agencies
  - Clergy/Chaplains
  - Attorneys

All of the above-listed individuals will maintain confidentiality when acting under the scope of their licensure, professional ethics, professional credentials, or official designation, except in extreme cases of immediacy of threat or danger or abuse of a minor/elder/individual with a disability, or when required to disclose by law or court order.

Institutional counselors are available to help free of charge and may be consulted on an emergency basis during normal business hours.

NOBTS employees who have confidentiality as described above, and who receive reports within the scope of their confidential roles will timely submit anonymous statistical information for Clery Act purposes unless they believe it would be harmful to their client, patient, or parishioner.

### **B. Anonymous Notice to Mandated Reporters**

At the request of a Complainant, notice may be given anonymously (i.e., without identification of the Complainant) to the Title IX Coordinator by a Mandated Reporter. The Mandated Reporter cannot remain anonymous themselves.

If a Complainant has requested that a Mandated Reporter maintain the Complainant's anonymity, the Mandated Reporter may do so unless it is reasonable to believe that a compelling threat to health or safety could exist. The Mandated Reporter can consult with the Title IX Coordinator on that assessment without revealing personally identifiable information.

Anonymous notice will be investigated by NOBTS to the extent possible, both to assess the underlying allegation(s) and to determine if supportive measures or remedies can be provided. However, anonymous notice typically limits NOBTS's ability to investigate, respond, and provide remedies, depending on what information is shared.

When a Complainant has made a request for anonymity, the Complainant's personally identifiable information may be withheld by a Mandated Reporter, but all other details must be shared with the Title IX Coordinator. Mandated reporters may not be able to maintain requests for anonymity for Complainants who are minors, elderly, and/or disabled, depending on state reporting of abuse requirements.

### **C. Mandated Reporters and Formal Notice/Complaints**

All NOBTS employees (including student employees), with the exception of those who are designated as Confidential Resources, are Mandated Reporters and must promptly share with the Title IX Coordinator all known details of a report made to them in the course of their employment.

Employees must also promptly share all details of behaviors under this Policy that they observe or have knowledge of, even if not reported to them by a Complainant or third party.

Complainants may want to carefully consider whether they share personally identifiable details with non-confidential Mandated Reporters, as those details must be shared with the Title IX Coordinator.

Generally, disclosures in climate surveys, classroom writing assignments or discussions, human subjects research, or at events such as "Take Back the Night" marches or speak-outs do not provide notice that must be reported to the Title IX Coordinator by employees, unless the Complainant clearly indicates that they desire a report to be made or a seek a specific response from NOBTS.

Supportive measures may be offered as the result of such disclosures without formal NOBTS action.

Failure of a Mandated Reporter, as described above in this section, to report an incident of harassment, discrimination, or retaliation of which they become aware is a violation of NOBTS Policy and can be subject to disciplinary action for failure to comply/failure to report.

Though this may seem obvious, when a Mandated Reporter is engaged in harassment or other violations of this Policy, they still have a duty to report their own misconduct, though NOBTS is technically not on notice simply because a harasser is also a Mandated Reporter unless the harasser does in fact report themselves.



Finally, it is important to clarify that a Mandated Reporter who is themselves a target of harassment or other misconduct under this Policy is not required to report their own experience, though they are, of course, encouraged to do so.

## **20. When a Complainant Does Not Wish to Proceed**

If a Complainant does not wish for their name to be shared, does not wish for an investigation to take place, and/or does not want a Formal Complaint to be pursued, they may make such a request to the Title IX Coordinator, who will evaluate that request in light of the duty to ensure the safety of the institution and to comply with state or federal law.

The Title IX Coordinator has ultimate discretion over whether NOBTS proceeds when the Complainant does not wish to do so, and the Title IX Coordinator may sign a Formal Complaint to initiate a grievance process, usually upon completion of an appropriate violence risk assessment.

The Title IX Coordinator's decision should be based on results of the violence risk assessment that show a compelling risk to health and/or safety that requires NOBTS to pursue formal action to protect the community.

A compelling risk to health and/or safety may result from evidence of patterns of misconduct, predatory conduct, threats, abuse of minors, use of weapons, and/or violence. NOBTS may be compelled to act on alleged employee misconduct irrespective of a Complainant's wishes.

The Title IX Coordinator must also consider the effect that non-participation by the Complainant may have on the availability of evidence and NOBTS's ability to pursue a Formal Grievance Process fairly and effectively.

When the Title IX Coordinator executes the written complaint, they do not become the Complainant. The Complainant is the individual who is alleged to be the victim of conduct that could constitute a violation of this Policy.

When NOBTS proceeds, the Complainant (and/or their Advisor) may have as much or as little involvement in the process as they wish. The Complainant retains all rights of a Complainant under this Policy irrespective of their level of participation. Typically, when the Complainant chooses not to participate, the Advisor may be appointed as proxy for the Complainant throughout the process, acting to ensure and protect the rights of the Complainant, though this does not extend to the provision of evidence or testimony.

Note that NOBTS's ability to remedy and respond to notice may be limited if the Complainant does not want NOBTS to proceed with an investigation and/or grievance process. The goal is to provide the Complainant with as much control over the process as possible, while balancing NOBTS's obligation to protect its community.

In cases in which the Complainant requests confidentiality/no formal action and the circumstances allow NOBTS to honor that request, NOBTS may offer Informal Resolution options, supportive measures, and remedies to the Complainant and the community, but will not otherwise pursue formal action.

If the Complainant elects to take no action, they can change that decision if they decide to pursue a Formal Complaint at a later date. Upon making a Formal Complaint, a Complainant has the right, and can expect, to have allegations taken seriously by NOBTS and to have the incidents investigated and properly resolved through these procedures. Please consider that delays may cause limitations on access to evidence, or present issues with respect to the status of the parties.

## **21. Federal Timely Warning Obligations**

NOBTS must issue timely warnings for reported incidents that pose a serious or continuing threat of bodily harm or danger to members of the campus community.

NOBTS will ensure that a Complainant's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger.

## **22. False Allegations and Evidence**

Deliberately false and/or malicious accusations under this Policy are a serious offense and will be subject to appropriate disciplinary action. This does not include allegations that are made in good faith but are ultimately shown to be erroneous or do not result in a policy violation determination.

Additionally, witnesses and parties knowingly providing false evidence, tampering with or destroying evidence, or deliberately misleading an official conducting an investigation, hearing, or informal resolution can be subject to discipline under appropriate NOBTS policies.

## **23. Amnesty for Complainants and Witnesses**

NOBTS community encourages the reporting of misconduct and crimes by Complainants and witnesses. Sometimes, Complainants or witnesses are hesitant to report to NOBTS officials or participate in resolution processes because they fear that they themselves may be in violation of certain policies, such as underage drinking or use of illicit drugs at the time of the incident. Respondents may hesitate to be forthcoming during the process for the same reasons.

It is in the best interests of the NOBTS community that Complainants choose to report misconduct to NOBTS officials, that witnesses come forward to share what they know, and that all parties be forthcoming during the process.

To encourage reporting and participation in the process, NOBTS maintains a policy of offering parties and witnesses amnesty from minor policy violations—such as underage consumption of alcohol or the use of illicit drugs—related to the incident.

Amnesty does not apply to more serious allegations such as physical abuse of another or illicit drug distribution. The decision not to offer amnesty to a Respondent is based on neither sex nor gender, but on the fact that collateral misconduct is typically addressed for all students within a progressive discipline system, and the rationale for amnesty—the incentive to report serious misconduct—is rarely applicable to Respondent with respect to a Complainant.

Sometimes, students are hesitant to assist others for fear that they may get in trouble themselves (for example, an underage student who has been drinking or using marijuana might hesitate to help take an individual who has experienced sexual assault to the police). NOBTS maintains a policy of amnesty for students who offer help to others in need. Although policy violations cannot be overlooked, NOBTS may provide purely educational options with no official disciplinary finding, rather than punitive sanctions, to those who offer their assistance to others in need.

#### **24. Federal Statistical Reporting Obligations**

Certain institutional officials—those deemed Campus Security Authorities—have a duty to report the following for federal statistical reporting purposes (Clery Act):

- 1) All “primary crimes,” which include criminal homicide, rape, fondling, incest, statutory rape, robbery, aggravated assault, burglary, motor vehicle theft, and arson;
- 2) Hate crimes, which include any bias-motivated primary crime as well as any bias-motivated larceny or theft, simple assault, intimidation, or destruction/damage/vandalism of property;
- 3) VAWA-based crimes,<sup>13</sup> which include sexual assault, domestic violence, dating violence, and stalking;
- 4) Arrests and referrals for disciplinary action for weapons-related law violations, liquor-related law violations, and drug law violations.

All personally identifiable information is kept private, but statistical information must be shared with Campus Security regarding the type of incident and its general location (on or off campus or in the surrounding area, but no addresses are given) for publication in the Annual Security Report and daily campus crime log.

Campus Security Authorities include: student affairs/student conduct staff, campus security, local police, residence life staff, student activities staff, human resources staff, advisors to

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<sup>13</sup> VAWA is the Violence Against Women Act, enacted in 1994 and codified in part at 42 U.S.C. sections 13701 through 14040.

student organizations, and any other official with significant responsibility for student and campus activities.

## **25. Preservation of Evidence**

The preservation of evidence in incidents of sexual assault and stalking is critical to potential criminal prosecution and to obtaining restraining/protective orders and is particularly time sensitive. NOBTS will inform the Complainant of the importance of preserving evidence by taking actions such as the following:

### **Sexual Assault**

- Seek forensic medical assistance at the local hospital, ideally within 120 hours of the incident (sooner is better).
- Avoid urinating, showering, bathing, washing hands or face, or douching, if possible, but evidence may still be collected even if you do.
- If oral sexual contact took place, refrain from smoking, eating, drinking, or brushing teeth.
- If clothes are changed, place soiled clothes in a paper bag (plastic destroys evidence) or secure evidence container the local police department.
- Seeking medical treatment can be essential even if it is not for the purposes of collecting forensic evidence.

### **Stalking**

- Evidence in the form of text and voice messages will be lost in most cases if the Complainant changes their phone number.
  - Make a secondary recording of any voice messages and/or save the audio files to a cloud server.
  - Take screenshots and/or a video recording of any text messages or other electronic messages (e.g., Instagram, Snapchat, Facebook).
- Save copies of e-mail and social media correspondence, including notifications related to account access alerts.
- Take timestamped photographs of any physical evidence including notes, gifts, etc. in place when possible.
- Save copies of any messages, to include those showing any request for no further contact.
- Obtain copies of call logs showing the specific phone number being used rather than a saved contact name if possible.

During the initial meeting between the Complainant and the Title IX Coordinator, the importance of taking these actions will be discussed, if timely.

## **RESOLUTION PROCESS<sup>14</sup> FOR ALLEGED VIOLATIONS OF THE EQUAL OPPORTUNITY, HARASSMENT, AND NONDISCRIMINATION POLICY (KNOWN AS PROCESS “A”)**

### **1. Overview**

NOBTS will act on any formal notice/complaint of violation of the Equal Opportunity, Harassment, and Nondiscrimination Policy (“the Policy”) that is received by the Title IX Coordinator<sup>15</sup> or any other Official with Authority by applying these procedures, known as “Process A.”

The procedures below apply only to qualifying allegations of Title IX Sexual Harassment (including sexual assault, dating violence, domestic violence, and stalking, as defined in the Policy) involving students, staff, administrators, or faculty members.

If other Policy definitions are invoked, such as protected characteristic harassment or discrimination as defined above, please see [Appendix F](#) for a description of the procedures applicable to the resolution of such offenses, known as “Process B.”

Process B can also apply to sexual harassment (including sexual assault, dating violence, domestic violence, and stalking, as defined above) when jurisdiction does not fall within Process A, as determined by the Title IX Coordinator.

The procedures below may be used to address alleged collateral misconduct by the Respondent arising from the investigation of or occurring in conjunction with reported misconduct (e.g., vandalism, physical abuse of another), when alleged violations of the Policy are being addressed at the same time. In such cases, the Title IX Coordinator may consult with the institution officials who typically oversee such conduct (e.g., human resources, student conduct, academic affairs, etc.) to provide input as needed. All other allegations of misconduct unrelated to incidents covered by the Policy will be addressed through procedures described in the student, faculty, and staff handbooks.

### **2. Notice/Complaint**

Upon receipt of a Formal Complaint or notice of an alleged policy violation by the Title IX Coordinator, the Title IX Coordinator initiates a prompt initial assessment to determine the next steps NOBTS needs to take. The Title IX Coordinator will contact the Complainant to offer supportive measures and determine whether the Complainant wishes to file a Formal Complaint.

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<sup>14</sup> For institutions with grievance processes enabling students and/or employees to challenge NOBTS action, it is recommended that discrimination allegations be exempted from that process and replaced with the Resolution Process outlined here. Most existing grievance proceedings are neither equitable (by definition), nor are they sufficiently prompt to satisfy Title IX. Such a change may require negotiation with any affected union.

<sup>15</sup> Anywhere this procedure indicates “Title IX Coordinator,” NOBTS may substitute a trained designee.

The Title IX Coordinator will then initiate at least one of three responses:

- 1) Offering supportive measures because the Complainant does not want to file a Formal Complaint
- 2) An Informal Resolution (upon submission of a Formal Complaint)
- 3) A Formal Grievance Process including an investigation and a hearing (upon submission of a Formal Complaint)

NOBTS uses a Formal Grievance Process as described below to determine whether the Policy has been violated. If so, NOBTS will promptly implement effective remedies designed to ensure that it is not deliberately indifferent to harassment or discrimination, their potential recurrence, and/or their effects.

### **3. Initial Assessment**

Following receipt of notice or a Formal Complaint of an alleged violation of this Policy, the Title IX Coordinator<sup>16</sup> engages in an initial assessment, typically within one to five (1-5) business days. The steps in an initial assessment can include:

- The Title IX Coordinator seeks to determine if the person impacted wishes to make a Formal Complaint, and will assist them to do so, if desired.
  - If they do not wish to do so, the Title IX Coordinator determines whether to initiate a complaint themselves because a violence risk assessment indicates a compelling threat to health and/or safety.
- If a Formal Complaint is received, the Title IX Coordinator assesses its sufficiency and works with the Complainant to make sure it is correctly completed.
- The Title IX Coordinator reaches out to the Complainant to offer supportive measures.
- The Title IX Coordinator works with the Complainant to ensure they are aware of the right to have an Advisor.
- The Title IX Coordinator works with the Complainant to determine whether the Complainant prefers a supportive and remedial response, an Informal Resolution option, or a formal investigation and grievance process.
  - If a supportive and remedial response is preferred, the Title IX Coordinator works with the Complainant to identify their needs, determine appropriate supports, and implements accordingly. No Formal Grievance Process is initiated, though the Complainant can elect to initiate one later, if desired.

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<sup>16</sup> If circumstances require, the President or Title IX Coordinator will designate another person to oversee the Resolution Process should an allegation be made about the Coordinator or the Coordinator be otherwise unavailable, unable to fulfill their duties, or have a conflict of interest.

- If an Informal Resolution option is preferred, the Title IX Coordinator assesses whether the complaint is suitable for Informal Resolution<sup>17</sup>, which informal mechanism may serve the situation best or is available, and may seek to determine if the Respondent is also willing to engage in Informal Resolution.
- If a Formal Grievance Process is preferred by the Complainant, the Title IX Coordinator determines if the alleged misconduct falls within the scope of the 2020 Title IX regulations:
  - If it does, the Title IX Coordinator will initiate the formal investigation and grievance process, directing the investigation to address, based on the nature of the complaint:
    - an incident, and/or
    - a pattern of alleged misconduct, and/or
    - a culture/climate issue
  - If alleged misconduct does not fall within the scope of the Title IX regulations, the Title IX Coordinator determines that the regulations do not apply (and will “dismiss” that aspect of the complaint, if any), assesses which policies may apply, which Resolution Process is applicable, and will refer the matter accordingly, including referring the matter for resolution under Process B, if applicable. Please note that dismissing a complaint under the 2020 Title IX regulations is solely a procedural requirement under Title IX, which does not limit NOBTS’s authority to address a complaint with an appropriate process and remedies.

## **A. Violence Risk Assessment**

In some cases, the Title IX Coordinator may determine that a Violence Risk Assessment (VRA) should be conducted by the Behavioral Intervention Team as part of the initial assessment. A VRA can aid in ten critical and/or required determinations, including:

- 1) Emergency removal of a Respondent on the basis of immediate threat to an individual or the community’s physical health/safety
- 2) Whether the Title IX Coordinator should pursue/sign a Formal Complaint absent a willing/able Complainant
- 3) Whether the scope of the investigation should include an incident, and/or pattern of misconduct, and/or climate of hostility/harassment
- 4) To help identify potential predatory conduct
- 5) To help assess/identify grooming behaviors
- 6) Whether it is reasonable to try to resolve a complaint through Informal Resolution, and if so, what approach may be most successful
- 7) Whether to permit a voluntary withdrawal by the Respondent

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<sup>17</sup> Per the 2020 Title IX regulations, NOBTS is prohibited from Informal Resolution of a complaint by a student against an employee.

- 8) Whether to impose transcript notation or communicate with a transfer NOBTS about a Respondent
- 9) Assessment of appropriate sanctions/remedies (to be applied post-hearing)
- 10) Whether a Clery Act Timely Warning/Trespass order/Persona-non-grata is needed

Threat assessment is the process of evaluating the actionability of violence by an individual against another person or group following the issuance of a direct or conditional threat. A VRA is a broader term used to assess any potential violence or danger, regardless of the presence of a vague, conditional, or direct threat.

VRAs require specific training and are typically conducted by psychologists, clinical counselors, social workers, case managers, law enforcement officers, student conduct officers, or other Behavioral Intervention Team (BIT) team members. A VRA authorized by the Title IX Coordinator should occur in collaboration with the BIT or threat assessment team. Where a VRA is required by the Title IX Coordinator, a Respondent refusing to cooperate may result in a charge of failure to comply within the appropriate student or employee conduct process.

A VRA is not an evaluation for an involuntary behavioral health hospitalization, nor is it a psychological or mental health assessment. A VRA assesses the risk of actionable violence, often with a focus on targeted/predatory escalations, and is supported by research from the fields of law enforcement, criminology, human resources, and psychology.

More about NOBTS's process for VRA can be found in Appendix D.

## **B. Dismissal (Mandatory and Discretionary)<sup>18</sup>**

NOBTS must dismiss a Formal Complaint or any allegations therein if, at any time during the investigation or hearing, it is determined that:

- 1) The conduct alleged in the Formal Complaint would not constitute Title IX Sexual Harassment as defined above, even if proved;
- 2) The conduct did not occur in an educational program or activity controlled by NOBTS (including buildings or property controlled by recognized student organizations), and/or NOBTS does not have control of the Respondent;
- 3) The conduct did not occur against a person in the United States;
- 4) At the time of filing a Formal Complaint, a Complainant is not participating in or attempting to participate in NOBTS's education program or activity, and based

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<sup>18</sup> These dismissal requirements are mandated by the 2020 Title IX Regulations, 34 CFR §106.45.



on the available information, the Title IX Coordinator has determined that they do not need to sign a Formal Complaint on behalf of NOBTS.<sup>19</sup>

NOBTS may dismiss a Formal Complaint or any allegations therein if, at any time during the investigation or hearing:

- 1) A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations therein.
- 2) The Respondent is no longer enrolled in or employed by NOBTS.
- 3) Specific circumstances prevent NOBTS from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.

A Complainant who decides to withdraw a complaint may later request to reinstate it or refile it.

Upon any dismissal, NOBTS will promptly send written notice of the dismissal and the rationale for doing so simultaneously to the parties.

This dismissal decision is appealable by any party under the procedures for appeal below. The decision not to dismiss is also appealable by any party claiming that a dismissal is required or appropriate.

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<sup>19</sup> Such a Complainant is still entitled to supportive measures, but the formal grievance process is not applicable unless the Title IX Coordinator signs the complaint in the event the Complainant cannot/will not do so.

#### **4. Counterclaims**

NOBTS is obligated to ensure that the grievance process is not abused for retaliatory purposes, thus counterclaims made with retaliatory intent will not be permitted. NOBTS permits the filing of counterclaims but uses an initial assessment, described above, to assess whether the allegations in the counterclaim are made in good faith.

Counterclaims determined to have been reported in good faith will be processed using the Resolution Process below. Investigation of such claims may take place after resolution of the underlying initial complaint, in which case a delay may occur.

Counterclaims may also be resolved through the same investigation as the underlying complaint, at the discretion of the Title IX Coordinator. When counterclaims are not made in good faith, they will be considered retaliatory and may constitute a violation of this policy.

#### **5. Right to an Advisor**

The parties may each have an Advisor of their choice present with them for all meetings, interviews, and hearings within the Resolution Process, if they so choose. The parties may select whoever they wish to serve as their Advisor as long as the Advisor is eligible and available.<sup>20</sup>

Choosing an Advisor who is also a witness in the process creates potential for bias and conflict of interest. A party who chooses an Advisor who is also a witness can anticipate that issues of potential bias will be explored by the hearing Decision-maker(s).

NOBTS may permit parties to have more than one Advisor upon special request to the Title IX Coordinator. The decision to grant this request is at the sole discretion of the Title IX Coordinator and will be granted equitably to all parties.

##### **A. Who Can Serve as an Advisor**

The Advisor may be a friend, mentor, family member, attorney, or any other individual a party chooses to advise, support, and/or consult with them throughout the Resolution Process. The parties may choose Advisors from inside or outside of the NOBTS community.

The Title IX Coordinator will also offer to assign a trained Advisor to any party if the party so chooses. If the parties choose an Advisor from the pool available from NOBTS,

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<sup>20</sup> “Available” means the party cannot insist on an Advisor who simply doesn’t have inclination, time, or availability. Also, the Advisor cannot have institutionally conflicting roles, such as being a Title IX administrator who has an active role in the matter, or a supervisor who must monitor and implement sanctions.

the Advisor will have been trained by NOBTS and be familiar with NOBTS's Resolution Process.

If the parties choose an Advisor from outside the pool of those identified by NOBTS, the Advisor may not have been trained by NOBTS and may not be familiar with NOBTS policies and procedures.

Parties also have the right to choose not to have an Advisor in the initial stages of the Resolution Process, prior to a hearing.

### **B. Advisor's Role in Meetings and Interviews**

The parties may be accompanied by their Advisor in all meetings and interviews at which the party is entitled to be present, including intake and interviews. Advisors should help the parties prepare for each meeting and are expected to advise ethically, with integrity, and in good faith.

NOBTS cannot guarantee equal Advisory rights, meaning that if one party selects an Advisor who is an attorney, but the other party does not or cannot afford an attorney, NOBTS is not obligated to provide an attorney.

Where applicable under state law or NOBTS policy, Advisors or attorneys are permitted to fully represent their advisees or clients in resolution proceedings, including all meetings, interviews, and hearings. Although NOBTS prefers to hear from parties directly, in these cases, parties are entitled to have evidence provided by their chosen representatives.

### **C. Advisors in Hearings/NOBTS-Appointed Advisor**

Under the Title IX Regulations, a form of indirect questioning is required during the hearing but must be conducted by the parties' Advisors. The parties are not permitted to directly question each other or any witnesses. If a party does not have an Advisor for a hearing, NOBTS will appoint a trained Advisor for the limited purpose of conducting any questioning of the parties and witnesses.

### **D. Pre-Interview Meetings**

Advisors and their advisees may request to meet with the Investigator(s) conducting interviews/meetings in advance of these interviews or meetings. This pre-meeting allows Advisors to clarify and understand their role and NOBTS's policies and procedures.

### **E. Advisor Violations of NOBTS Policy**

All Advisors are subject to the same NOBTS policies and procedures, whether they are attorneys or not, and whether they are selected by a party or assigned by NOBTS. Advisors are expected to advise their advisees without disrupting proceedings. Advisors should not address NOBTS officials or Investigators in a meeting or interview unless invited to do so (e.g., asking procedural questions). The Advisor may not make a presentation or represent their advisee during any meeting or proceeding and may not speak on behalf of the advisee to the Investigator(s) or other Decision-maker(s) except during a hearing proceeding during questioning.

The parties are expected to ask and respond to questions on their own behalf throughout the investigation phase of the Resolution Process. Although the Advisor generally may not speak on behalf of their advisee, the Advisor may consult with their advisee, either privately as needed, or by conferring or passing notes during any Resolution Process meeting or interview. For longer or more involved discussions, the parties and their Advisors should ask for breaks to allow for private consultation.

Any Advisor who oversteps their role as defined by this Policy, or who refuses to comply with NOBTS's established rules of decorum for the hearing, will be warned. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the meeting/interview/hearing may be ended, or other appropriate measures implemented, including NOBTS requiring the party to use a different Advisor or providing a different NOBTS-appointed Advisor. Subsequently, the Title IX Coordinator will determine how to address the Advisor's non-compliance and future role.

#### **F. Sharing Information with the Advisor**

NOBTS expects that the parties may wish to have NOBTS share documentation and evidence related to the allegations with their Advisors. NOBTS provides a consent form that authorizes NOBTS to share such information directly with a party's Advisor. The parties must either complete and submit this form to the Title IX Coordinator or provide similar documentation demonstrating consent to a release of information to the Advisor before NOBTS is able to share records with an Advisor.

If a party requests that all communication be made through their attorney Advisor, NOBTS will comply with that request at the discretion of the Title IX Coordinator.

Advisors appointed by the institution will not be asked to disclose details of their interactions with their advisees to institutional officials or Decision-makers.

#### **G. Privacy of Records Shared with Advisor**

Advisors are expected to maintain the privacy of the records shared with them. These records may not be shared with third parties, disclosed publicly, or used for purposes not explicitly authorized by NOBTS. NOBTS may restrict the role of any Advisor who

does not respect the sensitive nature of the process or who fails to abide by NOBTS's privacy expectations.

#### **H. Expectation of an Advisor**

NOBTS generally expects an Advisor to adjust their schedule to allow them to attend NOBTS meetings/interviews/hearings when planned, but NOBTS may change scheduled meetings/interviews/hearings to accommodate an Advisor's inability to attend, if doing so does not cause an unreasonable delay.

NOBTS may also make reasonable provisions to allow an Advisor who cannot be present in person to attend a meeting/interview/hearing by telephone, video conferencing, or other similar technologies as may be convenient and available.

#### **I. Expectations of the Parties with Respect to Advisors**

A party may elect to change Advisors during the process and is not obligated to use the same Advisor throughout. The parties are expected to inform the Investigator(s) of the identity of their Advisor at least two (2) business days before the date of their first meeting with Investigators (or as soon as possible if a more expeditious meeting is necessary or desired).

The parties are expected to provide timely notice to the Title IX Coordinator if they change Advisors at any time. It is assumed that if a party changes Advisors, consent to share information with the previous Advisor is terminated, and a release for the new Advisor should be secured. Parties are expected to inform the Title IX Coordinator of the identity of their hearing Advisor at least two (2) business days before the hearing.

#### **J. Assistance in Securing an Advisor<sup>21</sup>**

For representation, Respondents may wish to contact organizations such as:

- Families Advocating for Campus Equality (<http://www.facecampusequality.org>)
- Stop Abusive and Violent Environments (<http://www.saveservices.org>)

Complainants may wish to contact organizations such as:

- The Victim Rights Law Center (<http://www.victimrights.org>)
- The National Center for Victims of Crime (<http://www.victimsofcrime.org>), which maintains the Crime Victim's Bar Association
- The Time's Up Legal Defense Fund (<https://nwlc.org/times-up-legal-defense-fund/>)

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<sup>21</sup> This is being provided for informational purposes and does not constitute NOBTS's endorsement of any of the external individuals/organizations listed.

## 6. Resolution Processes

Resolution proceedings are private. All persons present at any time during the Resolution Process are expected to maintain the privacy of the proceedings in accordance with NOBTS Policy.

Although there is an expectation of privacy around what Investigators share with parties during interviews, the parties have discretion to share their own knowledge and evidence with others if they so choose, except for information the parties agree not to disclose as part of an Informal Resolution. NOBTS encourages parties to discuss any sharing of information with their Advisors before doing so.

The Formal Grievance Process is NOBTS's primary resolution approach unless Informal Resolution is elected by all parties and NOBTS.

### A. Informal Resolution

Three options for Informal Resolution are detailed in this section.

- 1) **Supportive Resolution.** When the Title IX Coordinator can resolve the matter informally by providing supportive measures (only) to remedy the situation
- 2) **Alternative Resolution.** When the parties agree to resolve the matter through an alternative resolution mechanism including mediation, restorative practices, facilitated dialogue, etc., as described below, often before a formal investigation takes place (See [Section B](#))
- 3) **Accepted Responsibility.** When the Respondent accepts responsibility for violating policy, and desires to accept the recommended sanction(s) and end the Resolution Process (See [Section C](#))

To initiate Informal Resolution, a Complainant must submit a Formal Complaint, as defined above. A Respondent who wishes to initiate Informal Resolution should contact the Title IX Coordinator. The parties may agree, as a condition of engaging in Informal Resolution, that statements made, or evidence shared, during the Informal Resolution process will not be considered in the Formal Grievance Process unless all parties consent.

It is not necessary to pursue Informal Resolution first in order to pursue a Formal Grievance Process, and any party participating in Informal Resolution can stop the process at any time and begin or resume the Formal Grievance Process. The parties may not enter into an agreement that requires NOBTS to impose specific sanctions, though the parties can agree to certain restrictions or other courses of action. For example, the parties cannot require a student be suspended, but the parties can agree that the

Respondent will temporarily or permanently withdraw. The only Informal Resolution Process that can result in sanctions levied by the institution is “Accepted Responsibility.” The Title IX Coordinator has discretion to determine if an investigation will be paused during Informal Resolution, or if it will be limited, or will continue during the Informal Resolution process.

Prior to implementing Informal Resolution, NOBTS will provide the parties with written notice of the reported misconduct and any sanctions (only in the case of Accepted Responsibility) or measures that may result from participating in such a process, including information regarding any records that will be maintained or shared by NOBTS.

NOBTS will obtain voluntary, written confirmation that all parties wish to resolve the matter through Informal Resolution before proceeding and will not pressure the parties to participate in Informal Resolution.

## **B. Alternative Resolution Approaches**

Alternative Resolution is an informal approach, including mediation, restorative practices, facilitated dialogue, etc. by which the parties reach a mutually agreed upon resolution of a complaint. All parties must consent to the use of an Alternative Resolution approach.

The Title IX Coordinator may consider the following factors to assess whether Alternative Resolution is appropriate, or which form of Alternative Resolution may be most successful for the parties:

- The parties’ amenability to Alternative Resolution
- Likelihood of potential resolution, considering any power dynamics between the parties
- The nature and severity of the alleged misconduct
- The parties’ motivation to participate
- Civility of the parties
- Results of a violence risk assessment/ongoing risk analysis
- Disciplinary history of the Respondent
- Whether an emergency removal is needed
- Skill of the Alternative Resolution facilitator with this type of complaint
- Complaint complexity
- Emotional investment/capability of the parties
- Rationality of the parties
- Goals of the parties
- Adequate resources to invest in Alternative Resolution (time, staff, etc.)

The ultimate determination of whether Alternative Resolution is available or successful is made by the Title IX Coordinator. The Title IX Coordinator is authorized to facilitate a resolution that is acceptable to all parties, and/or to accept a resolution that is proposed by the parties, usually through their Advisors, including terms of confidentiality, release, and non-disparagement.

The Title IX Coordinator maintains records of any resolution that is reached, and failure to abide by the resolution agreement may result in appropriate responsive/disciplinary actions (e.g., referral for formal resolution, referral to the conduct process for failure to comply). Results of complaints resolved by Alternative Resolution are not appealable.

### **C. Respondent Accepts Responsibility for Alleged Violations**

The Respondent may accept responsibility for all or part of the alleged policy violations at any point during the Resolution Process. If the Respondent indicates an intent to accept responsibility for all of the alleged misconduct, the formal process will be paused, and the Title IX Coordinator will determine whether Informal Resolution can be used according to the criteria above.

If Informal Resolution is applicable, the Title IX Coordinator will determine whether all parties and NOBTS are able to agree on responsibility, restrictions and/or remedies. If so, the Title IX Coordinator implements the accepted finding that the Respondent is in violation of NOBTS policy and implements agreed-upon restrictions and remedies and determines the appropriate sanction(s) in coordination with other appropriate administrator(s), as necessary.

This result is not subject to appeal once all parties indicate their written assent to all agreed upon resolution terms. When the parties cannot agree on all terms of resolution, the Formal Grievance Process will resume at the same point where it was paused.<sup>22</sup>

When a resolution is accomplished, the appropriate sanction(s) or responsive actions are promptly implemented to effectively stop the harassment or discrimination, prevent its recurrence, and remedy the effects of the discriminatory conduct, both on the Complainant and the community.

## **7. Formal Grievance Process Pool**

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<sup>22</sup> The parties may not want discussions that take place within Informal Resolution to be admissible in a later Formal Grievance Process, but essential facts must and do transfer from the informal process to the formal. Disclosing something in an informal setting to shield it from formal admissibility is a cynical strategy, so administrators should take care in determining the terms of any assurances of the confidentiality of the Informal Resolution.



The Formal Grievance Process relies on a pool of administrators<sup>23</sup> (“the Pool”) to carry out the process. Members of the Pool are announced in an annual distribution of this Policy to all students, employees, prospective students, and prospective employees. They are also listed in the Annual Title IX Report published by the Title IX Office.

The list of Pool members and a description of the Pool can be found [here](#).

### **A. Pool Member Roles**

Members of the Pool are trained annually, and can serve in in the following roles, at the discretion of the Title IX Coordinator:

- To provide appropriate intake of and initial guidance pertaining to complaints
- To act as an Advisor to the parties
- To serve in a facilitation role in Informal Resolution or Alternative Resolution if appropriately trained in appropriate resolution approaches (e.g., mediation, restorative practices, facilitated dialogue)
- To perform or assist with initial assessment
- To investigate complaints
- To serve as a hearing facilitator (process administrator, no decision-making role)
- To serve as a Decision-maker regarding the complaint
- To serve as an Appeal Decision-maker

### **B. Pool Member Appointment**

The Title IX Coordinator, in consultation with the President, appoints the Pool,<sup>24</sup> which acts with independence and impartiality. Although members of the Pool are typically trained in a variety of skill sets and can rotate amongst the different roles listed above in different complaints, NOBTS can also designate permanent roles for individuals in the Pool, using others as substitutes or to provide greater depth of experience when necessary. This process of role assignment may be the result of particular skills, aptitudes, or talents identified in members of the Pool that make them best suited to particular roles.

### **C. Pool Member Training**

Pool members receive annual training jointly. This training includes, but is not limited to:

- The scope of NOBTS’s Equal Opportunity, Harassment, and Nondiscrimination Policy and Procedures

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<sup>23</sup> External, trained third-party neutral professionals may also be used to serve in Pool roles

<sup>24</sup> This does not preclude NOBTS from having all members of the Pool go through an application and/or interview/selection process.

- How to conduct investigations and hearings that protect the safety of Complainants and Respondents, and promote accountability
- Implicit bias
- Disparate treatment
- Reporting, confidentiality, and privacy requirements
- Applicable laws, regulations, and federal regulatory guidance
- How to implement appropriate and situation-specific remedies
- How to investigate in a thorough, reliable, timely, and impartial manner
- How to conduct a sexual harassment investigation
- Trauma-informed practices pertaining to investigations and resolution processes
- How to uphold fairness, equity, and due process
- How to weigh evidence
- How to conduct questioning
- How to assess credibility
- Impartiality and objectivity
- How to render findings and generate clear, concise, evidence-based rationales
- The definitions of all offenses
- How to apply definitions used by NOBTS with respect to consent (or the absence or negation of consent) consistently, impartially, and in accordance with policy
- How to conduct an investigation and grievance process including hearings, appeals, and Informal Resolution Processes
- How to serve impartially by avoiding prejudgment of the facts at issue, conflicts of interest, and bias against Respondents and/or for Complainants, and on the basis of sex, race, religion, and other protected characteristics
- Any technology to be used at a live hearing
- Issues of relevance of questions and evidence
- Issues of relevance to create an investigation report that fairly summarizes relevant evidence
- How to determine appropriate sanctions in reference to all forms of harassment, discrimination, and/or retaliation allegations
- Recordkeeping

The materials used to train all members of the Pool are publicly posted here: [Title IX page](#).

## **8. Formal Grievance Process: Notice of Investigation and Allegations**

The Title IX Coordinator will provide written Notice of the Investigation and Allegations (the “NOIA”) to the Respondent upon commencement of the Formal Grievance Process. This facilitates the Respondent’s ability to prepare for the interview and to identify and choose an Advisor to accompany them. The NOIA is also copied to the Complainant, who will be given advance notice of when the NOIA will be delivered to the Respondent.

The NOIA will include:

- A meaningful summary of all allegations
- The identity of the involved parties (if known)
- The precise misconduct being alleged
- The date and location of the alleged incident(s) (if known)
- The specific policies implicated
- A description of the applicable procedures
- A statement of the potential sanctions/responsive actions that could result
- A statement that NOBTS presumes the Respondent is not responsible for the reported misconduct unless and until the evidence supports a different determination
- A statement that determinations of responsibility are made at the conclusion of the process and that the parties will be given an opportunity during the review and comment period to inspect and review all directly related and/or relevant evidence obtained
- A statement about NOBTS's policy on retaliation
- Information about the confidentiality of the process
- Information on the need for each party to have an Advisor of their choosing and suggestions for ways to identify an Advisor
- A statement informing the parties that NOBTS's policy prohibits knowingly making false statements, including knowingly submitting false information during the Resolution Process
- Detail on how the party may request disability accommodations during the Resolution Process
- The name(s) of the Investigator(s), along with a process to identify to the Title IX Coordinator, in advance of the interview process, any conflict of interest that the Investigator(s) may have
- An instruction to preserve any evidence that is directly related to the allegations

Amendments and updates to the NOIA may be made as the investigation progresses and more information becomes available regarding the addition or dismissal of various allegations.

Notice will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address(es) of the parties as indicated in official NOBTS records, or emailed to the parties' NOBTS-issued email or designated accounts. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

## **9. Resolution Timeline**

NOBTS will make a good faith effort to complete the Resolution Process within a sixty to ninety (60-90) business-day time period, including appeal if any, which can be extended as necessary for appropriate cause by the Title IX Coordinator, who will provide notice and rationale for any extensions or delays to the parties as appropriate, as well as an estimate of how much additional time will be needed to complete the process.

## **10. Appointment of Investigators**

Once the decision to commence a formal investigation is made, the Title IX Coordinator appoints Pool members to conduct the investigation (typically using a team of two Investigators), usually within two (2) business days of determining that an investigation should proceed.

## **11. Ensuring Impartiality**

Any individual materially involved in the administration of the Resolution Process [including the Title IX Coordinator, Investigator(s), and Decision-maker(s)] may neither have nor demonstrate a conflict of interest or bias for a party generally, or for a specific Complainant or Respondent.

The Title IX Coordinator will vet the assigned Investigator(s) for impartiality by ensuring there are no actual or apparent conflicts of interest or disqualifying biases. At any time during the Resolution Process, the parties may raise a concern regarding bias or conflict of interest, and the Title IX Coordinator will determine whether the concern is reasonable and supportable. If so, another Pool member will be assigned and the impact of the bias or conflict, if any, will be remedied. If the source of the conflict of interest or bias is the Title IX Coordinator, concerns should be raised with a Deputy Title IX Coordinator or the President.

The Formal Grievance Process involves an objective evaluation of all relevant evidence obtained, including evidence that supports that the Respondent engaged in a policy violation and evidence that supports that the Respondent did not engage in a policy violation. Credibility determinations may not be based solely on an individual's status or participation as a Complainant, Respondent, or witness.

NOBTS operates with the presumption that the Respondent is not responsible for the reported misconduct unless and until the Respondent is determined to be responsible for a policy violation by the applicable standard of proof.

## **12. Investigation Timeline**

Investigations are completed expeditiously, normally within thirty (30) business days, though some investigations may take many weeks or even months, depending on the nature, extent, and complexity of the allegations, availability of witnesses, law enforcement involvement, etc.

NOBTS will make a good faith effort to complete investigations as promptly as circumstances permit and will communicate regularly with the parties to update them on the progress and timing of the investigation.

### **13. Investigation Process Delays and Interactions with Law Enforcement**

NOBTS may undertake a short delay in its investigation (several days to a few weeks) if circumstances require. Such circumstances include but are not limited to: a request from law enforcement to temporarily delay the investigation, the need for language assistance, the absence of parties and/or witnesses, and/or health conditions.

NOBTS will communicate the anticipated duration of the delay and reason to the parties in writing and provide the parties with status updates if necessary. NOBTS will promptly resume its investigation and Resolution Process as soon as feasible. During such a delay, NOBTS will implement supportive measures as deemed appropriate.

NOBTS action(s) or processes are not typically altered or precluded on the grounds that civil or criminal charges involving the underlying incident(s) have been filed or that criminal charges have been dismissed or reduced.

### **14. Investigation Process Steps**

All investigations are thorough, reliable, impartial, prompt, and fair. Investigations involve interviews with all available relevant parties and witnesses; obtaining available, relevant evidence; and identifying sources of expert information, as necessary.

All parties have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence and expert witnesses, and to fully review and respond to all evidence on the record. Recordings of interviews are not provided to the parties, but the parties will have the ability to review the summary of the interview once the investigation report is compiled.

At the discretion of the Title IX Coordinator, investigations can be combined when complaints implicate a pattern, collusion, and/or other shared or similar actions.

The Investigator(s) typically take(s) the following steps, if not already completed (not necessarily in this order):

- Determine the identity and contact information of the Complainant
- Identify all policies implicated by the alleged misconduct and notify the Complainant and Respondent of all of the specific policies implicated
- Assist the Title IX Coordinator, if needed, with conducting a prompt initial assessment to determine if the allegations indicate a potential policy violation
- Commence a thorough, reliable, and impartial investigation by identifying issues and developing a strategic investigation plan, including a witness list, evidence list, intended investigation timeframe, and order of interviews for the parties and witnesses
- Meet with the Complainant to finalize their interview/statement, if necessary

- Work with the Title IX Coordinator, as necessary, to prepare the initial Notice of Investigation and Allegations (NOIA). The NOIA may be amended with any additional or dismissed allegations
  - Notice should inform the parties of their right to have the assistance of an Advisor, who could be a member of the Pool or an Advisor of their choosing present for all meetings attended by the party
- Provide each interviewed party and witness an opportunity to review and verify the Investigator's summary notes (or transcript) of the relevant evidence/testimony from their respective interviews and meetings
- Make good faith efforts to notify each party of any meeting or interview involving another party, in advance when possible
- When participation of a party is expected, provide that party with written notice of the date, time, and location of the meeting, as well as the expected participants and purpose
- Interview all available, relevant witnesses and conduct follow-up interviews as necessary
- Allow each party the opportunity to suggest witnesses and questions they wish the Investigator(s) to ask of another party and/or witnesses, and document in the report which questions were asked, with a rationale for any changes or omissions
- Complete the investigation promptly and without unreasonable deviation from the intended timeline
- Provide regular status updates to the parties throughout the investigation
- Prior to the conclusion of the investigation, provide the parties and their respective Advisors (if so desired by the parties) with a list of witnesses whose information will be used to render a finding
- Write a comprehensive investigation report fully summarizing the investigation, all witness interviews, and addressing all relevant evidence. Appendices including relevant physical or documentary evidence will be included
- Gather, assess, and synthesize evidence, but make no conclusions, engage in no policy analysis, and render no recommendations as part of their report
- Prior to the conclusion of the investigation, provide the parties and their respective Advisors (if so desired by the parties) a secured electronic or hard copy of the draft investigation report as well as an opportunity to inspect and review all of the evidence obtained as part of the investigation that is directly related to the reported misconduct, including evidence upon which NOBTS does not intend to rely in reaching a determination, for a ten (10) business-day review and comment period so that each party may meaningfully respond to the evidence. The parties may elect to waive the full ten (10) days. Each copy of the materials shared will be watermarked on each page with the role of the person receiving it (e.g., Complainant, Respondent, Complainant's Advisor, Respondent's Advisor).
- Elect to respond in writing in the investigation report to the parties' submitted responses and/or to share the responses between the parties for additional responses

- Incorporate relevant elements of the parties’ written responses into the final investigation report, include any additional relevant evidence, make any necessary revisions, and finalize the report. The Investigator(s) should document all rationales for any changes made after the review and comment period.
- Share the report with the Title IX Coordinator and/or legal counsel for their review and feedback
- Incorporate any relevant feedback and share the final report with all parties and their Advisors through secure electronic transmission or hard copy at least ten (10) business days prior to a hearing. The parties and Advisors are also provided with a file of any directly related evidence that was not included in the report.

## **15. Witness Role and Participation in the Investigation**

Witnesses (as distinguished from the parties) who are employees of NOBTS are strongly encouraged to cooperate with and participate in NOBTS’s investigation and Resolution Process. Student witnesses and witnesses from outside NOBTS community are encouraged to cooperate with NOBTS investigations and to share what they know about a complaint.

Although in-person interviews for parties and all potential witnesses are ideal, circumstances (e.g., study abroad, summer break) may require individuals to be interviewed remotely. Skype, Zoom, Microsoft Teams, FaceTime, WebEx, or similar technologies may be used for interviews if the Investigator(s) determine that timeliness, efficiency, or other reasons dictate a need for remote interviewing. NOBTS will take appropriate steps to reasonably ensure the security/privacy of remote interviews.

Witnesses may also provide written statements in lieu of interviews or choose to respond to written questions, if deemed appropriate by the Investigator(s), though not preferred.

## **16. Interview Recording**

No unauthorized audio or video recording of any kind is permitted during investigation meetings. If Investigator(s) elect to audio and/or video record interviews, all involved parties should be made aware of and consent to<sup>25</sup> audio and/or video recording.

## **17. Evidentiary Considerations**

Neither the investigation nor the hearing will consider: (1) incidents not relevant or not directly related to the possible violation(s), unless they evidence a pattern; or (2) questions and evidence about the Complainant’s sexual predisposition; or (3) questions and evidence about the Complainant’s prior sexual behavior, unless such questions and evidence 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

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<sup>25</sup> Consent of the interviewer and interviewee is required in “dual-party recording” states.

evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

Within the boundaries stated above, the investigation and the hearing can consider character evidence generally, if offered, but that evidence is unlikely to be relevant unless it is fact evidence or relates to a pattern of conduct.

## **18. Referral for Hearing**

Provided that the complaint is not resolved through Informal Resolution, once the final investigation report is shared with the parties, the Title IX Coordinator will refer the matter for a hearing.

The hearing cannot be held less than ten (10) business days from the conclusion of the investigation—when the final investigation report is transmitted to the parties and the Decision-maker(s)—unless all parties and the Decision-maker(s) agree to an expedited timeline.

The Title IX Coordinator will select an appropriate Decision-maker or Decision-makers from the Pool and provide a copy of the investigation report and the file of directly related evidence. Allegations involving student-employees in the context of their employment will be directed to the appropriate Decision-maker(s) depending on the context and nature of the alleged misconduct.

## **19. Hearing Decision-maker Composition**

NOBTS will designate a single Decision-maker or a [three]-member panel from the Pool, at the discretion of the Title IX Coordinator. The single Decision-maker will also Chair the hearing. With a panel, one of the three members will be appointed as Chair by the Title IX Coordinator.

The Decision-maker(s) will not have had any previous involvement with the complaint. The Title IX Coordinator may elect to have an alternate from the Pool sit in throughout the hearing process in the event that a substitute is needed for any reason.

Those who have served as Investigators will be witnesses in the hearing and therefore may not serve as Decision-makers. Those who are serving as Advisors for any party may not serve as Decision-makers in that matter.

The Title IX Coordinator may not serve as a Decision-maker or Chair in the matter but may serve as an administrative facilitator of the hearing if their previous role(s) in the matter do not create a conflict of interest. Otherwise, a designee may fulfill the facilitator role. The hearing will convene at a time and venue determined by the Title IX Coordinator or designee.

## **20. Additional Evidentiary Considerations in the Hearing**



Previous disciplinary action of any kind involving the Respondent may not be used unless there is an allegation of a pattern of misconduct. Such information may also be considered in determining an appropriate sanction upon a determination of responsibility, assuming NOBTS uses a progressive discipline system. This information is only considered at the sanction stage of the process and is not shared until then.

The parties may each submit a written impact and/or mitigation statement prior to the hearing for the consideration of the Decision-maker(s) at the sanction stage of the process when a determination of responsibility is reached.

After post-hearing deliberation, the Decision-maker(s) render(s) a determination based on the preponderance of the evidence; whether it is more likely than not that the Respondent violated the Policy as alleged.

## **21. Hearing Notice**

No less than ten (10) business days prior to the hearing,<sup>26</sup> the Title IX Coordinator or the Chair will send notice of the hearing to the parties. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

The notice will contain:

- A description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable hearing procedures, and a statement of the potential sanctions/responsive actions that could result.
- The time, date, and location of the hearing.
- Description of any technology that will be used to facilitate the hearing.
- Information about the option for the live hearing to occur with the parties located in separate rooms using technology that enables the Decision-maker(s) and parties to see and hear a party or witness answering questions. Such a request must be raised with the Title IX Coordinator as soon as possible, preferably at least five (5) business days prior to the hearing.
- A list of all those who will attend the hearing, along with an invitation to object to any Decision-maker(s) based on demonstrated bias or conflict of interest. This must be raised with the Title IX Coordinator at least two (2) business days prior to the hearing.
- Information on how the hearing will be recorded and how the parties can access the recording after the hearing.
- A statement that if any party or witness does not appear at the scheduled hearing, the hearing may be held in their absence. For compelling reasons, the Chair may reschedule the hearing.
- Notification that the parties may have the assistance of an Advisor of their choosing at the hearing and will be required to have one present for any questions they may desire

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<sup>26</sup> Unless an expedited hearing is agreed to by all parties.

to ask. The party must notify the Title IX Coordinator if they wish to conduct cross-examination and do not have an Advisor, and NOBTS will appoint one. Each party must have an Advisor present if they intend to cross-examine others. There are no exceptions.

- A copy of all the materials provided to the Decision-maker(s) about the complaint unless they have already been provided.<sup>27</sup>
- An invitation to each party to submit to the Chair an impact and/or mitigation statement pre-hearing that the Decision-maker(s) will review during any sanction determination.
- An invitation to contact the Title IX Coordinator to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing, at least seven (7) business days prior to the hearing.
- Whether parties can/cannot bring mobile phones/devices into the hearing.

Hearings for possible violations that occur near or after the end of an academic term (assuming the Respondent is still subject to this Policy) and are unable to be resolved prior to the end of term will typically be held immediately after the end of the term or during the summer, as needed, to meet the resolution timeline followed by NOBTS and remain within the 60-90 business-day goal for resolution.

If the Respondent is a graduating student, a hold may be placed on graduation and/or official transcripts until the matter is fully resolved (including any appeal). Employees who do not have 12-month contracts are still expected to participate in Resolution Proceedings that occur during months between contracts.

## **22. Alternative Hearing Participation Options**

If a party or parties prefer not to attend or cannot attend the hearing in person, the party should request alternative arrangements from the Title IX Coordinator or the Chair as soon as possible, preferably at least five (5) business days prior to the hearing.

The Title IX Coordinator or the Chair can arrange to use technology to allow remote testimony without compromising the fairness of the hearing. Remote options may also be needed for witnesses who cannot appear in person. Any witness who cannot attend in person should let the Title IX Coordinator or the Chair know as soon as possible, preferably at least five (5) business days prior to the hearing so that appropriate arrangements can be made.

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<sup>27</sup> The final investigation report may be shared using electronic means that preclude downloading, forwarding, or otherwise sharing.

### **23. Pre-Hearing Preparation**

After any necessary consultation with the parties, the Chair will provide the names of persons who have been asked to participate in the hearing, all pertinent documentary evidence, and the final investigation report to the parties at least ten (10) business days prior to the hearing.

Any witness scheduled to participate in the hearing must have been first interviewed by the Investigator(s) or have proffered a written statement or answered written questions, unless all parties and the Chair assent to the witness's participation in the hearing. The same holds for any relevant evidence that is first offered at the hearing. If the parties and Chair do not assent to the admission of evidence newly offered at the hearing, the Chair may delay the hearing and/or instruct that the investigation needs to be re-opened to consider that evidence.<sup>28</sup>

The parties will be given a list of the names of the Decision-maker(s) at least five (5) business days in advance of the hearing. All objections to any Decision-maker must be raised in writing, detailing the rationale for the objection, and must be submitted to the Title IX Coordinator as soon as possible and no later than two (2) business days prior to the hearing. Decision-makers will only be removed if the Title IX Coordinator concludes that their actual or perceived bias or conflict of interest precludes an impartial hearing of the complaint.

The Title IX Coordinator will give the Decision-maker(s) a list of the names of all parties, witnesses, and Advisors at least five (5) business days in advance of the hearing. Any Decision-maker who cannot make an objective determination must recuse themselves from the proceedings when notified of the identity of the parties, witnesses, and Advisors in advance of the hearing. If a Decision-maker is unsure of whether a bias or conflict of interest exists, they must raise the concern to the Title IX Coordinator as soon as possible.

During the ten (10)-business-day period prior to the hearing, the parties have the opportunity for continued review and comment on the final investigation report and available evidence. That review and comment can be shared with the Chair at a pre-hearing meeting or at the hearing and will be exchanged between each party by the Chair.

### **24. Pre-Hearing Meetings**

The Chair may convene a pre-hearing meeting(s) with the parties and/or their Advisors and invite them to submit the questions or topics they (the parties and/or their Advisors) wish to ask or discuss at the hearing, so that the Chair can rule on their relevance ahead of time to avoid any improper evidentiary introduction in the hearing or to provide recommendations for more appropriate phrasing.

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<sup>28</sup> 34 C.F.R. § 668.46(k)(3)(B)(3) requires "timely and equal access to the accuser, the accused, and appropriate officials to any information that will be used during informal and formal disciplinary meetings and hearings."

However, this advance review opportunity does not preclude the Advisors from asking a question for the first time at the hearing or from asking for a reconsideration on a pre-hearing ruling by the Chair based on any new information or testimony offered at the hearing. The Chair must document and share with each party their rationale for any exclusion or inclusion at a pre-hearing meeting.

The Chair, **only** with full agreement of the parties, may decide in advance of the hearing that certain witnesses do not need to be present if their testimony can be adequately summarized by the Investigator(s) in the investigation report or during the hearing.

At each pre-hearing meeting with a party and/or their Advisor, the Chair will consider arguments that evidence identified in the final investigation report as relevant is, in fact, not relevant. Similarly, evidence identified as directly related but not relevant by the Investigator(s) may be argued to be relevant. The Chair may rule on these arguments pre-hearing and will exchange those rulings between the parties prior to the hearing to assist in preparation for the hearing. The Chair may consult with legal counsel and/or the Title IX Coordinator or ask either or both to attend pre-hearing meetings.

The pre-hearing meeting(s) may OR may not be recorded. The pre-hearing meetings may be conducted as separate meetings with each party/Advisor, with all parties/Advisors present at the same time, remotely, or as a written-only exchange. The Chair will work with the parties to establish the format.

## **25. Hearing Procedures**

At the hearing, the Decision-maker(s) have the authority to hear and make determinations on all allegations of discrimination, harassment, and/or retaliation and may also hear and make determinations on any additional alleged policy violations that occurred in concert with the discrimination, harassment, and/or retaliation, even though those collateral allegations may not specifically fall within the Equal Opportunity, Harassment, and Nondiscrimination Policy.

Participants at the hearing will include the Chair, any additional panelists, the hearing facilitator, the Investigator(s) who conducted the investigation, the parties (or three (3) organizational representatives when an organization is the Respondent), Advisors to the parties, any called witnesses, the Title IX Coordinator, and anyone providing authorized accommodations, interpretation, and/or assistive services.

The Chair will answer all questions of procedure.

Anyone appearing at the hearing to provide information will respond to questions on their own behalf.

The Chair will allow witnesses who have relevant information to appear at a portion of the hearing to respond to specific questions from the Decision-maker(s) and the parties, and the

witnesses will then be excused. The Investigator(s) will remain present for the duration of the hearing.

## **26. Joint Hearings**

In hearings involving more than one Respondent and/or involving more than one Complainant who has accused the same individual of substantially similar conduct, the default procedure will be to hear the allegations jointly.

However, the Title IX Coordinator may permit the investigation and/or hearings pertinent to each Respondent or complaint to be conducted separately if there is a compelling reason to do so. In joint hearings, separate determinations of responsibility will be made for each Respondent and/or for each complaint with respect to each alleged policy violation.

## **27. The Order of the Hearing – Introductions and Explanation of Procedure**

The Chair explains the procedures and introduces the participants. This may include a final opportunity for challenge or recusal of the Decision-maker(s) based on bias or conflict of interest. The Chair will rule on any such challenge unless the Chair is the individual who is the subject of the challenge, in which case the Title IX Coordinator will review the challenge and decide.

The Chair AND/OR hearing facilitator then conducts the hearing according to the hearing script. At the hearing, recording, witness logistics, party logistics, curation of documents, separation of the parties, and other administrative elements of the hearing process are managed by a non-voting hearing facilitator/case manager appointed by the Title IX Coordinator.<sup>29</sup>

The hearing facilitator may attend to: logistics of rooms for various parties/witnesses as they wait; flow of parties/witnesses in and out of the hearing space; ensuring recording and/or virtual conferencing technology is working as intended; copying and distributing materials to participants, as appropriate, etc.

## **28. Investigator Presentation of Final Investigation Report**

The Investigator(s) will present a summary of the final investigation report, including items that are contested and those that are not, and will be subject to questioning by the Decision-maker(s) and the parties (through their Advisors). The Investigator(s) will be present during the entire hearing process, but not during deliberations.

Neither the parties nor the Decision-maker(s) should ask the Investigator(s) their opinions on credibility, recommended findings, or determinations, and Advisors and parties will refrain from

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<sup>29</sup> If not conflicted out by previous involvement, the Title IX Coordinator may serve as the hearing facilitator/case manager.

discussion of or questions for Investigators about these assessments. If such information is introduced, the Chair will direct that it be disregarded.

## **29. Testimony and Questioning**

Once the Investigator(s) present(s) the report and respond(s) to questions, the parties and witnesses may provide relevant information in turn, beginning with the Complainant, and then in the order determined by the Chair. The hearing will facilitate questioning of parties and witnesses by the Decision-maker(s) and then by the parties through their Advisors.

All questions are subject to a relevance determination by the Chair. The Advisor, who will remain seated during questioning, will pose the proposed question orally, electronically, or in writing (orally is the default, but other means of submission may be permitted by the Chair upon request if agreed to by all parties and the Chair), the proceeding will pause to allow the Chair to consider the question (and state it if it has not already been stated aloud), and the Chair will determine whether the question will be permitted, disallowed, or rephrased.

The Chair may invite explanations or persuasive statements regarding relevance with the Advisors if the Chair so chooses. The Chair will then state their decision on the question for the record and advise the party/witness to whom the question was directed, accordingly. The Chair will explain any decision to exclude a question as not relevant, or to reframe it for relevance.

The Chair will limit or disallow questions on the basis that they are irrelevant, unduly repetitious (and thus irrelevant), or abusive. The Chair has final say on all questions and determinations of relevance. The Chair may consult with legal counsel on any questions of admissibility. The Chair may ask Advisors to frame why a question is or is not relevant from their perspective but will not entertain argument from the Advisors on relevance once the Chair has ruled on a question.

If the parties raise an issue of bias or conflict of interest of an Investigator or Decision-maker at the hearing, the Chair may elect to address those issues, consult with legal counsel, and/or refer them to the Title IX Coordinator, and/or preserve them for appeal. If bias is not in issue at the hearing, the Chair should not permit irrelevant questions that probe for bias.

## **30. Refusal to Submit to Questioning; Inferences**

Any party or witness may choose not to offer evidence and/or answer questions at the hearing, either because they do not attend the hearing, or because they attend but refuse to participate in some or all questioning. The Decision-maker(s) can only rely on whatever relevant evidence is available through the investigation and hearing in making the ultimate determination of responsibility. The Decision-maker(s) may not draw any inference solely from a party's or witness's absence from the hearing or refusal to submit to cross-examination or answer other questions.

An Advisor may not be called as a witness at a hearing to testify to what their advisee has told them during their role as an Advisor unless the party being advised consents to that information being shared. It is otherwise considered off-limits, and an Advisor who is an institutional employee is temporarily alleviated from mandated reporter responsibilities related to their interaction with their advisee during the Resolution Process.

### **31. Hearing Recordings**

Hearings (but not deliberations) are recorded by NOBTS for purposes of review in the event of an appeal. The parties may not record the proceedings and no other unauthorized recordings are permitted.

The Decision-maker(s), the parties, their Advisors, and appropriate administrators of NOBTS will be permitted to review the recording or review a transcript of the recording, upon request to the Title IX Coordinator. No person will be given or be allowed to make a copy of the recording without permission of the Title IX Coordinator.

### **32. Deliberation, Decision-making, and Standard of Proof**

The Decision-maker(s) will deliberate in closed session to determine whether the Respondent is responsible for the policy violation(s) in question. If a panel is used, a simple majority vote is required to determine the finding. The preponderance of the evidence standard of proof is used. The hearing facilitator may be invited to attend the deliberation by the Chair, but is there only to facilitate procedurally, not to address the substance of the allegations.

When there is a finding of responsibility on one or more of the allegations, the Decision-maker(s) may then consider the previously submitted party impact and/or mitigation statement(s) in determining appropriate sanction(s). The Chair will ensure that each of the parties has an opportunity to review any submitted impact and/or mitigation statement(s) once they are submitted.

The Decision-maker(s) will also review any pertinent conduct history provided by the appropriate administrators and will determine the appropriate sanction(s) in consultation with other appropriate administrators, as required.

The Chair will then prepare a written statement detailing all findings and final determinations, the rationale(s) explaining the decision(s), the evidence used in support of the determination(s), the evidence not relied upon in the determination(s), any credibility assessments, and any sanction(s) or recommendation(s) and rationales explaining the sanction(s) and will deliver the statement to the Title IX Coordinator.

This statement is typically three to five (3-5) pages in length and must be submitted to the Title IX Coordinator within two (2) business days of the end of deliberations unless the Title IX

Coordinator grants an extension. If an extension is granted, the Title IX Coordinator will notify the parties.

### **33. Notice of Outcome**

Using the deliberation statement, the Title IX Coordinator will work with the Chair to prepare a Notice of Outcome letter. The Title IX Coordinator will then share the letter, which includes the final determination, rationale, and any applicable sanction(s), with the parties and their Advisors within 5 business days of receiving the deliberation statement.

The Notice of Outcome will be shared with the parties simultaneously. Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official NOBTS records, or emailed to the parties' NOBTS-issued email or otherwise approved account. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

The Notice of Outcome will articulate the specific alleged policy violation(s), including the relevant policy section(s), and will contain a description of the procedural steps taken by NOBTS from the receipt of the misconduct report to the determination, including any and all notifications to the parties, interviews with parties and witnesses, site visits, methods used to obtain evidence, and hearings held.

The Notice of Outcome will specify the finding for each alleged policy violation; the findings of fact that support the determination; conclusions regarding the application of the relevant policy to the facts at issue; a statement of, and rationale for, the result of each allegation to the extent NOBTS is permitted to share such information under state or federal law; any sanction(s) issued which NOBTS is permitted to share according to state or federal law; and whether remedies will be provided to the Complainant to ensure access to NOBTS's educational or employment program or activity.

The Notice of Outcome will also include information on when the results are considered final by NOBTS, will note any changes to the outcome and/or sanction(s) that occur prior to finalization, and the relevant procedures and bases for appeal.

### **34. Rights of the Parties (See [Appendix C](#))**



### 35. Sanctions

Factors considered when determining a sanction/responsive action may include, but are not limited to:

- The nature, severity of, and circumstances surrounding the violation(s)
- The Respondent's disciplinary history
- The need for sanctions/responsive actions to bring an end to the discrimination, harassment, and/or retaliation
- The need for sanctions/responsive actions to prevent the future recurrence of discrimination, harassment, and/or retaliation
- The need to remedy the effects of the discrimination, harassment, and/or retaliation on the Complainant and the community
- The impact on the parties
- Any other information deemed relevant by the Decision-maker(s)

The sanctions will be implemented as soon as is feasible, either upon the outcome of any appeal or the expiration of the window to appeal without an appeal being requested.

The sanctions described in this Policy are not exclusive of, and may be in addition to, other actions taken, or sanctions imposed, by external authorities.

If it is later determined that a party or witness intentionally provided false or misleading information, that action could be grounds for re-opening a grievance process at any time, and/or referring that information to another process for resolution.

#### **A. Student Sanctions**

The following are the common sanctions that may be imposed upon students singly or in combination:<sup>30</sup>

- *Warning:* A formal statement that the conduct was unacceptable and a warning that further violation of any NOBTS policy, procedure, or directive will result in more severe sanctions/responsive actions.
- *Required Counseling:* A mandate to meet with and engage in either NOBTS-sponsored or external counseling to better comprehend the misconduct and its effects.
- *Probation:* A written reprimand for violation of institutional policy, providing for more severe disciplinary sanctions in the event that the student or organization is found in violation of any institutional policy, procedure, or directive within a specified period of time. Terms of the probation will be articulated and may

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<sup>30</sup> NOBTS policies on transcript notation will apply to these proceedings.

include denial of specified social privileges, exclusion from co-curricular activities, exclusion from designated areas of campus, no-contact orders, and/or other measures deemed appropriate.

- *Suspension*: Termination of student status for a definite period of time not to exceed two years and/or until specific criteria are met. Students who return from suspension are automatically placed on probation through the remainder of their tenure as a student at NOBTS.
- *Expulsion*: Permanent termination of student status and revocation of rights to be on campus for any reason or to attend NOBTS-sponsored events. This sanction will be noted permanently as a Conduct Expulsion on the student's official transcript, [subject to any applicable expungement policies.]
- *Withholding Diploma*: NOBTS may withhold a student's diploma for a specified period of time and/or deny a student participation in commencement activities as a sanction if the student is found responsible for violating policy.
- *Revocation of Degree*: NOBTS reserves the right to revoke a degree previously awarded from NOBTS for fraud, misrepresentation, and/or other violation of NOBTS policies, procedures, or directives in obtaining the degree, or for other serious violations committed by a student prior to graduation.
- *Other Actions*: In addition to or in place of the above sanctions, NOBTS may assign any other sanctions as deemed appropriate.

## **B. Student Organization Sanctions**

The following are the common sanctions that may be imposed upon student organizations singly or in combination:<sup>31</sup>

- *Warning*: A formal statement that the conduct was unacceptable and a warning that further violation of any NOBTS policy, procedure, or directive will result in more severe sanctions/responsive actions.
- *Probation*: A written reprimand for violation of institutional policy, providing for more severe disciplinary sanctions in the event that the organization is found in violation of any institutional policy, procedure, or directive within a specified period of time. Terms of the probation will be articulated and may include denial of specified social and event privileges, denial of NOBTS funds, ineligibility for honors and awards, restrictions on new member recruitment, no-contact orders, and/or other measures deemed appropriate.
- *Suspension*: Termination of student organization recognition for a definite period of time not to exceed two years and/or until specific criteria are met. During the suspension period, a student organization may not conduct any formal or informal business or participate in NOBTS-related activities, whether they occur on or off campus. Re-recognition is possible but not guaranteed and will only be

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<sup>31</sup> Subject to NOBTS's Organizational Code of Conduct.

considered after the end of the suspension period and based on meeting all re-recognition criteria and obtaining clearance from NOBTS.

- *Expulsion*: Permanent termination of student organization recognition and revocation of the privilege to congregate and conduct business on campus as an organization for any reason.
- *Loss of Privileges*: Restricted from accessing specific NOBTS privileges for a specified period of time.
- *Other Actions*: In addition to or in place of the above sanctions, NOBTS may assign any other sanctions as deemed appropriate.

### **C. Employee Sanctions/Responsive/Corrective Actions**

Responsive actions for an employee who has engaged in harassment, discrimination, and/or retaliation include:

- *Verbal or Written Warning*
- *Performance Improvement Plan/Management Process*
- *Enhanced Supervision, Observation, or Review*
- *Required Counseling*
- *Required Training or Education*
- *Probation*
- *Denial of Pay Increase/Pay Grade*
- *Loss of Oversight or Supervisory Responsibility*
- *Demotion*
- *Transfer*
- *Reassignment*
- *Delay of (or referral for delay of) Tenure Track Progress*
- *Assignment to New Supervisor*
- *Restriction of Stipends, Research, and/or Professional Development Resources*
- *Suspension/Administrative Leave with Pay*
- *Suspension/Administrative Leave without Pay*
- *Termination*
- *Other Actions*: In addition to or in place of the above sanctions/responsive actions, NOBTS may assign any other responsive actions as deemed appropriate.

## **36. Withdrawal or Resignation Before Complaint Resolution**

### **A. Students**

Should a Respondent decide not to participate in the Resolution Process, the process proceeds absent their participation to a reasonable resolution. Should a student Respondent permanently withdraw from NOBTS, the Resolution Process typically ends with a dismissal, as NOBTS has lost primary disciplinary jurisdiction over the withdrawn

student. However, NOBTS may continue the Resolution Process when, at the discretion of the Title IX Coordinator, doing so may be necessary to address safety and/or remedy any ongoing effects of the alleged harassment, discrimination, and/or retaliation.

Regardless of whether the complaint is dismissed or pursued to completion of the Resolution Process, NOBTS will continue to address and remedy any systemic issues or concerns that may have contributed to the alleged violation(s), and any ongoing effects of the alleged harassment, discrimination, and/or retaliation. The student who withdraws or leaves while the process is pending may not return to NOBTS in any capacity. Admissions and Human Resources will be notified, accordingly. Such exclusion applies to all NOBTS locations.

If the student Respondent only withdraws or takes a leave for a specified period of time (e.g., one semester or term), the Resolution Process may continue remotely and, if found in violation, that student is not permitted to return to NOBTS unless and until all sanctions, if any, have been satisfied.

## **B. Employees**

Should an employee Respondent resign with unresolved allegations pending, the Resolution Process typically ends with dismissal, as NOBTS has lost primary disciplinary jurisdiction over the resigned employee. However, NOBTS may continue the Resolution Process when, at the discretion of the Title IX Coordinator, doing so may be necessary to address safety and/or remedy any ongoing effects of the alleged harassment, discrimination, and/or retaliation.

Regardless of whether the matter is dismissed or pursued to completion of the Resolution Process, NOBTS will continue to address and remedy any systemic issues or concerns that contributed to the alleged violation(s), and any ongoing effects of the alleged harassment, discrimination, and/or retaliation.

The employee who resigns with unresolved allegations pending is not eligible for academic admission or rehire with NOBTS, and the records retained by the Title IX Coordinator will reflect that status.

All NOBTS responses to future inquiries regarding employment references for that individual will include that the former employee resigned during a pending disciplinary matter.

## **37. Appeals**

Any party may submit a written request for appeal ("Request for Appeal") to the Title IX Coordinator within 5 business days of the delivery of the Notice of Outcome.

A three-member appeal panel chosen from the Pool will be designated by the Title IX Coordinator OR a single Appeal Decision-maker will Chair the appeal. No Appeal Decision-maker(s) will have been previously involved in the Resolution Process for the complaint, including in any dismissal appeal that may have been heard earlier in the process.

The Request for Appeal will be forwarded to the Appeal Chair or designee for consideration to determine if the request meets the grounds for appeal (a Review for Standing). This review is not a review of the merits of the appeal, but solely a determination as to whether the request meets the grounds and is timely filed.

#### **A. Grounds for Appeal**

Appeals are limited to the following grounds:

- 1) A procedural irregularity affected the outcome of the matter
- 2) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter
- 3) The Title IX Coordinator, Investigator(s), or Decision-maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent that affected the outcome of the matter

If any of the grounds in the Request for Appeal do not meet the grounds in this Policy, that request will be denied by the Appeal Chair, and the parties and their Advisors will be notified in writing of the denial and the rationale.

If any of the grounds in the Request for Appeal meet the grounds in this Policy, then the Appeal Chair will notify all parties and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigator(s) and/or the original Decision-maker(s).

All other parties and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigator(s) and/or the original Decision-maker(s) will be mailed, emailed, and/or provided a hard copy of the Request for Appeal with the approved grounds and then be given 5 business days to submit a response to the portion of the appeal that was approved and involves them. All responses, if any, will be forwarded by the Appeal Chair to all parties for review and comment.

The non-appealing party (if any) may also choose to appeal at this time. If so, that will be reviewed to determine if it meets the grounds in this Policy by the Appeal Chair and either denied or approved. If approved, it will be forwarded to the party who initially requested an appeal, the Title IX Coordinator, and the Investigator(s) and/or original Decision-maker(s), as necessary, who will submit their responses, if any, within 5 business days. Any such responses will be circulated for review and comment by all parties. If not approved, the parties will be notified accordingly, in writing.

Neither party may submit any new requests for appeal after this time period. The Appeal Chair will collect any additional information needed and all documentation regarding the approved grounds for appeal, and the subsequent responses will be shared with the Appeal Panel/Chair and the Chair/Panel will render a decision within no more than 5 business days, barring exigent circumstances. All decisions are by majority vote and apply the preponderance of the evidence standard.

A Notice of Appeal Outcome will be sent to all parties simultaneously. The Notice of Appeal Outcome will specify the finding on each ground for appeal, any specific instructions for remand or reconsideration, any sanction(s) that may result which NOBTS is permitted to share according to state or federal law, and the rationale supporting the essential findings to the extent NOBTS is permitted to share under state or federal law.

Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official institutional records, or emailed to the parties' NOBTS-issued email or otherwise approved account. Once mailed, emailed and/or received in-person, notice will be presumptively delivered.

## **B. Sanctions Status During the Appeal**

Any sanctions imposed as a result of the hearing are stayed (i.e.: not implemented) during the appeal process. Supportive measures may be reinstated, subject to the same supportive measure procedures above.

If any of the sanctions are to be implemented immediately post-hearing, but pre-appeal, then the emergency removal procedures (detailed above) for a show cause meeting on the justification for doing so must be permitted within 48 hours of implementation.

If the original sanctions include separation in any form, NOBTS may place a hold on official transcripts, diplomas, graduations, course registration, etc. pending the outcome of an appeal. The Respondent may request a stay of these holds from the Title IX Coordinator within two (2) business days of the notice of the sanctions. The request will be evaluated by the Title IX Coordinator or designee, whose determination is final.

## **C. Appeal Considerations**

- Appeals are not intended to provide for a full re-hearing (de novo) of the allegation(s). In most cases, appeals are confined to a review of the written documentation or record of the original hearing and pertinent documentation regarding the specific grounds for appeal.

- Decisions on appeal are to be deferential to the original determination, making changes to the finding only when there is clear error and to the sanction(s)/responsive action(s) only if there is a compelling justification to do so.
- An appeal is not an opportunity for Appeal Decision-makers to substitute their judgment for that of the original Decision-maker(s) merely because they disagree with the finding and/or sanction(s).
- The Appeal Chair/Decision-maker(s) may consult with the Title IX Coordinator and/or legal counsel on questions of procedure or rationale, for clarification, if needed. Documentation of all such consultation will be maintained.
- Appeals granted should normally be remanded (or partially remanded) to the original Investigator(s) and/or Decision-maker(s) for reconsideration.
- Once an appeal is decided, the outcome is final: further appeals are not permitted, even if a decision or sanction is changed on remand (except in the case of a new hearing). When appeals result in no change to the finding or sanction, that decision is final. When an appeal results in a new finding or sanction, that finding or sanction can be appealed one final time on the grounds listed above and in accordance with these procedures.
- In rare cases where an error cannot be cured by the original Investigator(s) and/or Decision-maker(s) or the Title IX Coordinator (as in cases of bias), the Appeal Chair/Decision-maker(s) may order a new investigation and/or a new hearing with new Pool members serving in the Investigator and Decision-maker roles.
- The results of a remand to a Decision-maker(s) cannot be appealed. The results of a new hearing can be appealed, once, on any of the three available appeal grounds.
- In cases that result in reinstatement to NOBTS or resumption of privileges, all reasonable attempts will be made to restore the Respondent to their prior status, recognizing that some opportunities lost may be irreparable in the short term.

### **38. Long-Term Remedies/Other Actions**

Following the conclusion of the Resolution Process, and in addition to any sanctions implemented, the Title IX Coordinator may implement additional long-term remedies or actions with respect to the parties and/or the institutional community that are intended to stop the harassment, discrimination, and/or retaliation, remedy the effects, and prevent reoccurrence. These remedies/actions may include, but are not limited to:

- Referral to counseling and health services
- Referral to the Employee Assistance Program
- Education to the individual and/or the community
- Permanent alteration of housing assignments

- Permanent alteration of work arrangements for employees
- Provision of campus safety escorts
- Climate surveys
- Policy modification and/or training
- Provision of transportation assistance
- Implementation of long-term contact limitations between the parties
- Implementation of adjustments to academic deadlines, course schedules, etc.

At the discretion of the Title IX Coordinator, certain long-term support or measures may also be provided to the parties even if no policy violation is found.

When no policy violation is found, the Title IX Coordinator will address any remedies NOBTS owes the Respondent to ensure no effective denial of educational access.

NOBTS will maintain the confidentiality of any long-term remedies/actions/measures, provided confidentiality does not impair NOBTS's ability to provide these services.

### **39. Failure to Comply with Sanctions and/or Responsive Actions**

All Respondents are expected to comply with the assigned sanctions, responsive actions, and/or corrective actions within the timeframe specified by the final Decision-maker(s) (including the Appeal Chair/Decision-maker(s)).

Failure to abide by the sanction(s)/action(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanction(s)/action(s), including suspension, expulsion, and/or termination from NOBTS. Supervisors are expected to enforce completion of sanctions/responsive actions for their employees.

A suspension will only be lifted when compliance is achieved to the satisfaction of the Title IX Coordinator.



#### **40. Recordkeeping**

NOBTS will maintain for a period of at least seven years following the conclusion of the Resolution Process, records of:

- 1) Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required under federal regulation
- 2) Any disciplinary sanctions imposed on the Respondent
- 3) Any remedies provided to the Complainant designed to restore or preserve equal access to NOBTS's education program or activity
- 4) Any appeal and the result therefrom
- 5) Any Informal Resolution and the result therefrom
- 6) All materials used to train Title IX Coordinators, Investigators, Decision-makers, and any person who facilitates an Informal Resolution process. NOBTS will make these training materials publicly available on NOBTS's website.
- 7) Any actions, including any supportive measures, taken in response to a report or Formal Complaint of sexual harassment, including:
  - a. The basis for all conclusions that the response was not deliberately indifferent
  - b. Any measures designed to restore or preserve equal access to NOBTS's education program or activity
  - c. If no supportive measures were provided to the Complainant, document the reasons why such a response was not clearly unreasonable in light of the known circumstances

NOBTS will also maintain any and all records in accordance with state and federal laws.

#### **41. Disability Accommodations in the Resolution Process**

NOBTS is committed to providing reasonable accommodations and support to qualified students, employees, or others with disabilities to ensure equal access to NOBTS's Resolution Process.

Anyone needing such accommodations or support should contact the Assistant Dean of Students for Student Affairs or appropriate HR individual if employee, who will review the request and, in consultation with the person requesting the accommodation and the Title IX Coordinator, determine which accommodations are appropriate and necessary for full participation in the process.

#### **42. Revision of this Policy and Procedures**

This Policy and procedures supersede any previous policies addressing harassment, sexual misconduct, discrimination, and/or retaliation for incidents occurring on or after August 14, 2020, under Title IX and will be reviewed and updated annually by the Title IX Coordinator. NOBTS reserves the right to make changes to this document as necessary, and once those changes are posted online, they are in effect.

During the Resolution Process, the Title IX Coordinator may make minor modifications to procedures that do not materially jeopardize the fairness owed to any party, such as to accommodate summer schedules. The Title IX Coordinator may also vary procedures materially with notice (on the institutional website, with the appropriate effective date identified) upon determining that changes to law or regulation require Policy or procedural alterations not reflected in this Policy and procedures.

If government laws or regulations change—or court decisions alter—the requirements in a way that impacts this document, this document will be construed to comply with the most recent government laws or regulations or court holdings.

This document does not create legally enforceable protections beyond the protections of the background state and federal laws which frame such policies and codes, generally.

This Policy and procedures are effective August 2023.

## **APPENDIX A: PROHIBITED CONDUCT EXAMPLES (TITLE IX)**

### **Examples of possible Title IX Sexual Harassment:**

- A professor offers for a student to have sex or go on a date with them in exchange for a good grade. This constitutes sexual harassment regardless of whether the student agrees to the request and irrespective of whether a good grade is promised or a bad grade is threatened.
- A student repeatedly sends graphic, sexually oriented jokes and pictures to hundreds of other students via social media. Many don't find it funny and ask them to stop, but they do not. Because of these jokes, one student avoids the sender on campus and in the residence hall in which they both live, eventually asking to move to a different building and dropping a class they had together.
- A professor engages students in class in discussions about the students' past sexual experiences, yet the conversations are not in any way germane to the subject matter of the class. The professor inquires about explicit details and demands that students answer them, though the students are clearly uncomfortable and hesitant.
- An ex-partner widely spreads false stories about their sex life with their former partner to the clear discomfort and frustration of the former partner, turning the former partner into a social pariah on campus.

### **Examples of Stalking:**

- Students A and B were "friends with benefits." Student A wanted a more serious relationship, which caused student B to end the relationship. Student A could not let go and relentlessly pursued Student B. Student B obtained a campus no-contact order. Subsequently, Student B discovered their social media accounts were being accessed, and things were being posted and messaged as if they were from them, but they were not. Whoever accessed their account posted a picture of a penis, making it look as if Student B had sent out a picture of themselves, though it was not their penis. This caused them considerable embarrassment and social anxiety. They changed their passwords, only to have it happen again. Seeking help from the Title IX Coordinator, Student B met with the IT department, which discovered an app on their phone and a keystroke recorder on their laptop, both of which were being used to transmit their data to a third party.
- A graduate student working as an on-campus tutor received flowers and gifts delivered to their office. After learning the gifts were from a student they recently tutored, the

graduate student thanked the student and stated that it was not necessary and they would appreciate it if the gift deliveries stopped. The student then started leaving notes of love and gratitude on the tutor's car, both on-campus and at home. Asked again to stop, the student stated by email, "You can ask me to stop, but I'm not giving up. We are meant to be together, and I'll do anything to make you have the feelings for me that I have for you." When the tutor did not respond, the student emailed again, "You cannot escape me. I will track you to the ends of the earth. If I can't have you, no one will."

#### Examples of Sexual Assault:

- Amanda and Bill meet at a party. They spend the evening dancing and getting to know each other. Bill convinces Amanda to come up to his room. From 11:00 p.m. until 3:00 a.m., Bill uses every line he can think of to convince Amanda to have sex with him, but she adamantly refuses. Despite her clear communications that she is not interested in doing anything sexual with him, Bill keeps at her, questions her religious convictions, and accuses her of being "a prude." He brings up several rumors that he has heard about how she performed oral sex on a number of other guys. Finally, it seems to Bill that her resolve is weakening, and he convinces her to "jerk him off" (hand to genital contact). Amanda would have never done it but for Bill's incessant coercion.
- Jiang is a junior. Beth is a sophomore. Jiang comes to Beth's residence hall room with some mutual friends to watch a movie. Jiang and Beth, who have never met before, are attracted to each other. After the movie, everyone leaves, and Jiang and Beth are alone. They hit it off, soon become more intimate, and start to make out. Jiang verbally expresses his desire to have sex with Beth. Beth, who was abused by a babysitter at the age of five and avoids sexual relations as a result, is shocked at how quickly things are progressing. As Jiang takes her by the wrist over to the bed, lays her down, undresses her, and begins to have intercourse with Beth. Beth has a severe flashback to her childhood trauma. She wants to tell Jiang to stop but cannot. Beth is stiff and unresponsive during the intercourse.
- Kevin and Jane are at a party. Kevin is not sure how much Jane has been drinking, but he is pretty sure it's a lot. After the party, he walks Jane to his apartment, and Jane comes on to Kevin, initiating sexual activity. Kevin asks Jane if she is really up to this, and Jane says yes. They remove each other's clothes, and they end up in Jane's bed. Suddenly, Jane runs for the bathroom. When she returns, her face is pale, and Kevin thinks she may have thrown up. Jane gets back into bed, and they begin to have sexual intercourse. Kevin is having a good time, though he can't help but notice that Jane seems pretty groggy and passive, and he thinks Jane may have even passed out briefly during sex, but she came to again. When Kevin runs into Jane the next day, he thanks

her for the great night. Jane remembers nothing and decides to make a report to the Dean.

Examples of Retaliation:

- A student-athlete alleges sexual harassment by a coach; the coach subsequently cuts the student-athlete's playing time without a legitimate justification.
- A faculty member alleges gender inequity in pay within her department; the Department Chair then revokes approval for the faculty member to attend a national conference, citing the faculty member's tendency to "ruffle feathers."
- A student from Organization A participates in a sexual harassment investigation as a witness whose testimony is damaging to the Respondent, who is also a member of Organization A; the student is subsequently removed as a member of Organization A because of their participation in the investigation.

## **APPENDIX B: AN ATIXA FRAMEWORK FOR INFORMAL RESOLUTION (IR)**

ATIXA has framed a process for IR that includes three options:

- 1) A response based on supportive measures
- 2) A response based on a Respondent accepting responsibility
- 3) A response based on alternative resolution, which could include various approaches and/or facilitation of dialogue

Alternative resolution approaches such as mediation, restorative practices, and transformative justice are likely to be used more and more often by colleges and universities. ATIXA does not endorse these approaches as better or worse than other formal or informal approaches.

ATIXA believes that if they are to be used in and are effective for sex offenses, they need to be carefully and thoughtfully designed and executed and be facilitated by well-trained personnel who take the necessary time to prepare and lay a foundation for success. Although no approach is a panacea, the framework below can help to lay that foundation, regardless of which approach(es) are used.

Here are the principles to be considered in supporting various approaches to Informal Resolution:

- IR can be applied in any sex/gender-based interpersonal conflict but may not be appropriate or advisable in cases involving violent incidents (sexual violence, stalking, domestic and dating violence, severe sexual harassment, sexual exploitation, etc.)
- Situations involving dangerous patterns or significant ongoing threat to the community should not be resolved by IR.
- The determination of whether to permit an IR-based resolution is entirely at the discretion of the Title IX Coordinator (TIXC) and in line with the requirements for IR laid out in the Title IX regulations.
- Any party can end IR early-, mid-, or late-process for any reason or no reason.
- IR can be attempted before and in lieu of formal resolution as a diversionary resolution (although a Formal Complaint must be filed if you are within 34 C.F.R. § 106.30, per OCR).
- Alternative approaches can inform formal resolution, as in a formal resolution model infused with restorative practices.
- IR-based processes could be deployed after formal resolution, as an adjunct healing/catharsis opportunity (that could potentially mitigate sanctions or be a form of sanction).
- Alternative Resolution approaches to IR must be facilitated by NOBTS or a third party. There may be value in creating clearly agreed-upon ground rules, which the parties must sign in advance and agree to abide by, otherwise the Informal Resolution process may be deemed to have failed.

- Technology-facilitated IR can be made available, should the parties not be able or willing to meet in person.
- If IR fails, a formal resolution can take place thereafter. Evidence elicited within the “safe space” of the IR facilitation could be later admissible in the formal resolution unless all parties determine it should not be. This will be clearly spelled out as a term of the decision to engage in the IR process.
- With cases involving violence, the preferred alternative approach typically involves a minimal number of essential parties and is not a restorative circle approach with many constituents, in order to ensure confidentiality.
- Some approaches require a reasonable gesture toward accountability (this could be more than an acknowledgement of harm) and some acceptance, or at least recognition, by the Respondent that catharsis is of value and likely the primary goal of the Complainant. A full admission by the Respondent is not a prerequisite. This willingness needs to be vetted carefully in advance by the TIXC before determining that an incident is amenable/appropriate for resolution by IR.
- IR can result in an accord or agreement between the parties (Complainant, Respondent, NOBTS), which is summarized in writing by and enforced by NOBTS. This can be a primary goal of the process.
- IR can result in the voluntary imposition of safety measures, remedies, and/or agreed-upon resolutions by the parties that are enforceable by NOBTS. These can be part of the agreement.
- As a secondary goal, IR can result in the voluntary acceptance of “sanctions,” meaning that a Respondent could agree to withdraw, self-suspend (by taking a leave of absence), or undertake other restrictions/transfers/online course options that would help to ensure the safety/educational access of the Complainant, in lieu of formal sanctions that would create a formal record for the Respondent. These are enforceable by NOBTS as part of the agreement, as may be terms of mutual release, non-disparagement, and/or non-disclosure.
- Although a non-disclosure agreement (NDA) could result from IR, it would have to be mutually agreed-upon by the parties in an environment of non-coercion verified by the TIXC.
- Institutions must develop clear rules for managing/facilitating the conference/meeting/dialogue of alternative resolution approaches to ensure they are civil, age-appropriate, culturally competent, reflective of power imbalances, and maximize the potential for the Resolution Process to result in catharsis, restoration, remedy, etc., for the Complainant(s).

## **APPENDIX C: STATEMENT OF RIGHTS OF THE PARTIES**

- The right to an equitable investigation and resolution of all credible allegations of prohibited harassment, discrimination, and/or retaliation made in good faith to NOBTS officials.
- The right to timely written notice of all alleged violations, including the identity of the parties involved (if known), the precise misconduct being alleged, the date and location of the alleged misconduct (if known), the implicated policies and procedures, and possible sanctions.
- The right to timely written notice of any material adjustments to the allegations (e.g., additional incidents or allegations, additional Complainants, unsubstantiated allegations) and any attendant adjustments needed to clarify potentially implicated policy violations.
- The right to be informed in advance of any public release of information by NOBTS regarding the allegation(s) or underlying incident(s), whenever possible.
- The right not to have any personally identifiable information released by NOBTS to the public without consent provided, except to the extent permitted by law.
- The right to be treated with respect by NOBTS officials.
- The right to have NOBTS policy and these procedures followed without material deviation.
- The right not to be pressured to mediate or otherwise informally resolve any reported misconduct involving violence, including sexual violence.
- The right not to be discouraged by NOBTS officials from reporting sexual harassment, discrimination, and/or retaliation to both on-campus and off-campus authorities.
- The right to be informed by NOBTS officials of options to notify proper law enforcement authorities, including on-campus and local police, and the option(s) to be assisted by NOBTS in notifying such authorities, if the party so chooses. This also includes the right not to be pressured to report.



- The right to have allegations of violations of this Policy responded to promptly and with sensitivity by NOBTS law enforcement and/or other NOBTS officials.
- The right to be informed of available supportive measures, such as counseling; advocacy; health care; legal, student financial aid, visa, and immigration assistance; and/or other services, both on campus and in the community.
- The right to a NOBTS-implemented no-contact order or a no-trespass order against a non-affiliated third party when a person has engaged in or threatens to engage in stalking, threatening, harassing, or other improper conduct.
- The right to be informed of available assistance in changing academic, living, and/or working situations after an alleged incident of discrimination, harassment, and/or retaliation, if such changes are reasonably available. No formal report, or investigation, either institutional or criminal, needs to occur before this option is available. Such actions may include, but are not limited to:
  - Relocating an on-campus student's housing to a different on-campus location
  - Assistance from NOBTS staff in completing the relocation
  - Changing an employee's work environment (e.g., reporting structure, office/workspace relocation)
  - Transportation assistance
  - Visa/immigration assistance
  - Arranging to dissolve a housing contract and provide a pro-rated refund
  - Exam, paper, and/or assignment rescheduling or adjustment
  - Receiving an incomplete in, or a withdrawal from, a class (may be retroactive)
  - Transferring class sections
  - Temporary withdrawal/leave of absence (may be retroactive)
  - Campus safety escorts
  - Alternative course completion options
- The right to have NOBTS maintain such actions for as long as necessary and for supportive measures to remain confidential, provided confidentiality does not impair NOBTS's ability to provide the supportive measures.
- The right to receive sufficiently advanced, written notice of any NOBTS meeting or interview involving another party, when possible.
- The right to identify and have the Investigator(s), Advisors, and/or Decision-maker(s) question relevant available witnesses, including expert witnesses.

- The right to provide the Investigator(s)/Decision-maker(s) with a list of questions that, if deemed relevant by the Investigator(s)/Decision-maker(s), may be asked of any party or witness.
- The right to have inadmissible sexual predisposition/prior sexual history or irrelevant character evidence excluded by the Decision-maker(s).
- The right to know the relevant and directly related evidence obtained and to respond to that evidence.
- The right to a fair opportunity to provide the Investigator(s) with their account of the alleged misconduct and have that account be on the record.
- The right to receive a copy of all relevant and directly related evidence obtained during the investigation, subject to privacy limitations imposed by state and federal law, and a ten (10)-business-day period to review and comment on the evidence.
- The right to receive a copy of the final investigation report, including all factual, policy, and/or credibility analyses performed, and to have at least ten (10) business days to review and comment on the report prior to the hearing.
- The right to be informed of the names of all witnesses whose information will be used to make a finding, in advance of that finding, when relevant.
- The right to regular updates on the status of the investigation and/or resolution.
- The right to have reports of alleged Policy violations addressed by Investigators, Title IX Coordinators, and Decision-maker(s) who have received relevant annual training.
- The right to a Hearing Panel that is not single sex in its composition, if a panel is used.
- The right to preservation of confidentiality/privacy, to the extent possible and permitted by law.
- The right to meetings, interviews, and/or hearings that are closed to the public.
- The right to petition that any NOBTS representative in the process be recused on the basis of disqualifying bias and/or conflict of interest.

- The right to have an Advisor of their choice to accompany and assist the party in all meetings and/or interviews associated with the Resolution Process.
- The right to the use of the appropriate standard of evidence, preponderance of the evidence, to make a Finding and Final Determination after an objective evaluation of all relevant evidence.
- The right to be present, including presence via remote technology, during all testimony given and evidence presented during any hearing.
- The right to have an impact and/or mitigation statement considered by the Decision-maker(s) following a determination of responsibility for any allegation, but prior to sanctioning.
- The right to be promptly informed of the finding(s) and sanction(s) (if any) of the Resolution Process and a detailed rationale of the decision (including an explanation of how credibility was assessed) in a written Notice of Outcome letter delivered simultaneously (without undue delay) to the parties.
- The right to be informed in writing of when a decision by NOBTS is considered final and any changes to the Final Determination or sanction(s) that occur post Notification of Outcome.
- The right to be informed of the opportunity to appeal the finding(s) and sanction(s) of the Resolution Process, and the procedures for doing so in accordance with the standards for appeal established by NOBTS.
- The right to a fundamentally fair resolution as defined in these procedures.

## **APPENDIX D: VIOLENCE RISK ASSESSMENT (VRA)**

Threat assessment is the process of assessing the actionability of violence by an individual against another person or group following the issuance of a direct or conditional threat. A ***Violence Risk Assessment (VRA)*** is a broader term used to assess any potential violence or danger, regardless of the presence of a vague, conditional, or direct threat.

The implementation of VRAs require specific training and are typically conducted by psychologists, clinical counselors, social workers, case managers, law enforcement officers, student conduct officers, and/or other Behavioral Intervention Team (BIT) (sometimes also known as CARE teams) members.

A VRA occurs in collaboration with the BIT, CARE, and/or threat assessment team and must be understood as an ongoing process, rather than a singular evaluation or meeting. A VRA is not an evaluation for an involuntary behavioral health hospitalization, nor is it a psychological or mental health assessment.

A VRA assesses the risk of actionable violence, often with a focus on targeted/predatory escalations, and is supported by research from the fields of law enforcement, criminology, human resources, and psychology.

When conducting a VRA, the assessor(s) use an evidence-based process consisting of:

- 1) An appraisal of ***risk factors*** that escalate the potential for violence
- 2) A determination of ***stabilizing influences*** that reduce the risk of violence
- 3) A contextual ***analysis of violence risk*** by considering environmental circumstances, hopelessness, and suicidality; catalyst events; nature and actionability of threat; fixation and focus on target; grievance collection; and action and time imperative for violence
- 4) The application of ***intervention and management*** approaches to reduce the risk of violence

To assess an individual's level of violence risk, the Title IX Coordinator will initiate the violence risk assessment process through the BIT. The BIT will assign a trained individual(s) to perform the assessment, according to the specific nature of the Title IX case.

The assessor(s) will follow the process for conducting a violence risk assessment as outlined in the BIT manual and will rely on a consistent, research-based, reliable system that allows for the evaluation of the risk levels.

Some examples of formalized approaches to the VRA process include: The NABITA Risk Rubric,<sup>32</sup> The Structured Interview for Violence Risk Assessment (SIVRA-35),<sup>33</sup> Violence Risk Assessment of the Written Word (VRAWW),<sup>34</sup> Workplace Assessment of Violence Risk (WAVR-21),<sup>35</sup> Historical Clinical Risk Management (HCR-20),<sup>36</sup> and MOSAIC.<sup>37</sup>

The VRA is conducted independently from the Title IX process, informed by it, but free from outcome pressure. The individual(s) conducting the assessment will be trained to mitigate any bias and provide the analysis and findings in a fair and equitable manner.

The BIT conducts a VRA process and makes a recommendation to the Title IX Coordinator as to whether the VRA indicates there is a substantial, compelling, and/or immediate risk to the health and/or safety of an individual or the community.

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<sup>32</sup> <https://www.nabita.org/training/nabita-risk-rubric/>

<sup>33</sup> <https://www.nabita.org/training/sivra-35/>

<sup>34</sup> <https://www.nabita.org/training/vraww/>

<sup>35</sup> [www.wavr21.com](http://www.wavr21.com)

<sup>36</sup> <http://hcr-20.com>

<sup>37</sup> [www.mosaicmethod.com](http://www.mosaicmethod.com)

## **APPENDIX E: PROCESS B**

- Process B is applicable when the Title IX Coordinator determines Process A is inapplicable, or offenses subject to Process A have been dismissed.
- If Process A is applicable, Process A must be applied in lieu of Process B.

### **RESOLUTION PROCESS<sup>38</sup> FOR ALLEGED VIOLATIONS OF THE EQUAL OPPORTUNITY, HARASSMENT, AND NONDISCRIMINATION POLICY**

NOBTS will act on any formal or informal allegation or notice of violation of the Equal Opportunity, Harassment and Nondiscrimination Policy that is received by the Title IX Coordinator<sup>39</sup> or a member of the administration, faculty, or other employee, with the exception of confidential resources, as articulated in the Policy above.

The procedures described below apply to all allegations of harassment, discrimination, and/or retaliation on the basis of protected characteristic status involving students, staff, faculty members, or third parties.

These procedures may also be used to address collateral misconduct arising from the investigation of or occurring in conjunction with harassing, discriminatory, or retaliatory conduct (e.g., vandalism, physical abuse of another). All other allegations of misconduct unrelated to incidents covered by this Policy will be addressed through the procedures elaborated in the respective student, faculty, and staff handbooks.

#### **1. Initial Assessment**

Following intake, receipt of notice, or a complaint of an alleged violation of NOBTS's nondiscrimination policy, the Title IX Coordinator<sup>40</sup> engages in an initial assessment, which is typically one to five (1-5) business days in duration. The steps in an initial assessment can include:

- The Title IX Coordinator reaches out to the Complainant to offer supportive measures.
- The Title IX Coordinator works with the Complainant to ensure they have an Advisor.
- The Title IX Coordinator works with the Complainant to determine which of three options to pursue: A Supportive Response, an Informal Resolution, or an Administrative Resolution.

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<sup>38</sup> For Recipients with grievance processes enabling students and/or employees to challenge disciplinary action, it is recommended that discrimination allegations be exempted from that process and replaced with the Resolution Process outlined. Most existing grievance proceedings are neither equitable (by definition), nor are they sufficiently prompt to satisfy Title IX.

<sup>39</sup> All references herein to a Title IX Coordinator also include a designee of the Title IX Coordinator.

<sup>40</sup> If circumstances require, the President or Title IX Coordinator will designate another person to oversee the process below should an allegation be made about the Coordinator or the Coordinator be otherwise unavailable or unable to fulfill their duties.

- If a Supportive Response is preferred, the Title IX Coordinator works with the Complainant to identify their wishes and then seeks to facilitate implementation. An Administrative Resolution process is not initiated, though the Complainant can elect to initiate it later, if desired.
- If an Informal Resolution option is preferred, the Title IX Coordinator assesses whether the complaint is suitable for Informal Resolution, which informal mechanism may serve the situation best or is available and may seek to determine if the Respondent is also willing to engage in Informal Resolution.
- If Administrative Resolution is preferred, the Title IX Coordinator initiates the investigation process and determines whether the scope of the investigation will address:
  - Incident
  - A potential pattern of misconduct
  - A culture/climate issue<sup>41</sup>
- In many cases, the Title IX Coordinator may determine that a Violence Risk Assessment (VRA) should be conducted by the Behavioral Intervention Team (BIT) as part of the initial assessment. A VRA can aid in ten critical and/or required determinations, including:
  - Interim suspension of a Respondent who is a threat to health/safety
  - Whether the Title IX Coordinator should pursue Administrative Resolution absent a willing/able Complainant
  - Whether to put the investigation on the footing of incident and/or pattern and/or climate
  - To help identify potentially predatory conduct
  - To help assess/identify grooming behaviors
  - Whether a Complaint is amenable to Informal Resolution, and what modality may be most successful
  - Whether to permit a voluntary withdrawal by the Respondent
  - Whether to impose transcript notation or communicate with a transfer NOBTS about a Respondent
  - Assessment of appropriate sanctions/remedies
  - Whether a Clery Act Timely Warning and/or Trespass order/Persona-non-grata is needed

More about NOBTS's process for VRA can be found in Appendix D.

Based on the initial assessment, NOBTS will initiate one of these responses:

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<sup>41</sup> The Title IX Coordinator has the discretion to modify these procedures as necessary to address a culture/climate complaint, including the fact that a named complainant may not be available, or that specific respondents may not be identified. Where a program, department, or division is being investigated, administrators are typically named "respondents" on behalf of the program, and are responsible for implementing remedies, but may not be held responsible for misconduct unless there is evidence of intentional disparate treatment).

- **Supportive Response** – measures to help restore the Complainant’s education access, as described in the Policy.
- **Informal Resolution** – typically used for less serious offenses and only when all parties agree to Informal Resolution, or when the Respondent is willing to accept responsibility for violating policy.
- **Administrative Resolution** – investigation of alleged policy violation(s) and recommended finding, subject to a determination by the Title IX Coordinator or Decision-maker(s) and the opportunity to appeal.

The investigation and the subsequent Administrative Resolution determine whether the Equal Opportunity, Harassment, and Nondiscrimination Policy has been violated. If so, NOBTS will promptly implement effective remedies designed to end the discrimination, prevent recurrence, and address the effects.

The process followed considers the preference of the parties but is ultimately determined at the discretion of the Title IX Coordinator. If at any point during the initial assessment or formal investigation the Title IX Coordinator determines that reasonable cause does not support the conclusion that policy has been violated, the process will end, and the parties will be notified.

The Complainant may request that the Title IX Coordinator review the reasonable cause determination and/or re-open the investigation. This decision lies in the sole discretion of the Title IX Coordinator, but the request is usually only granted in extraordinary circumstances.

## **2. Resolution Process Pool**

The Resolution Process relies on a pool of officials (“Pool”) for implementation. Members of the Pool are announced in an annual distribution of this Policy to all students, employees, prospective students, and prospective employees.

The list of members and a description of the Pool can be found at our [Title IX page](#). Members of the Pool are trained annually in all aspects of the Resolution Process and can serve in any of the following roles, at the direction of the Title IX Coordinator:

- To provide sensitive intake for and initial advice pertaining to the allegations
- To act as optional process Advisors to the parties
- To facilitate Informal Resolution
- To investigate allegations
- To serve as a Decision-maker
- To serve as an Appeal Decision-maker

The Title IX Coordinator, in consultation with the President, carefully vets Pool members for potential conflicts of interest or disqualifying biases and appoints the Pool, which acts with independence and impartiality.



Pool members receive annual training organized by the Title IX Coordinator, including a review of NOBTS policies and procedures as well as applicable federal and state laws and regulations so that they are able to appropriately address allegations, provide accurate information to members of the community, protect safety, and promote accountability.

The Pool members receive annual training jointly OR specific to their role. This training includes, but is not limited to:

- The scope of NOBTS's Equal Opportunity, Harassment, and Nondiscrimination Policy and Procedures
- How to conduct investigations and hearings that protect the safety of Complainants and Respondents and promote accountability
- Implicit bias
- Disparate treatment
- Reporting, confidentiality, and privacy requirements
- Applicable laws, regulations, and federal regulatory guidance
- How to implement appropriate and situation-specific remedies
- How to investigate in a thorough, reliable, timely, and impartial manner
- How to conduct a sexual harassment investigation
- Trauma-informed practices pertaining to investigations and Resolution Processes
- How to uphold fairness, equity, and due process
- How to weigh evidence
- How to conduct questioning
- How to assess credibility
- Impartiality and objectivity
- Types of evidence
- Deliberation
- How to render findings and generate clear, concise, evidence-based rationales
- The definitions of all offenses
- How to apply definitions used by the institution with respect to consent (or the absence or negation of consent) consistently, impartially, and in accordance with Policy
- How to conduct an investigation and grievance process including hearings, appeals, and Informal Resolution Processes
- How to serve impartially by avoiding prejudgment of the facts at issue, conflicts of interest, and bias against Respondents and/or for Complainants, and on the basis of sex, race, religion, and other protected characteristics
- Any technology to be used
- Issues of relevance of questions and evidence
- Issues of relevance to create an investigation report that fairly summarizes relevant evidence
- How to determine appropriate sanctions in reference to all forms of harassment and discrimination allegations

### **3. Counterclaims**

Counterclaims by the Respondent may be made in good faith or may instead be motivated by a retaliatory intent. NOBTS is obligated to ensure that any process is not abused for retaliatory purposes.

NOBTS permits the filing of counterclaims, but uses the initial assessment, described above, to assess whether the allegations are made in good faith. If they are, the allegations will be processed using the resolution procedures below, typically after resolution of the underlying allegation. Counterclaims made with retaliatory intent will not be permitted.

A delay in the processing of counterclaims is permitted, accordingly. Occasionally, allegations and counterclaims can be resolved through the same investigation, at the discretion of the Title IX Coordinator. When counterclaims are not made in good faith, they will be considered retaliatory, and may constitute a violation of this Policy.

### **4. Advisors**

#### **A. Advisor Expectations**

NOBTS generally expects an Advisor to adjust their schedule to allow them to attend NOBTS meetings when planned, but NOBTS may change scheduled meetings to accommodate an Advisor's inability to attend, if doing so does not cause an unreasonable delay.

NOBTS may also make reasonable provisions to allow an Advisor who cannot attend in person to attend a meeting by telephone, video conferencing, or other similar technologies as may be convenient and available.

Parties whose Advisors are disruptive or who do not abide by NOBTS policies and procedures may face the loss of that Advisor and/or possible Policy violations.

Advisors are expected to consult with their advisees without disrupting NOBTS meetings or interviews. Advisors do not represent parties in the process; their role is only to advise.

#### **B. Expectations of the Parties with Respect to Advisors**

Each party may choose an Advisor<sup>42</sup> who is eligible and available<sup>43</sup> to accompany them throughout the process. The Advisor can be anyone, including an attorney, but should not be someone who is also a witness in the process. A party may elect to change Advisors during the process and is not obligated to use the same Advisor throughout.

The parties are expected to inform the Investigators of the identity of their Advisor at least two (2) business days before the date of their first meeting with the Investigator(s) (or as soon as possible if a more expeditious meeting is necessary or desired).

The parties are expected to provide timely notice to the Investigator(s) and/or the Title IX Coordinator if they change Advisors at any time.

Upon written request of a party, NOBTS will copy the Advisor on all communications between NOBTS and the party. The Advisor may be asked to sign a non-disclosure agreement (NDA) regarding private, sensitive records.

At the discretion of the Title IX Coordinator, more than one Advisor may be permitted to the parties, upon request. For equity purposes, if one party is allowed another Advisor, the other party must be allowed one to as well.

### **C. Assistance in Securing an Advisor<sup>44</sup>**

NOBTS will provide an Advisor for the resolution process unless the parties decide to choose their own.

For representation, Respondents may wish to contact organizations such as:

- Families Advocating for Campus Equality (<http://www.facecampusequality.org>)
- Stop Abusive and Violent Environments (<http://www.saveservices.org>)

Complainants may wish to contact organizations such as:

- The Victim Rights Law Center (<http://www.victimrights.org>)
- The National Center for Victims of Crime (<http://www.victimsofcrime.org>), which maintains the Crime Victim's Bar Association
- The Time's Up Legal Defense Fund (<https://nwlc.org/times-up-legal-defense-fund/>)

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<sup>42</sup> This could include an attorney, advocate, or support person. Witnesses are not entitled to Advisors within the process, though they can be advised externally. If NOBTS allows more than one Advisor for one party, they should do so for all parties.

<sup>43</sup> "Available" means the party cannot insist on an Advisor who simply doesn't have inclination, time, or availability. Also, the Advisor cannot have institutionally conflicting roles, such as being a Title IX administrator who has an active role in the matter, or a supervisor who must implement and monitor sanctions.

<sup>44</sup> This is being provided for informational purposes and does not constitute NOBTS's endorsement of any of the external individuals/organizations listed.

## **5. Resolution Options**

Proceedings are private. All persons present at any time during the Resolution Process are expected to maintain the privacy of the proceedings in accord with NOBTS Policy.

While there is an expectation of privacy around what is discussed during interviews, the parties have discretion to share their own experiences with others if they so choose but are encouraged to discuss with their Advisors first before doing so.

### **A. Informal Resolution**

Informal Resolution is applicable when the parties voluntarily agree to resolve the matter through Alternative Resolution [mediation, restorative practices, facilitated dialogue, etc.], when the Respondent accepts responsibility for violating Policy, or when the Title IX Coordinator can resolve the matter informally by providing remedies to resolve the situation. The Title IX Coordinator has discretion to determine if an investigation will be paused during Informal Resolution, or if it will be limited, or will continue during the Informal Resolution process.

It is not necessary to pursue Informal Resolution first in order to pursue Administrative Resolution, and any party participating in Informal Resolution can stop the process at any time and request the Administrative Resolution process. Further, if an Informal Resolution fails after the resolution is finalized, Administrative Resolution may be pursued.

#### **i. Alternative Resolution**

Alternative Resolution is an informal process, such as mediation or restorative practices, by which the parties mutually agree to resolve an allegation. It may be used for less serious, yet inappropriate, behaviors and is encouraged as an alternative to the Administrative Resolution process (described below) to resolve conflicts, as appropriate. The parties must consent to the use of Alternative Resolution.

The Title IX Coordinator determines if Alternative Resolution is appropriate, based on the willingness of the parties, the nature of the conduct at issue, and the susceptibility of the conduct to Alternative Resolution.

In an Alternative Resolution, a trained administrator or third party facilitates communication among with the parties to an effective resolution, if possible. Institutionally imposed sanctions are not possible as the result of an Alternative Resolution process, though the parties may agree to accept sanctions and/or appropriate remedies.

The Title IX Coordinator maintains records of any resolution that is reached, and failure to abide by the resolution can result in appropriate enforcement actions.

Alternative Resolution is not typically the primary resolution mechanism used to address reports of violent behavior of any kind or in other cases of serious violations of policy, though similarly structured conversations may be made available after the Administrative Resolution process is completed should the parties and the Title IX Coordinator believe it could be beneficial. The results of Alternative Resolution are not appealable.

## **ii. Respondent Accepts Responsibility for Alleged Violations**

The Respondent may accept responsibility for all or part of the alleged policy violations at any point during the Resolution Process. If the Respondent accepts responsibility, the Title IX Coordinator determines that the individual is in violation of NOBTS policy.

The Title IX Coordinator then determines appropriate sanction(s) or responsive actions, which are promptly implemented in order to effectively stop the harassment, discrimination, and/or retaliation; prevent its recurrence; and remedy the effects of the conduct, both on the Complainant and the community.

If the Respondent accepts responsibility for all of the alleged policy violations and the Title IX Coordinator or designee has determined appropriate sanction(s) or responsive actions, to which the Respondent agrees, and which are promptly implemented, the process is over. The Complainant will be informed of this outcome.

If the Respondent accepts responsibility for some of the alleged policy violations and the Title IX Coordinator has determined appropriate sanction(s) or responsive actions, to which the Respondent agrees, and which are promptly implemented for those violations, then the remaining allegations will continue to be investigated and resolved through Administrative Resolution. The parties will be informed of this outcome. The parties are still able to seek Alternative Resolution on the remaining allegations, subject to the stipulations above.

## **B. Administrative Resolution via an Investigation and Hearing**

Administrative Resolution can be pursued at any time during the process for any behavior for which the Respondent has not accepted responsibility that would constitute conduct covered by the Equal Opportunity, Harassment, and Nondiscrimination Policy if proven. Administrative Resolution starts with a thorough, reliable, and impartial investigation.

If Administrative Resolution is initiated, the Title IX Coordinator will provide written notification of the investigation to the parties at an appropriate time during the investigation. Typically, notice is given at least 48 hours in advance of an interview. Advanced notice facilitates the parties' ability to identify and choose an Advisor, if any, to accompany them to the interview.

Notification will include a meaningful summary of the allegations, will be made in writing, and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official NOBTS records, or emailed to the parties' NOBTS-issued or designated email account. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered. The notification will include the policies allegedly violated, if known at the time. Alternatively, the policies allegedly violated can be provided at a later date, in writing, as the investigation progresses, and details become clearer.

NOBTS aims to complete all investigations within a sixty (60) business-day time period, which can be extended as necessary for appropriate cause by the Title IX Coordinator, with notice to the parties as appropriate. Investigations can take weeks or even months, depending on the nature, extent, and complexity of the allegations, availability of witnesses, police involvement, etc.

Once the decision is made to commence an investigation, the Title IX Coordinator appoints Pool members to conduct the investigation (typically using a team of two Investigators), usually within two (2) business days of determining that an investigation should proceed.

The Title IX Coordinator will vet the assigned Investigator(s) to ensure impartiality by ensuring there are no conflicts of interest or disqualifying bias.

The parties may, at any time during the Resolution Process, raise a concern regarding bias or conflict of interest, and the Title IX Coordinator will determine whether the concern is reasonable and supportable. If so, another Investigator will be assigned and the impact of the bias or conflict, if any, will be remedied. If the bias or conflict relates to the Title IX Coordinator, concerns should be raised with the President.

NOBTS will make a good faith effort to complete the investigation as promptly as circumstances permit and will communicate regularly with the parties to update them on the progress and timing of the investigation.

NOBTS may undertake a short delay in its investigation (several days to weeks, to allow evidence collection) when criminal charges based on the same behaviors that invoke NOBTS's Resolution Process are being investigated by law enforcement. NOBTS will promptly resume its investigation and Resolution Process once notified by law enforcement that the initial evidence collection process is complete.

NOBTS action(s) are not typically altered or precluded on the grounds that civil or criminal charges involving the underlying incident(s) have been filed or that criminal charges have been dismissed or reduced.

Investigations involve interviews with all relevant parties and witnesses, obtaining available, relevant evidence, and identifying sources of expert information, as necessary.

All parties have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence, and to fully review and respond to all evidence on the record.

## **6. Investigation**

The Investigators typically take the following steps, if not already completed (not necessarily in this order):

- Determine the identity and contact information of the Complainant
- In coordination with institutional partners (e.g., the Title IX Coordinator), initiate or assist with any necessary supportive measures
- Identify all policies implicated by the alleged misconduct
- Assist the Title IX Coordinator with conducting an initial assessment to determine if there is reasonable cause to believe the Respondent has violated policy
- If there is insufficient evidence to support reasonable cause, the process is closed with no further action
- Commence a thorough, reliable, and impartial investigation by developing a strategic investigation plan, including a witness list, evidence list, intended investigation timeframe, and order of interviews for all parties and witnesses
- Meet with the Complainant to finalize their statement, if necessary
- Prepare the initial Notice of Investigation and Allegations (NOIA) on the basis of the initial assessment. Notice may be one step or multiple steps, depending on how the investigation unfolds, and potential policy violations may be added or dropped as more is learned. Investigators will update the NOIA accordingly and provide it to the parties.
- Notice should inform the parties of their right to have the assistance of a Pool member as a process Advisor appointed by NOBTS or an Advisor of their choosing present for all meetings attended by the advisee
- When formal notice is given, it should provide the parties with a written description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable procedures, and a statement of the potential sanctions/responsive actions that could result
- Give an instruction to the parties to preserve any evidence that is directly related to the allegations

- Provide the parties and witnesses with an opportunity to review and verify the Investigator's summary notes from interviews and meetings with that specific party or witness
- Make good faith efforts to notify each party of any meeting or interview involving another party, in advance when possible
- Interview all relevant individuals and conduct follow-up interviews as necessary
- Allow each party the opportunity to suggest questions they wish for the Investigator(s) to ask the other party and witnesses
- Complete the investigation promptly and without unreasonable deviation from the intended timeline
- Provide regular status updates to the parties throughout the investigation
- Prior to the conclusion of the investigation, summarize for the parties the list of witnesses whose information will be used to render a finding
- Write a comprehensive investigation report fully summarizing the investigation and all evidence
- Provide the parties with a copy of the draft investigation report when it is completed, including all relevant evidence, analysis, credibility assessments, and recommended finding(s)
- Provide each party with a full and fair opportunity to respond to the report in writing within 5 business days and incorporate that response, if any, into the report
- Investigators may choose to respond in writing in the report to the responses of the parties, and/or to share the responses between the parties for their responses, while also ensuring that they do not create a never-ending feedback loop
- Share the report with the Title IX Coordinator or legal counsel for review and feedback
- Provide the final report to the Title IX Coordinator with one of two options:
  - In the report, include a recommended determination, based on a preponderance of the evidence, whether a policy violation is more likely than not to have occurred, OR
  - Gather, assess, and synthesize evidence without making a finding, conclusion, determination, or recommendation.

## **7. Determination**

Within two to three (2-3) business days of receiving the Investigator's recommendation, the Title IX Coordinator or a trained, designated Decision-maker from the Pool<sup>45</sup> reviews the report and all responses, and then makes the final determination on the basis of the preponderance of the evidence.

If the record is incomplete, the Title IX Coordinator/Decision-maker may direct a re-opening of the investigation, or may direct or conduct any additional inquiry necessary, including informally meeting with the parties or any witnesses, if needed.

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<sup>45</sup> When the Title IX Coordinator is the Investigator or has been heavily involved in the process prior to determination, a Decision-maker should be designated from the Pool to ensure there is no conflict of interest.



The investigation recommendation, if any, should be strongly considered but is not binding on the Title IX Coordinator/Decision-Maker. The Title IX Coordinator or Decision-maker may invite and consider impact and/or mitigation statements from the parties if and when determining appropriate sanction(s), if any.

## **8. Additional Details of the Investigation Process**

### **A. Witness Responsibilities**

Witnesses (as distinguished from the parties) who are NOBTS faculty or staff are expected to cooperate with and participate in NOBTS's investigation and Resolution Process. Failure of a witness to cooperate with and/or participate in the investigation or Resolution Process constitutes a violation of Policy and may be subject to discipline.

### **B. Remote Processes**

Parties and witnesses may be interviewed remotely by phone, video conferencing, or similar technologies if the Investigator(s) and/or Decision-maker determine that timeliness, efficiency, or other causes dictate a need for remote interviewing. Witnesses may also provide written statements in lieu of interviews, or respond to questions in writing, if deemed appropriate by the Investigator(s), though this approach is not ideal. When remote technologies are used, NOBTS makes reasonable efforts to ensure privacy and ensures that any technology does not work to the detriment of any party or subject them to unfairness.

### **C. Recording**

No unauthorized audio or video recording of any kind is permitted during the Resolution Process including investigation interviews. If Investigator(s) elect to audio and/or video record interviews, all involved parties must be made aware of and consent to<sup>46</sup> audio and/or video recording.

### **D. Evidence**

Any evidence that is relevant and credible may be considered, including an individual's prior misconduct history as well as evidence indicating a pattern of misconduct, subject to the limitation in (E) below. The process should exclude irrelevant or immaterial evidence and may disregard evidence lacking in credibility or that is improperly prejudicial.

### **E. Prior Sexual History/Patterns**

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<sup>46</sup> Consent of the interviewer and interviewee is required in "dual-party recording" states.

Unless the Title IX Coordinator/Decision-maker determines it is appropriate, the investigation and the finding do not consider: (1) incidents not directly related to the possible violation(s), unless they evidence a pattern; (2) the irrelevant sexual history of the parties (though there may be a limited exception made with regard to the sexual history between the parties); (3) irrelevant character evidence.

#### **F. Previous Allegations/Violations**

While previous conduct violations by the Respondent are not generally admissible as information supporting the current allegation, the Investigator(s) may supply the Title IX Coordinator/Decision-maker with information about previous good faith allegations and/or findings, when that information suggests potential pattern and/or predatory conduct.

If NOBTS uses a progressive discipline system, previous disciplinary action of any kind involving the Respondent may be considered in determining the appropriate sanction(s).

Character witnesses or evidence may be offered. The investigation and hearing will determine if the character evidence is relevant. If so, it may be considered. If not, it will be excluded.

#### **G. Notification of Outcome**

If the Respondent admits to the violation(s), or is found in violation, the Title IX Coordinator [in consultation with other administrators as appropriate] determines sanction(s) and/or responsive actions, which are promptly implemented in order to effectively to stop the harassment, discrimination, and/or retaliation; prevent its recurrence; and remedy the effects of the discriminatory conduct, both on the Complainant and the community.

The Title IX Coordinator informs the parties of the determination within two to three (2-3) business days of the resolution, ideally simultaneously, but without significant time delay between notifications. Notifications are made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official NOBTS records, or emailed to the parties' NOBTS-issued or designated email account. Once mailed, emailed, and/or received in-person, notice is presumptively delivered.

The Notification of Outcome specifies the finding for each alleged policy violation, any sanction(s) that may result which NOBTS is permitted to share pursuant to state or federal law, and the rationale supporting the findings to the extent NOBTS is permitted to share under state or federal law.

The notice will detail when the determination is considered final (See [Section 11](#)) and will detail any changes that are made prior to finalization.

Unless based on an acceptance of violation by the Respondent, the determination may be appealed by either party. The Notification of Outcome also includes the grounds on which the parties may appeal and the steps the parties may take to request an appeal of the findings. More information about the appeal procedures can be found in [Section 11](#).

## **9. Sanctions**

Factors considered when determining any sanction(s)/responsive action(s) may include, but are not limited to:

- The nature, severity of, and circumstances surrounding the violation(s)
- An individual's disciplinary history
- Previous allegations or allegations involving similar conduct
- The need for sanctions/responsive actions to bring an end to the discrimination, harassment, and/or retaliation
- The need for sanctions/responsive actions to prevent the future recurrence of discrimination, harassment, and/or retaliation
- The need to remedy the effects of the discrimination, harassment, and/or retaliation on the Complainant and the community
- The impact on the parties
- Any other information deemed relevant by the Title IX Coordinator/Decision-maker

The sanction(s) will be implemented as soon as is feasible. The sanctions described in this Policy are not exclusive of, and may be in addition to, other actions taken, or sanctions imposed by outside authorities.

### **A. Student Sanctions**

The following are the common sanctions that may be imposed upon students singly or in combination:

- *Warning:* A formal statement that the conduct was unacceptable and a warning that further violation of any NOBTS policy, procedure, or directive will result in more severe sanctions/responsive actions.
- *Required Counseling:* A mandate to meet with and engage in either NOBTS-sponsored or external counseling to better comprehend the misconduct and its effects.
- *Probation:* A written reprimand for violation of institutional policy, providing for more severe disciplinary sanctions in the event that the student or organization is found in violation of any institutional policy, procedure, or directive within a specified period of time. Terms of the probation will be articulated and may

include denial of specified social privileges, exclusion from co-curricular activities, exclusion from designated areas of campus, no-contact orders, and/or other measures deemed appropriate.

- *Suspension*: Termination of student status for a definite period of time not to exceed two years and/or until specific criteria are met. Students who return from suspension are automatically placed on probation through the remainder of their tenure as a student at NOBTS.
- *Expulsion*: Permanent termination of student status and revocation of rights to be on campus for any reason or to attend NOBTS-sponsored events. This sanction will be noted permanently as a Conduct Expulsion on the student's official transcript.
- *Withholding Diploma*: NOBTS may withhold a student's diploma for a specified period of time and/or deny a student participation in commencement activities as a sanction if the student is found responsible for an alleged violation.
- *Revocation of Degree*: NOBTS reserves the right to revoke a degree previously awarded from NOBTS for fraud, misrepresentation, and/or other violation of NOBTS policies, procedures, or directives in obtaining the degree, or for other serious violations committed by a student prior to graduation.
- *Other Actions*: In addition to or in place of the above sanctions, NOBTS may assign any other sanctions as deemed appropriate.

## **B. Student Organization Sanctions**

The following are the common sanctions that may be imposed upon student organizations singly or in combination:

- *Warning*: A formal statement that the conduct was unacceptable and a warning that further violation of any NOBTS policy, procedure, or directive will result in more severe sanctions/responsive actions.
- *Probation*: A written reprimand for violation of institutional policy, providing for more severe disciplinary sanctions in the event that the organization is found in violation of any institutional policy, procedure, or directive within a specified period of time. Terms of the probation will be articulated and may include denial of specified social and event privileges, denial of NOBTS funds, ineligibility for honors and awards, restrictions on new member recruitment, no-contact orders, and/or other measures deemed appropriate.
- *Suspension*: Termination of student organization recognition for a definite period of time not to exceed two years and/or until specific criteria are met. During the suspension period, a student organization may not conduct any formal or informal business or participate in NOBTS-related activities, whether they occur on or off-campus. Re-recognition is possible but not guaranteed and will only be considered after the end of the suspension period and based on meeting all re-recognition criteria and obtaining clearance from NOBTS.

- *Expulsion*: Permanent termination of student organization recognition and revocation of the privilege to congregate and conduct business on campus as an organization for any reason.
- *Loss of Privileges*: Restricted from accessing specific NOBTS privileges for a specified period of time.
- *Other Actions*: In addition to or in place of the above sanctions, NOBTS may assign any other sanctions as deemed appropriate.

### **C. Employee Sanctions/Responsive/Corrective Actions**

Responsive actions for an employee who has engaged in harassment, discrimination, and/or retaliation include:

- *Verbal or Written Warning*
- *Performance Improvement Plan/Management Process*
- *Enhanced Supervision, Observation, or Review*
- *Required Counseling*
- *Required Training or Education*
- *Probation*
- *Denial of Pay Increase/Pay Grade*
- *Loss of Oversight or Supervisory Responsibility*
- *Demotion*
- *Transfer*
- *Reassignment*
- *Delay of Tenure Track Progress*
- *Assignment to New Supervisor*
- *Restriction of Stipends, Research, and/or Professional Development Resources*
- *Suspension with Pay*
- *Suspension without Pay*
- *Termination*
- *Other Actions*: In addition to or in place of the above sanctions/responsive actions, NOBTS may assign any other responsive actions as deemed appropriate.

## **10. Withdrawal or Resignation while Charges are Pending**

### **A. Students**

NOBTS does not permit a student to withdraw if that student has an allegation pending for violation of the Equal Opportunity, Harassment, and Nondiscrimination Policy. NOBTS may place a hold, bar access to an official transcript, and/or prohibit graduation as necessary to permit the Resolution Process to be completed.

### **B. Employees**

Should an employee resign with unresolved allegations pending, the records of the Title IX Coordinator will reflect that status, and any NOBTS responses to future inquiries regarding employment references for that individual will include the former employee's unresolved status and whether the employee is eligible for rehire.

## **11. Appeals**

All requests for appeal consideration must be submitted in writing to the Title IX Coordinator within 5 business days of the delivery of the written finding of the Title IX Coordinator or Decision-maker.

A three-member Appeal Panel OR an Appeal Decision-maker chosen from the Pool will be designated by the Title IX Coordinator from those who have not previously been involved in the process. One member of the Appeal Panel will be designated as the Chair. Any party may appeal, but appeals are limited to the following grounds:

- 1) A procedural error or omission occurred that significantly impacted the outcome (e.g., substantiated bias, material deviation from established procedures, failure to correctly apply the evidentiary standard).
- 2) To consider new evidence, unknown or unavailable during the investigation, that could substantially impact the original finding or sanction. A summary of this new evidence and its potential impact must be included in the appeal.

When any party requests an appeal, the Title IX Coordinator will share the appeal request with all other parties or other appropriate persons such as the Investigator(s), who may file a response within three (3) business days. Another party may also bring their own appeal on separate grounds.

If new grounds are raised, the original appealing party will be permitted to submit a written response to these new grounds within 5 business days. These responses or appeal requests will be shared with each party. The Appeal Chair/Panel will review the appeal request(s) within 5 business days of completing the pre-appeal exchange of materials. If grounds are not sufficient for an appeal, or the appeal is not timely, the Appeal Chair/Panel dismisses the appeal.

When the Appeal Chair/Panel finds that at least one of the grounds is met by at least one party, additional principles governing the review of appeals include the following:

- Decisions by the Appeal Chair/Panel are to be deferential to the original decision, making changes to the finding only when there is clear error and to the sanction(s)/responsive action(s) only if there is compelling justification to do so.
- Appeals are not intended to be full re-hearings (de novo) of the allegation(s). In most cases, appeals are confined to a review of the written documentation or record of the investigation and pertinent documentation regarding the grounds for appeal.

- An appeal is not an opportunity for the Appeal Chair/Panel to substitute their judgment for that of the original Investigator(s) or Title IX Coordinator/Decision-maker merely because they disagree with the finding and/or sanction(s).
- Appeals granted based on new evidence should normally be remanded to the Investigator(s) for reconsideration. Other appeals should be remanded at the discretion of the Appeal Chair/Panel.
- Sanctions imposed as the result of the Administrative Resolution are implemented immediately unless the Title IX Coordinator stays their implementation in extraordinary circumstances, pending the outcome of the appeal.
  - For students: Graduation, study abroad, internships/externships, etc., do NOT in and of themselves constitute exigent circumstances, and students may not be able to participate in those activities during their appeal.
- All parties will be informed in writing within 5 business days of the outcome of the appeal without significant time delay between notifications, and in accordance with the standards for Notice of Outcome as defined above.
- Once an appeal is decided, the outcome is final; further appeals are not permitted, even if a decision or sanction is changed on remand. When appeals result in no change to the finding or sanction, that decision is final. When an appeal results in a new finding or sanction, that finding or sanction can be appealed one final time on the grounds listed above, and in accordance with these procedures.]
- In rare cases when a procedural or substantive error cannot be cured by the original Investigator(s) and/or Decision-maker or the Title IX Coordinator (as in cases of bias), the Appeal Chair/Panel may recommend a new investigation and/or Administrative Resolution process, including a new Decision-maker.
- The results of a new Administrative Resolution process can be appealed once, on any of the three applicable grounds for appeals.
- In cases in which the appeal results in Respondent's reinstatement to NOBTS or resumption of privileges, all reasonable attempts will be made to restore the Respondent to their prior status, recognizing that some opportunities lost may be irreparable.

## **12. Long-Term Remedies/Actions**

Following the conclusion of the Resolution Process, and in addition to any sanctions implemented, the Title IX Coordinator may implement long-term remedies or actions with respect to the parties and/or the campus community to stop the harassment, discrimination, and/or retaliation; remedy its effects; and prevent its reoccurrence.

These remedies/actions may include, but are not limited to:

- Referral to counseling and health services
- Education to the community
- Permanent alteration of housing assignments
- Permanent alteration of work arrangements for employees

- Provision of campus safety escorts
- Climate surveys
- Policy modification
- Provision of transportation assistance
- Implementation of long-term contact limitations between the parties
- Implementation of adjustments to academic deadlines, course schedules, etc.

At the discretion of the Title IX Coordinator, long-term remedies may also be provided to the Complainant even if no policy violation is found.

When no policy violation is found, the Title IX Coordinator will address any remedial requirements owed by NOBTS to the Respondent.

### **13. Failure to Complete Sanctions/Comply with Interim and Long-Term Remedies/Responsive Actions**

All Respondents are expected to comply with conduct sanctions, responsive actions, and corrective actions within the timeframe specified by the Title IX Coordinator.

Failure to abide by the sanction(s)/action(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanction(s) and responsive/corrective action(s), including suspension, expulsion, and/or termination from NOBTS and may be noted on a student's official transcript. Supervisors are expected to enforce completion of sanctions/responsive actions for their employees.

A suspension will only be lifted when compliance is achieved to the satisfaction of the Title IX Coordinator.

### **14. Recordkeeping**

In implementing this Policy, records of all allegations, investigations, resolutions, and hearings will be kept by the Title IX Coordinator in the Title IX complaint database indefinitely, or as required by state or federal law or institutional policy.

### **15. Statement of the Rights of the Parties (See [Appendix C](#))**



## **16. Disability Accommodation in the Resolution Process**

NOBTS is committed to providing reasonable accommodations and support to qualified students, employees, or others with disabilities to ensure equal access to NOBTS's Resolution Process. Anyone needing such accommodations or support should contact the Assistant Dean of Students for Student Affairs, who will review the request and, in consultation with the person requesting the accommodation and the Title IX Coordinator, determine which accommodations are appropriate and necessary for full participation in the process.

## **17. Revision**

These policies and procedures will be reviewed and updated annually by the Title IX Coordinator. NOBTS reserves the right to make changes to this document as necessary and once those changes are posted online, they are in effect.

The Title IX Coordinator may make minor modifications to these procedures that do not materially jeopardize the fairness owed to any party, such as to accommodate summer schedules.

The Title IX Coordinator may also vary procedures materially with notice (on NOBTS website, with the appropriate effective date identified) upon determining that changes to law or regulation require policy or procedural alterations not reflected in this policy and procedure.

Procedures in effect at the time of the resolution will apply to resolution of incidents, regardless of when the incident occurred.

Policy in effect at the time of the offense will apply even if the policy is changed subsequently but prior to resolution unless the parties consent to be bound by the current policy.

If government regulations change in a way that impacts this document, this document will be construed to comply with the most recent government regulations.

This document does not create legally enforceable protections beyond the protection of the background state and federal laws which frame such policies and codes, generally.

This Policy and procedure was implemented in August 2023.

## **APPENDIX F: TITLE IX POLICY STATEMENT SAMPLE TEMPLATE**

NOBTS adheres to all federal, state, and local civil rights laws prohibiting discrimination in employment and education. NOBTS does not discriminate in its admissions practices [except as permitted by law], in its employment practices, or in its educational programs or activities on the basis of sex/gender. As a NOBTS of federal financial assistance for education activities, NOBTS is required by Title IX of the Education Amendments of 1972 to ensure that all of its education programs and activities do not discriminate on the basis of sex/gender. Sex includes sex, sex stereotypes, and pregnancy or parenting status.

NOBTS also prohibits retaliation against any person opposing discrimination or participating in any discrimination investigation or complaint process internal or external to the institution. Sexual harassment, sexual assault, dating and domestic violence, and stalking are forms of sex discrimination, which are prohibited under Title IX and by NOBTS policy.

Any member of the institutional community, guest, or visitor who acts to deny, deprive, or limit the educational, employment, residential, or social access, opportunities and/or benefits of any member of the NOBTS community on the basis of sex is in violation of the NOBTS policy.

Any person may report sex discrimination (whether or not the person reporting is the person alleged to have experienced the conduct), in person, by mail, by telephone, by video, or by email, using the contact information listed for the Title IX Coordinator (below). A report may be made at any time (including during non-business hours) by completing this [report form](#).

Questions regarding Title IX, including its application and/or concerns about noncompliance, should be directed to the Title IX Coordinator. For a complete copy of the policy or for more information, please visit our [Title IX page](#) or contact the Title IX Coordinator.

Individuals who believe they have experienced sex discrimination, harassment, and/or retaliation in violation of NOBTS policy should contact the following:

- **Conner Hinton**, Assistant Dean of Students, Title IX Coordinator  
Office of Spiritual Formation, Luter Student Center  
3939 Gentilly Blvd., New Orleans, LA 70126  
Telephone: (504) 816-8072  
Email: [chinton@nobts.edu](mailto:chinton@nobts.edu)

A person may also file a complaint with the appropriate federal, state, or local agency within the time frame required by law. Depending upon the nature of the complaint, the appropriate agency may be the federal Equal Employment Opportunity Commission (EEOC), the U.S. Department of Education Office for Civil Rights (OCR), the Department of Justice, and/or the Louisiana Commission on Human Rights.

- **Louisiana Commission on Human Rights  
Office of the Governor**  
U.S. Department of Education  
1001 N. 23<sup>rd</sup> St  
Baton Rouge, LA 70802  
Telephone: 225-342-6969  
Fax: 225-342-2063
  
- **Equal Employment Opportunity Commission  
New Orleans Field Office**  
Hale Boggs Federal Building  
500 Poydras St, Suite 809  
New Orleans, LA 70130  
Telephone: 1-800-669-4000  
Fax: 504-595-2884; TTY: 504-595-2958
  
- **Department of Education Office for Civil Rights (OCR)  
Louisiana, Mississippi, Texas District**  
Dallas Office  
U.S. Department of Education  
Office for Civil Rights  
Renaissance Tower  
1201 Elm St, Suite 1000  
Dallas, TX 75270  
Telephone: 214-661-9600  
Fax: 214-661-9587  
Email: OCR.Dallas@ed.gov
  
- **Assistant Secretary for Civil Rights  
Office for Civil Rights, National Headquarters**  
U.S. Department of Education  
Lyndon Baines Johnson Dept. of Education Building  
400 Maryland Avenue, SW  
Washington, DC 20202-1100  
Telephone: 800-421-3481  
Fax: 202-453-6012; TDD: 800-877-8339  
Email: OCR@ed.gov

Within any Resolution Process related to this Policy, NOBTS provides reasonable accommodations to persons with disabilities and religious accommodations, when that accommodation is consistent with state and federal law.

## **APPENDIX G: ATIXA RECORD MAINTENANCE AND ACCESS MODEL POLICY**

### **Policy Scope:**

This policy covers records maintained in any medium that are created pursuant to NOBTS's policy and/or the regular business of NOBTS's Title IX Office. All such records are considered private or confidential by the Title IX Office, in accordance with FERPA and the directive from the Department of Education to maintain the confidentiality of records related to Title IX. These records may be shared internally with those who have a legitimate educational interest and will be shared with the parties to a complaint under applicable state and/or federal law, including the Title IX regulations, FERPA, and/or the Clery Act/VAWA § 304. The Title IX Office controls the dissemination and sharing of any records under its control.

### **Types of Records Covered Under this Policy:**

Records Pertaining to the Resolution Process. These records include, but are not limited to:

- Documentation of notice to the institution including incident reports
- Anonymous reports later linked to a specific incident involving known parties
- Any documentation supporting the initial assessment
- Investigation-related evidence (e.g., physical and documentary evidence collected and interview transcripts)
- Dismissal-related documentation
- Documentation related to the Resolution Process
- The final investigation report
- Remedy-related documentation
- Supportive measures-related documentation
- Hearing recordings and records
- Appeal-related documentation
- Informal resolution records
- Notices of Outcome
- Records documenting that NOBTS's response was not deliberately indifferent
- Any other records typically maintained by NOBTS as part of the case file

Specific examples of records pertaining to the Resolution Process may include, but are not limited to: anonymous reports later identified; intake documentation; incident reports; the written complaint; the names of the Complainant, the Respondent; any witnesses; any relevant statements or other evidence obtained; interview notes or transcripts; timelines, flowcharts and other forms used in the investigation process; witness lists, correspondence, telephone logs, evidence logs and other documents related to the processing of an investigation; correspondence relating to the substance of the investigation; supportive measures implemented on behalf of the Complainant or Respondent; actions taken to restrict/remove the Respondent; correspondence with the parties; medical, mental health, medical, and

forensic record evidence obtained with consent during the course of the investigation; police reports; expert sources used in consideration of the evidence; documentation of outcome and rationale; correspondence and documentation of the appeals process; documentation of any sanctions/discipline resulting from the Resolution Process; and documentation of reported retaliatory behavior as well as all actions taken to address these reports.

**Drafts and Working Files:** Preliminary drafts and “working files” are not considered records that must be maintained by NOBTS, and these are typically destroyed during the course of an investigation or at the conclusion of the Resolution Process. They are preliminary versions of records and other documents that do not state a final position on the subject matter reviewed or are not considered to be in final form by their creator and/or the Title IX Coordinator. An example of a “working file” would be the investigator notes made during one interview with topics the investigator wants to revisit in subsequent interviews. Sole possession records maintained as such in accordance with FERPA are also included in this category. All drafts of investigation reports shared with the parties are maintained.

**Attorney Work-Product:** Communications from the Title IX Office or its designees with NOBTS’s legal counsel may be work product protected by attorney-client privilege. These communications are not considered records to be maintained by the Title IX Office or accessible under this policy unless the Title IX Coordinator, in consultation with legal counsel as necessary, determines that these communications should be included as accessible records.

### **Record Storage:**

Records may be created and maintained in different media formats; this policy applies to all records, irrespective of format. All records created pursuant to the Policy, as defined above, must be stored in database, digital and/or paper format. The complete file must be transferred to the Title IX Office or Student Life Office within fourteen (14) business days of resolution of the complaint (including any appeal), if the file is not already maintained within the Title IX Office. Security protocols must be in place to preserve the integrity and privacy of any parts of any record that are maintained in the Title IX Office during the pendency of an investigation.

The Title IX Office or Student Life Office will store all records created pursuant to the Policy, regardless of the identities of the parties. Parallel records should be maintained in the Office of Student Conduct and/or Human Resources, respectively and should be maintained in accordance with the security protocols of those offices. Any extra (non-essential) copies of the records (both digital and paper) must be destroyed.

A copy of records showing compliance with Clery Act requirements by Title IX personnel will be maintained along with the case file in the Title IX Office.

NOBTS will maintain an access log of each case file, showing when and by whom it was accessed, and for what purpose.

**Record Retention:**

All records created and maintained pursuant to the Policy must be retained indefinitely by the Title IX Office in database, digital, and/or paper form unless destruction or expungement is authorized by the Title IX Coordinator, who may act under their own discretion, or in accordance with a duly executed and binding settlement of claim, and/or by court or government order.

**Record Access:**

Access to records created pursuant to the Policy or housed in the Title IX Office is strictly limited to the Title IX Coordinator and any individual the Coordinator authorizes in writing, at their discretion. Those who are granted broad access to the records of the Title IX Office are expected to only access records pertinent to their scope or work or specific assignment. Anyone who accesses such records without proper authorization may be subject to an investigation and possible discipline/sanction. The discipline/sanction for unauthorized access of records covered by this policy will be at the discretion of the appropriate disciplinary authority, consistent with other relevant NOBTS policies and procedures.

Student parties may request access to their case file. NOBTS will provide access or a copy within 45 days of the request. Appropriate redactions of personally identifiable information may be made before inspection or any copy is shared.

During the investigation, materials may be shared with the parties using secure file transmission software. Any such file will be watermarked by the Title IX Office before being shared, with the watermark identifying the role of NOBTS in the process (Complainant, Respondent, Hearing Decision-maker; Complainant's Advisor, etc.).

**Record Security:**

The Title IX Coordinator is expected to maintain appropriate security practices for all records, including password protection, lock and key, and other barriers to access as appropriate. Record security should include protection from flood, fire, and other potential emergencies. Clothing, forensic, and other physical evidence should be securely stored in the Title IX Office, designated secure storage area, and/or with the campus law enforcement entity. All physical evidence will be maintained in a facility that is reasonably protected from flood and fire. A catalogue of all physical evidence will be retained with the case file.