



ROCKY MOUNTAIN  
UNIVERSITY *of*  
HEALTH PROFESSIONS

**Nondiscrimination,  
Nonharassment,  
Conduct,  
& Equity Resolution  
Process Handbook**

**2019**

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## Section 1: Policy Rationale, Purpose, and Jurisdiction

The purpose of this handbook is to establish an understanding of nondiscrimination regarding protected classes (under civil rights and equal opportunity law and related state and federal policy and guidance, as adopted and enacted by Rocky Mountain University of Health Professions (abbreviated “RMUoHP”; elsewhere, the University)), the equity resolution process in situations of harassment and discrimination, and implications for failure to act in regards to equal opportunity.

The University affirms its commitment to promote fairness and equity. All allegations and infractions are subject to resolution using the RMUoHP Equity Resolution Process (ERP) described in this handbook.

As used in this document, the term “reporting party” refers to the person impacted by alleged discrimination and/or harassment. The term “responding party” refers to the person who has allegedly engaged in discrimination and/or harassment.

When the responding party is a member of the RMUoHP community (e.g., students, student organizations, faculty, administrators, staff), the ERP is applicable regardless of the status of the reporting party (e.g., guests, visitors).

### A. TITLE IX AND ADA COORDINATOR

The Institutional Equity Officer (IEO) serves as the RMUoHP Title IX and ADA Coordinator (as referred to in federal policies), and oversees implementation of this handbook on equal opportunity, harassment, and nondiscrimination. In all federal and RMUoHP policies referencing either the Title IX or ADA Coordinator, the IEO is responsible. The IEO also works closely with Human Resources, Student Affairs, and administrators to ensure compliance with federal policy. The IEO leads and supervises the Title IX and ADA Deputy Coordinators, the Resolution Administrators (RAs), members of the ERP Pool, and any other persons appointed with independence and authority free of conflicts of interest.

### B. RESOLUTION ADMINISTRATORS

The IEO, the Provost, and the Human Resources (HR) Manager serve as Resolution Administrators (RA). The IEO serves as the RA in all investigations involving students or visitors as reporting parties; the HR Manager serves as the RA in investigations involving non-faculty employees as the reporting party; the Provost serves as the RA in investigations involving faculty as the reporting party. In the event that a RA has a conflict of interest, one of the other RAs will oversee the process; in the event that all RAs have such a conflict, a person from the ERP Pool will be appointed as a temporary RA by the University President.

To raise any concern involving a conflict of interest or a complaint of misconduct against the IEO, an individual may contact the University President at 385.375.8338 or, in the absence of the President, the Provost (385.375.8340). For concerns of conflicts of interest or complaints of misconduct against any other RA or any other administrator involved in the ERP, individuals should contact the IEO.

**Internal inquiries about and reports regarding this policy and associated procedures may be made to the following:**

Raymond J Rodriguez, MPH, MCHES  
Institutional Equity Officer, Federal Title IX and ADA Coordinator  
Rocky Mountain University of Health Professions  
Room 195, Building 3

Discrimination Hotline: 385.375.8344 / 385.375.8798 / rrodriguez@rmuohp.edu

Nick Starr, MBA, CCP, CBP  
Human Resources Manager, Federal Title IX Deputy Coordinator  
Rocky Mountain University of Health Professions  
Room 188, Building 3  
Main: 385.375.8658 / nstarr@rmuohp.edu

Mark Horacek, PT, MS, PhD  
Executive Vice President of Academic Affairs/Provost, Federal Title IX Deputy Coordinator  
Rocky Mountain University of Health Professions  
Room 123, Building 3  
Main: 385.375.8340 / mhoracek@rmuohp.edu

**External inquiries may be made to the following:**

Office for Civil Rights (OCR)  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, DC 20202-1100  
Customer Service Hotline #: 800.421.3481  
Facsimile: 202.453.6012  
TDD#: 877.521.2172  
Email: OCR@ed.gov  
Web: <http://www.ed.gov/ocr>

Equal Employment Opportunity Commission (EEOC)  
Contact: <http://www.eeoc.gov/contact/>

### C. REPORTING DISCRIMINATION

Reports of discrimination, harassment, and/or retaliation may be made using any of the following options. There is no time limitation on the filing of allegations. However, if the responding party is no longer subject to RMUoHP jurisdiction, the ability to investigate, respond, and provide remedies may be more limited:

1. Report directly to an RA by a face-to-face meeting, using email, or using a telephone.
2. Report online using the reporting form posted at <https://rmuohp.edu/institutional-equity/>; or
3. Report using the RMUoHP Discrimination Hotline (385.375.8344).

All reports shall be promptly acted upon as described in Section 3 of this document. Every effort is made to preserve the privacy of reports. Reports may be made anonymously. Anonymous reports will be investigated to determine if remedies can be provided. Additionally, all employees are required to report observed infractions, and all employees are encouraged to report infractions and promptly share a report with the IEO. (Confidentiality and mandated reporting is addressed more specifically below.) Reports of misconduct or discrimination committed by the IEO should be reported to the University President.

## D. JURISDICTION

Upon notification, any such discrimination will be appropriately addressed and remedied according to the ERP (described in Section 3). Non-members of the campus community who engage in discriminatory actions within RMUoHP programs or on University property are not under the jurisdiction of this policy, but can be subject to actions that limit their access and/or involvement with RMUoHP programs as the result of their misconduct. All vendors serving the University through third-party contracts are subject by those contracts to the principles, policies, and procedures in this handbook.

This handbook applies to behaviors that take place on the campus, at RMUoHP-sponsored events, and may also apply off-campus and to actions online when the RA determines that the off-campus conduct affects a substantial RMUoHP interest. A substantial University interest is defined to include:

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 where it appears that the responding party may present a danger or threat to the health or safety of self or others;
3. Any situation that significantly impinges upon the rights, property, or achievements of self or others or significantly breaches the peace and/or causes social disorder; and/or
4. Any situation that is detrimental to the educational and operational interests of RMUoHP.

## Section 2: Definitions

### A. NONDISCRIMINATION

The University adheres to all federal and state civil rights laws prohibiting discrimination in private institutions of higher education, and will not discriminate against any employee, faculty, adjunct faculty, contractor, applicant for employment, student, or applicant for admission on the basis of:

- race or color; ethnicity; and national origin, including ancestry;
- citizenship status;
- personal appearance;
- religion, faith, or creed, including no religion;
- political affiliation;
- economic status including bankruptcy or bad debt
- disability, whether physical or mental;
- age;
- marital status;
- sexual orientation; gender or gender expression, or gender identity;
- sex;
- pregnancy;
- veteran or military status;
- predisposing genetic characteristics;
- domestic violence victim status or
- any other protected category under applicable local, state or federal law, including protection for those opposing discrimination or participating in any resolution process.

This handbook covers nondiscrimination in employment and access to educational opportunities. Therefore, any member of the campus community who acts to deny, deprive, or limit the educational,

employment, access, benefits, and/or opportunities of any member of the campus community, guest, or visitor on the basis of their actual or perceived membership in the protected classes listed above is in violation of University policy on nondiscrimination.

## B. ACCOMMODATIONS OF DISABILITIES

The University is committed to compliance with the *Americans with Disabilities Act of 1990* (ADA and ADAAA) and Section 504 of the *Rehabilitation Act of 1973*, which prohibit discrimination against qualified persons with disabilities, as well as other federal and state laws 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 the institution whether qualified or not. 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 IEO has been designated as the ADA/504 Coordinator responsible for coordinating campus efforts to comply with federal disability laws, including investigation of any allegation of noncompliance.

### Students with Disabilities

RMUoHP is committed to providing qualified students with disabilities reasonable accommodations and support to ensure equal access to the academic programs and activities of the University. For more detailed information, refer to Policy 1230 Academic Accommodations.

All accommodations are made on a case-by-case basis. A student requesting any accommodation should first contact the IEO who coordinates requests and services for students with disabilities. The Committee on Inclusiveness, in consultation with the IEO, reviews documentation provided by the student and determines which accommodations are appropriate to the student's particular needs and academic programs. For more detailed information on expectations of conduct and resolution of equal opportunity, refer to Policy 1075 Equal Opportunity and Access.

### Employees with Disabilities

Pursuant to the ADA, RMUoHP will provide reasonable accommodation(s) to all qualified employees with known disabilities, where their disability affects the performance of their essential job functions, except where doing so would be unduly disruptive, result in undue hardship to the university, or fundamentally change an academic program or function.

An employee with a disability is responsible for requesting an accommodation in writing to the HR Manager, and provide appropriate documentation. The HR Manager 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.

For more detailed information, refer to Policy 4402 Americans with Disabilities Act – Reasonable Accommodation.

## C. DISCRIMINATORY HARASSMENT

Students, staff, administrators, faculty, guests, and other visitors are entitled to an environment free of discriminatory harassment. RMUoHP's harassment 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 following sections describe the specific forms of legally prohibited harassment that are also prohibited under Policy 1000 Academic Freedom.

### **Discriminatory and Bias-Related Harassment**

Harassment constitutes a form of discrimination that is prohibited by RMUoHP policy and federal and state law. RMUoHP prohibits and will not tolerate discriminatory harassment against any employee, student, visitor, or guest on the basis of any status protected by policy or law. The University will remedy all forms of harassment when reported, whether or not the harassment rises to the level of creating a hostile environment. When harassment rises to the level of creating a hostile environment, RMUoHP may also impose sanctions on the harasser through application of the ERP. The University explicitly prohibits any form of discriminatory or bias-related harassment, which is defined as unwelcome conduct by any member or group of the community on the basis of actual or perceived membership in a protected class.

A hostile environment may be created by harassing verbal, written, graphic, or physical conduct that is severe or persistent, such that it interferes with, limits, or denies the ability of an individual to participate in or benefit from educational programs, or activities, or employment access, benefits, or opportunities.<sup>1</sup>

RMUoHP reserves the right to have appropriate parties address offensive conduct and/or harassment that either does not rise to the level of creating a hostile environment or is of a generic nature not on the basis of a protected status. Addressing such behaviors may not result in the imposition of discipline under this handbook, but may be addressed through other University policies or handbooks, respectful confrontation, remedial actions, and/or effective education and conflict resolution mechanisms.

For assistance with conflict resolution techniques, employees should contact the HR Manager or their supervisor as appropriate, and students or guests should contact either the IEO or the Student Services Manager.

Refer to Policy 3006 Nondiscrimination, Nonharassment, and Conduct for further information.

### **Sexual Harassment**

The Department of Education's Office for Civil Rights (OCR), the Equal Employment Opportunity Commission (EEOC), and the State of Utah regard sexual harassment as a form of sex/gender discrimination and, therefore, as an unlawful discriminatory practice. RMUoHP has adopted the following definition of sexual harassment to address the special environment of an academic community, which consists not only of employer and employees, but of students as well.<sup>2</sup>

Sexual harassment is:

- unwelcome,

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<sup>1</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. The document is available at: <http://www.ed.gov/about/offices/list/ocr/docs/race394.html>.

<sup>2</sup> Also of relevance is the Office of Civil Rights 2001 statement on sexual harassment, "Revised Sexual Harassment Guidance: Harassment Of Students By School Employees, Other Students, Or Third Parties, Title IX," which can be found at: <http://www2.ed.gov/legislation/FedRegister/other/2001-1/011901b.html>, the April, 2011 Dear Colleague Letter on Campus Sexual Violence, which can be found at: [http://www.whitehouse.gov/sites/default/files/dear\\_colleague\\_sexual\\_violence.pdf](http://www.whitehouse.gov/sites/default/files/dear_colleague_sexual_violence.pdf) and OCR's Questions and Answers on Title IX and Sexual Violence, which can be found at: <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>.

- sexual, sex-based, and/or gender-based,
- verbal, written, online, and/or physical conduct.

Anyone experiencing sexual harassment is encouraged to report it immediately to an RA.

Sexual harassment may be disciplined when it takes the form of *quid pro quo* harassment, retaliatory harassment, and/or creates a hostile environment.

A hostile environment is created when sexual harassment is:

- severe, or
- pervasive

*Quid Pro Quo* sexual harassment is unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature by a person having power or authority over another constitutes sexual harassment when submission to such sexual conduct is made either explicitly or implicitly a term or condition of rating or evaluating an individual's professional or educational development or performance.

Some examples of possible sexual harassment include<sup>3</sup>:

- A professor insists that a student have sex with him/her in exchange for a good grade.
- A student repeatedly sends sexually oriented jokes around on an email list s/he created, even when asked to stop, causing one recipient to avoid the sender on campus and in the classroom.
- Explicit sexual pictures are displayed in a professor's office.
- Two supervisors frequently 'rate' several employees' bodies and sex appeal, commenting suggestively about their clothing and appearance.
- A professor engages students in her class in discussions about their past sexual experiences, yet the conversation is not in any way germane to the subject matter of the class. She probes for explicit details and demands that students answer her, though they are clearly uncomfortable and hesitant.
- An ex-girlfriend widely spreads false stories about her sex life with her former partner to the clear discomfort of that person, turning the former partner into a social pariah on campus.
- Male students take to calling a particular brunette student "Monica" because of her resemblance to Monica Lewinsky. Soon, everyone adopts this nickname for her, and she is the target of consistent remarks about cigars, the president, "sexual relations," and weight loss programs.

*Consensual relationships:*<sup>4</sup> There are inherent risks in any romantic or sexual relationship between individuals in unequal positions (such as faculty and student, supervisor and employee). These relationships may be less consensual than perceived by the individual whose position confers power. The relationship also may be viewed in different ways by each of the parties, particularly in retrospect. Furthermore, circumstances may change, and conduct that was previously welcome may become unwelcome. Even when both parties have consented at the outset to a romantic or sexual involvement, this past consent may not remove grounds for a later charge of a violation of applicable sections of this

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<sup>3</sup> OCR has been consistent in their expectation for examples to be included in policy.

<sup>4</sup> This section is offered as an optional inclusion, as some campuses prefer to include this policy elsewhere, such as a faculty handbook or employee manual. We include it here to inform students, not just employees, of our expectations. Regardless, violation of this policy is an HR/Employee Relations Matter, and should not be addressed under the ERP unless the elements of *Quid Pro Quo* harassment are met.

policy. The University does not wish to interfere with private choices regarding personal relationships when these relationships do not interfere with the goals and policies of the University. For the personal protection of members of this community, relationships in which power differentials are inherent (faculty-student, staff-student, administrator-student) are generally discouraged.

Consensual romantic or sexual relationships in which one party maintains a direct supervisory or evaluative role over the other party are unethical. Therefore, persons with direct supervisory or evaluative responsibilities who are involved in such relationships must bring those relationships to the timely attention of their supervisor, and will likely result in the necessity to remove the employee from the supervisory or evaluative responsibilities, or shift a party out of being supervised or evaluated by someone with whom they have established a consensual relationship. This includes student group participants, teaching assistants, and any student in a relationship with another student or employee over whom they have direct responsibility. While no relationships are prohibited by this policy, failure to timely self-report such relationships to a supervisor as required can result in disciplinary action for an employee.

### Sexual Misconduct<sup>5</sup>

State law defines various violent and/or non-consensual sexual acts as crimes. While some of these acts may have parallels in criminal law, RMUoHP has defined categories of sex/gender discrimination as sexual misconduct, as follows, for which action under this policy may be imposed. Responding parties may also contact a police jurisdiction in their area, and may seek out an RA for assistance with this. Generally speaking, RMUoHP considers non-consensual sexual intercourse violations to be the most serious of these offenses, and therefore typically imposes the most severe sanctions, including suspension or expulsion for students and termination for employees. However, the University reserves the right to impose any level of sanction, ranging from a reprimand up to and including termination, for any act of sexual misconduct or other sex/gender-based offenses, including intimate partner (dating and/or domestic) violence, non-consensual sexual contact, and/or stalking based on the facts and circumstances of the particular allegation. Acts of sexual misconduct may be committed by any person upon any other person, regardless of the sex, sexual orientation, and/or gender identity of those involved. Violations include:

1. Sexual Harassment (as defined in the Sexual Harassment description above)
2. Non-Consensual Sexual Intercourse; defined as:
  - any sexual intercourse (see below), however slight, with any object by a person upon another person that is without consent and/or by force<sup>6</sup>
3. Sexual intercourse includes:
  - Vaginal or anal penetration by a penis, tongue, finger or object, or oral copulation (mouth to genital contact) no matter how slight the penetration or contact.

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<sup>5</sup> RMUoHP has avoided such terms such as rape and sexual assault in policy, as they confuse discrimination and misconduct with criminal activity.

<sup>6</sup> The use of force in non-consensual sexual intercourse and contact-based incidents is not “worse” than the subjective experience of violation of someone who is a victim of sexual intercourse or sexual contact without consent. However, the use of physical force constitutes a stand-alone non-sexual offense as well, as it is our expectation that those who use physical force (restrict, battery, etc.) would face not just the sexual misconduct allegation, but allegations under the code for the additional assaultive behavior.

4. Non-consensual sexual contact<sup>7</sup>; defined as:
  - any intentional sexual touching, however slight, with any object by a person upon another person that is without consent and/or by force
5. Sexual touching includes:
  - Intentional contact with the breasts, groin, or genitals, mouth, or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts; or
  - Any other bodily contact in a sexual manner.
6. Sexual exploitation; defined as:
  - A situation in which a person takes non-consensual or abusive sexual advantage of another and that behavior does not otherwise fall within the definitions of sexual harassment, non-consensual sexual intercourse, or non-consensual sexual contact. Examples of sexual exploitation include, but are not limited to:
    - i. Sexual voyeurism (such as watching a person undressing, using the bathroom, or engaged in sexual acts without the consent of the person observed).
    - ii. Invasion of sexual privacy.
    - iii. Taking pictures or video or audio recording another in a sexual act, or in any other private 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).
7. Prostitution.
8. Sexual exploitation also includes engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV), a sexually transmitted disease (STD) or infection (STI) without informing the other person of the infection.
9. Administering alcohol or drugs (such as "date rape" drugs) to another person without his or her knowledge or consent (assuming the act is not completed).
10. Exposing one's genitals in non-consensual circumstances.
11. Sexually-based stalking and/or bullying may also be forms of sexual exploitation.

#### Force, Coercion, Consent, and Incapacitation

*Force* is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that overcome resistance or produce an illusion of consent ("Have sex with me or I'll hit you." "Okay, don't hit me, I'll do what you want.").

*Coercion* is unreasonable pressure for sexual activity. Coercive behavior differs from seductive behavior based on the type of pressure someone uses to get consent from another. When someone makes clear to you that they do not want sex, 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.

**Note:** *The presence of consent is not demonstrated by the absence of resistance or silence. Silence or the absence of resistance alone is not consent. There is no requirement on a party to verbally or physically resist the sexual advance or request; however, resistance is a clear demonstration of non-consent. Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not always, by definition, forced.*

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<sup>7</sup> The state definition of sexual assault, which is applicable to criminal prosecutions for sexual assault in Utah, may differ from the definition used on campus to address policy violations.

*Consent* is knowing, voluntary, and clear permission by word or action to engage in mutually agreed upon sexual activity. Since individuals may experience the same interaction in different ways, it is the responsibility of each party to make certain that the other has consented before engaging in the activity. For consent to be clearly communicated and valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Consent can be withdrawn once given, as long as the withdrawal is clearly communicated.

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 dating relationship is not sufficient to constitute consent. The existence of consent is based on the totality of the circumstances, including the context in which an alleged incident occurred and any similar previous patterns that may be evidenced.

For clarification for the Clery Act, the State of Utah's definition of consent can be found at: [https://le.utah.gov/xcode/Title76/Chapter5/76-5-S406.html?v=C76-5-S406\\_2015051220150512](https://le.utah.gov/xcode/Title76/Chapter5/76-5-S406.html?v=C76-5-S406_2015051220150512); while this is applicable to criminal prosecutions for sex offenses in Utah, it differs from the definition used on campus to address policy violations, and the University definition been described in this handbook.

*Incapacitation* is defined as a state where someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (i.e., to understand the "who, what, when, where, why or how" of their sexual interaction). This policy also covers a person whose incapacity results from mental disability, involuntary physical restraint, and/or from the taking of incapacitating drugs, including alcohol.

A person is incapacitated and cannot consent if they are unable to understand what is happening or is disoriented, helpless, asleep, or unconscious for any reason including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has violated this policy.

It is not an excuse that the responding party was intoxicated and, therefore, did not realize the incapacity of the reporting party.

In Utah, a minor (a person under the age of 16 years) cannot consent to sexual activity. This means that sexual contact by an adult with a person younger than 16 years old is a crime and a potential violation of this policy, even if the minor wanted to engage in the act. Utah defines a minor as anyone under 18 if the above sexual contact is completed or attempted by someone in a supervisory or leadership position over said minor.

#### D. OTHER CIVIL RIGHTS OFFENSES

In addition to the forms of sexual misconduct described previously, the following behaviors are also prohibited as forms of discrimination when the act is based upon the reporting party's actual or perceived membership in a protected class.

- Threatening or causing physical harm, extreme verbal abuse, or other conduct which threatens or endangers the health or safety of any person;
- Discrimination, defined as actions that deprive, limit, or deny other members of the community of educational or employment access, benefits, or opportunities;
- Intimidation, defined as implied threats or acts that cause an unreasonable fear of harm in another;

- Hazing, defined as acts likely to cause physical or psychological harm or social ostracism to any person within the university community, when related to the admission, initiation, pledging, joining, or any other group-affiliation activity;
- Bullying, occurs when each of the following are true:
  - repeated and/or severe
  - aggressive behavior
  - likely to intimidate or intentionally hurt, control or diminish another person, physically or mentally
- Intimate Partner Violence (IPV), defined as violence or abuse between those in an intimate interaction and/or relationship to each other. Examples include:
  - A boyfriend shoves his girlfriend into a wall upon seeing her talking to a male friend. This physical assault based in jealousy is a violation of the Intimate Partner Violence definition used here.
  - An ex-girlfriend shames her female partner, threatening to expose her as a lesbian if she doesn't give the ex-partner another chance. This is psychological abuse and is a form of Intimate Partner Violence. If one party is a student or employee, or if this happens to anyone on campus, it is subject to investigation, remedies, and potential sanctions.
  - A graduate student refuses to wear a condom and forces his girlfriend to take hormonal birth control though it makes her ill in order to prevent pregnancy. This is both psychological abuse and coercion-based IPV.
  - Married employees are witnessed in the parking lot, with one partner slapping and scratching the other in the midst of an argument. This is a physical assault and a form of Intimate Partner Violence.
- Stalking occurs when each of the following are true:
  - A course of conduct directed at a specific person;
  - on the basis of actual or perceived membership in a protected class;
  - that is unwelcome, AND
  - would cause a reasonable person to feel fear.

*Examples of stalking:*

- A student repeatedly shows up at another student's off-campus hotel, always notifying the front desk attendant that they are there to see the resident. Upon a call to the resident, the student informs hotel staff that this visitor is uninvited and continuously attempts to see them. This unwanted visitor goes as far as waiting for them outside of classes and requesting that they go out on a date together.
- 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 would appreciate if the gift deliveries stop. The student then started leaving notes of love and gratitude on the graduate assistant's car, both on-campus and at home. When 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 necessary 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. We are meant to be together."
- Any other University policies may fall within this section when a violation is motivated by the actual or perceived membership of the reporting party's inherent characteristics, including those listed under "Protections" and including sex or gender.

Sanctions for the above-listed “Other Civil Rights Behaviors” behaviors range from reprimand through expulsion (students) or termination of employment (employees).

## E. RETALIATION

Retaliation is defined as any adverse action taken against a person participating in a protected activity because of their participation in that protected activity. Protected activity in the workplace are activities that workers may engage in without fear of retaliation by supervisors or employers. An individual alleging harassment, supporting a party bringing an allegation, or for assisting in providing information relevant to a claim of harassment are examples of protected activity. Retaliation in these instances is a violation of RMUoHP policy and will be treated as a possible instance of harassment or discrimination. Acts of alleged retaliation should be reported immediately to the RA and will be promptly investigated. The University is prepared to take appropriate steps to protect individuals who fear that they may be subjected to retaliation.

Examples of Retaliation:

- A faculty member complains of gender inequity in pay within her department; the department chair then revokes his prior approval allowing her to attend a national conference, citing the faculty member’s tendency to “ruffle feathers.”
- A student from student council participates in a sexual misconduct investigation against the responding individual – also a member of student council; the student is subsequently removed as a member of student council because he participated in the investigation.

## F. REMEDIAL ACTION

RMUoHP will implement initial remedial, responsive, and/or protective actions upon notice of alleged harassment, retaliation, and/or discrimination. Such actions could include but are not limited to: no contact orders, providing counseling and/or medial services, academic support, living arrangement adjustments, transportation accommodations, visa and immigration assistance, student financial aid counseling, providing a campus escort, academic or work schedule and assignment accommodations, safety planning, and/or referral to campus and community support resources.

RMUoHP will take additional prompt remedial and/or disciplinary action with respect to any member of the community, guest, or visitor upon a finding that they have engaged in harassing or discriminatory behavior or retaliation.

RMUoHP will maintain confidential any remedial actions, including but not limited to accommodations or protective measures, provided confidentiality does not impair the University’s ability to provide the accommodations or protective measures.

Procedures for handling reported incidents are described in Section 3 of this document.

## G. CONFIDENTIALITY AND REPORTING OF OFFENSES UNDER THIS HANDBOOK

All University employees are expected to report observed or suspected discrimination or harassment to appropriate officials immediately, though there are some limited exceptions. To make informed choices, it is important that employees are aware of confidentiality and mandatory reporting requirements when consulting campus resources.

## Confidential Reporting

On campus, some resources and employees may maintain confidentiality – meaning they are not required to report actual or suspected discrimination or harassment to appropriate University officials – thereby offering options and advice without any obligation to inform an outside agency or campus official unless a reporting party has requested information to be shared. If a reporting party would like the details of an incident to be kept confidential, the reporting party may speak with:

- Licensed professional counselors, on- or off-campus
- Local rape crisis counselors
- Domestic violence resources
- Local or state assistance agencies
- Clergy/Chaplains

All of the individuals listed above will maintain confidentiality except in cases of immediacy of threat or danger to oneself or others or abuse of a minor. Student & Alumni Affairs representatives are available to help (free of charge) and can be accessed on an emergency basis during normal business hours. RMUoHP employees listed previously will record and submit anonymous statistical information for Clery Act purposes to the IEO or the University designee for Clery reporting.

## Formal Reporting Options

All University employees are expected to report incidents of harassment and discrimination, unless the employee falls under confidential reporting. Reporting parties may want to consider carefully whether they share personally identifiable details with employees, as allegations must be shared with the appropriate RA. Generally, climate surveys, classroom writing assignments or discussions, human subjects research, or events such as Take Back the Night marches or speak-outs do not provide notice that must be reported to the IEO by employees, unless the reporting party clearly indicates that they wish a report to be made. Remedial actions may result from such disclosures without formal University action.

If a reporting party does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a formal resolution to be pursued, the reporting party may make such a request to an RA, who will evaluate that request in light of the duty to ensure the safety of the campus and comply with federal law. RMUoHP's ability to remedy and respond to a reported incident may be limited if the reporting party does not want the institution to proceed with an investigation and/or the ERP.

In cases indicating pattern, predation, threat, weapons, and/or violence, RMUoHP will likely be unable to honor a request for confidentiality. In cases where the reporting party requests confidentiality and the circumstances allow the University to honor that request, RMUoHP will offer interim supports and remedies to the reporting party and the community, but will not otherwise pursue formal action. A reporting party has the right, and can expect, to have allegations taken seriously when formally reported and to have those incidents investigated and properly resolved through these procedures.

Formal reporting still affords privacy to the reporting party, and only a small group of officials who need to know will be told, possibly including but not limited to: Office for Institutional Equity, Department of Human Resources, Student & Alumni Affairs, and the University Health and Wellness Committee. Information will be shared as necessary with investigators, witnesses and the responding party. The circle of people with this knowledge will be kept as small as possible to preserve a reporting party's rights and privacy. Additionally, anonymous reports can be made by victims and/or third parties using the online reporting form posted at <https://rmuohp.edu/institutional-equity/>, or the reporting hotline at 385.375.8344. An anonymous report may prompt a need for the institution to investigate.

Failure of a non-confidential employee, as described in this section, to report an observed or suspected incident or incidents of harassment or discrimination of which they become aware is a violation of this handbook and may be subject to disciplinary action.

#### H. FEDERAL TIMELY WARNING OBLIGATIONS

Parties reporting misconduct should be aware that under the Clery Act, RMUoHP administrators must issue timely warnings for incidents reported to them that pose a substantial threat of bodily harm or danger to members of the campus community. RMUoHP will ensure that a victim'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.

#### I. FALSE ALLEGATIONS

Deliberately false and/or malicious accusations under this policy, as opposed to allegations which (even if erroneous) are made in good faith, are a serious offense and will be subject to appropriate disciplinary action.

#### J. AMNESTY FOR REPORTING PARTY AND WITNESSES

The University encourages the reporting of misconduct (as determined by campus policy) and crimes (as determined by law). Sometimes, reporting parties or witnesses are hesitant to report to RMUoHP officials or participate in resolution processes because they fear that they themselves may be accused of policy violations, such as recreational drug use or violating the consensual relationship policy. It is in the best interests of this community that reporting parties choose to report to University officials, and that witnesses come forward to share what they know. To encourage reporting, RMUoHP pursues a policy of offering reporting parties and witnesses amnesty from minor policy violations related to the incident. For example, someone who has been assaulted while under the influence of a drug may receive amnesty for the drug violation. This is done to allow the victim to share details without self-incrimination or risk to employment or academic success.

#### K. PARENTAL NOTIFICATION (ALLEGATIONS INVOLVING STUDENTS)

The University reserves the right to notify parents/guardians of dependent students, employees, guests, or visitors regarding any health or safety risk or any change in student status or conduct situation. Where a student or guest is non-dependent, parents/guardians may be contacted to inform them of situations in which there is a significant and articulable health and/or safety risk. RMUoHP also reserves the right to designate which University officials have a need to know about student-related incidents that fall within this policy, pursuant to the Family Educational Rights and Privacy Act (FERPA).

#### L. FEDERAL STATISTICAL REPORTING OBLIGATIONS

Certain campus officials have a duty to report specific misconduct, crimes, and policy violations for federal statistical reporting purposes (Clery Act). All personally identifiable information is kept confidential, but aggregate statistical information must be passed along, regarding the type of incident and its general location (e.g., on or off-campus, in the surrounding area (no addresses are given)), for publication in the annual Campus Safety & Security Report. This report provides the community with a clear picture of the extent and nature of campus crime to ensure greater community safety. Mandated federal reporters include: student affairs/student conduct, local police, student activities staff, human resources staff, advisors to student organizations, and any other official with significant responsibility for student and campus activities. The information to be shared includes the date, the location of the incident (using Clery location categories) and the Clery crime category.

## Section 3: Procedures

The following procedures apply to all allegations of harassment or discrimination on the basis of protected class involving students or employees (including all staff and faculty regardless of position). These procedures may also be used to address collateral misconduct occurring in conjunction with harassing or discriminatory conduct (e.g., vandalism, physical abuse of a person). All other allegations of misconduct unrelated to incidents covered by this policy will be addressed through the procedures elaborated in the University Handbook and the Employee Handbook, as well as any program-specific handbooks (e.g., the DPT Handbook).

### A. OVERVIEW OF THE EQUITY RESOLUTION PROCESS (ERP)

Upon notice to an RA, this resolution process involves a prompt preliminary inquiry to determine if there is reasonable evidence to believe Policy 3006 has been violated. If so, a confidential investigation will be initiated that is thorough, reliable, impartial, prompt, and fair. If an investigation and the subsequent resolution process determines that the nondiscrimination policy has been violated, effective remedies designed to end the discrimination, prevent its recurrence, and address its effects will be promptly implemented.

Allegations under the policy on nondiscrimination are resolved using the ERP. Members of the ERP pool are announced in an annual distribution of this handbook to campus, prospective students, and prospective employees. The list of members and a description of the panel can be found at <https://rmuohp.edu/institutional-equity/>. Members of the ERP pool are trained in the resolution process and can serve in any of the following roles at the discretion of the IEO (or, if the IEO is unavailable or has a conflict of interest, another RA, or failing this, at the appointment of the President):

- Provide sensitive intake for and initial advice pertaining to allegations.
- Serve in a mediation or restorative justice role in conflict mediation.
- Investigate allegations.
- Act as process advisors or advocates to those involved in the ERP.

ERP pool members also recommend proactive policies and serve in an educative role for the University community. The President, in consultation with the IEO and RAs, appoints the pool, which reports to the IEO. ERP pool members are required to receive annual training organized by the IEO, including a review of University 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. This training includes, but is not limited to:

- How to appropriately remedy, investigate, render findings, and determine appropriate sanctions in reference to all forms of harassment and discrimination allegations;
- Policy 3006 and this handbook;
- Confidentiality and privacy; and
- Applicable laws, regulations, and federal regulatory guidance.

The ERP pool includes:

- The IEO, Provost, and HR Manager (the Resolution Administrators).
- At least two members from Academic Affairs.
- At least two members of the non-academic administration and/or staff.
- At least one representative from Student & Alumni Affairs.

ERP pool members are appointed to three-year terms. Appointments to the pool are made with attention to representation of groups protected by Policy 3006. Individuals who are interested in serving in the pool are encouraged to contact the IEO. No member of the pool may be a practicing attorney.

## B. REPORTING MISCONDUCT

Any member of the RMUoHP community, guest, or visitor who believes that Policy 3006 has been violated should contact the appropriate RA (either the IEO, the HR Manager, or the Provost).

It is also acceptable for employees to notify a supervisor or for students to notify an academic advisor or faculty member. These individuals will in turn notify the appropriate RA. The RMUoHP website also includes a reporting form at <https://rmuohp.edu/institutional-equity/> which may serve to initiate the resolution process.

All employees receiving reports of a potential violation of University policy are expected to promptly contact an RA within 24 hours of becoming aware of a report or incident. All initial contacts will be treated with privacy. Specific information on any allegations received by any party will be reported to the appropriate RA, but, subject to RMUoHP's obligation to redress violations, every effort will be made to maintain the privacy of those initiating an allegation. In all cases, RMUoHP will give consideration to the reporting party with respect to how the reported misconduct is pursued, but reserves the right, when necessary to protect the community, to investigate and pursue a resolution even when a reporting party chooses not to initiate or participate in the resolution process.

## C. PRELIMINARY INQUIRY

Following receipt of notice or a report of misconduct, the RA<sup>8</sup> engages in a preliminary inquiry, either conducting the inquiry personally or assigning two members of the ERP pool, to determine if there is reasonable cause to believe Policy 3006 has been violated. The preliminary inquiry is typically one-to-three days in duration. This inquiry may also serve to help the RA to determine if the allegations are verifiable and to determine if there is evidence of violence, threat, pattern, predation, and/or weapon. In any case where violence, threat, pattern, predation and/or weapon is not evidenced, the RA may respect a reporting party's request for no action, and will investigate only so far as necessary to determine appropriate remedies. In cases where violence, threat, pattern, predation, and/or weapon use is evidenced the RA may proceed with an investigation, despite the reporting party's request for no action, when there is a substantial University interest or the safety of others among the University Community may be at risk. As necessary, RMUoHP reserves the right to initiate resolution proceedings without a formal report or participation by the reporting party.

In cases where the reporting party wishes to proceed or the RA determines it must proceed and the preliminary inquiry shows that reasonable cause exists, the RA will direct a formal investigation to commence and the allegation will be resolved through one of the processes below:

- Conflict Resolution – Typically used for less serious offenses and only when both parties agree to conflict resolution.
- Administrative Resolution – Resolution by a trained RA.

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<sup>8</sup> If circumstances require, the President or Institutional Equity Officer may designate another person to oversee the process below, should an allegation be made against the IEO, or the IEO be otherwise unavailable or unable to fulfill their duties.

The process followed considers the preference of the parties, but is ultimately determined at the discretion of the RA. Conflict Resolution may only occur if selected by all parties, otherwise the Administrative Resolution process applies.

If Conflict Resolution is desired by the reporting party and it appears appropriate given the nature of the alleged behavior, then the report does not proceed to investigation unless a pattern of misconduct is suspected or there is an actual or perceived threat of further harm to the community or any of its members.

Once a formal investigation has commenced as part of an Administrative Resolution, the RA provides written notification of the investigation to the responding party at an appropriate time during the investigation.<sup>9</sup> Investigations should be completed within 60 calendar days, however, this may be extended for appropriate cause by the RA with notice to the parties.

If, during the preliminary inquiry or at any point during the formal investigation, the RA determines that there is no reasonable cause to believe that policy has been violated, the process will be terminated. The reporting party may request, however, the RA make an extraordinary determination to re-open the investigation. This decision lies in the discretion of the RA.

#### D. INTERIM REMEDIES/ACTIONS

The RA may provide interim remedies intended to address the short-term effects of harassment, discrimination, and/or retaliation (i.e., to redress harm to the reporting party and the community and to prevent further violations). The RA will coordinate with appropriate parties for remediation. These remedies may include, but are not limited to:

- Referral to counseling and related mental or physical health services.
- Referral to the Employee Assistance Program.
- Education to the community.
- Altering work arrangements for employees.
- Providing campus guides.
- Providing transportation accommodations.
- Implementing contact limitations between the parties.
- Offering adjustments to academic deadlines, course schedules, or work responsibilities or functions.

As an interim remedy, a student or organization or employee may be placed on administrative leave, pending the completion of the ERP investigation and procedures. This may happen when, in the judgment of the RA, the safety or well-being of any member(s) of the campus community may be jeopardized by the presence (on-campus, at university sponsored events, or online) of the responding party or the ongoing activity of a student organization whose behavior is in question. In all cases in which an interim suspension or leave is imposed, the student, employee, or student organization will be given the option to meet with the RA prior to such suspension or leave being imposed (or as soon thereafter as reasonably possible), to show cause why the suspension or leave should not be implemented. Under this policy, the RAs have discretion to implement or stay an interim suspension or

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<sup>9</sup> 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 RMUoHP records; or emailed to the parties' RMUoHP-issued email account. Once mailed, emailed and/or received in-person, notice will be presumptively delivered. The reporting party is typically copied on such correspondence.

leave and to determine its conditions and duration. Violation of an interim suspension or leave under this policy will be grounds for expulsion or termination. All suspensions and leaves will be reported to the appropriate RA prior to implementation to facilitate necessary communication among appropriate personnel.

During an interim suspension or administrative leave, a student or employee may be denied access to RMUoHP services, including campus facilities and events. As determined by the RA, this restriction can include classes and/or all other University activities or privileges for which the student might otherwise be eligible. At the discretion of the RA, and with consultation with appropriate parties, alternative coursework options or job duties may be pursued to ensure as minimal an impact as possible on the responding party.

The Institution will maintain as confidential any interim actions or protective measures, provided confidentiality does not impair the Institution's ability to provide the interim actions or protective measures.

## E. INVESTIGATION

Once the decision is made to commence a formal investigation, the RAs appoint ERP pool members to conduct the investigation (one of which may be a RA), usually within two days of determining that an investigation should proceed. Investigations are completed expeditiously, normally within ten days, depending on the nature, extent, and complexity of the allegations, availability of witnesses, police involvement, and related factors.

Short investigation delays may be permitted to allow time for evidence collection when criminal charges are being investigated on the basis of the same behaviors that invoke this process. The University will promptly resume its investigation and resolution processes once notified by law enforcement that the initial evidence collection process is complete. RMUoHP action will not typically be altered or precluded on the grounds that civil or criminal charges involving the same incident have been filed or that charges have been dismissed or reduced.

All investigations will be thorough, reliable, impartial, prompt, and fair. Investigations shall entail interviews with all relevant parties and witnesses, obtaining available evidence, and identifying sources of expert information, as necessary.

The investigators will typically complete the following actions:

- In coordination with campus partners (e.g.: IEO, HR Manager, and the Provost), initiate or assist with any necessary remedial actions;
- Determine the identity and contact information of the reporting party;
- Identify all policies allegedly violated;
- Assist the RAs with an immediate preliminary inquiry to determine if there is reasonable cause to believe the responding party has violated policy;
  - If there is insufficient evidence to support reasonable cause, the inquiry should be closed with no further action.
- Commence a thorough, reliable, impartial, prompt, and fair investigation by developing a strategic investigation plan, including a witness list, evidence list, intended timeframe, and order of interviews for all witnesses and the responding party, who may be given notice prior to or at the time of the interview;
- Prepare the notice of allegation on the basis of the preliminary inquiry;
- Meet with the reporting party to finalize their statement, if necessary;

- If possible, provide written notification to the parties prior to their interviews that they may have the assistance of an ERP pool member or other advisor of their choosing present for all meetings;
- Provide 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, to the reporting party and responding party;
- Prior to the conclusion of the investigation, may provide the reporting party and the responding party with a list of witnesses whose information will be used to render a finding;
- Allow each party the opportunity to suggest questions they wish the investigators to ask of the other party and witnesses;
- Provide parties with all relevant evidence to be used in rendering a determination and provide each with a full and fair opportunity to address that evidence prior to a finding being rendered;
- Complete the investigation promptly and without unreasonable deviation from the intended timeline;
- Provide regular updates to the reporting party throughout the investigation and to the responding party, as appropriate;
- Create a report on the investigation;
- Along with the RA, share a draft report with the parties and allow them a period of comment prior to the report being finalized;
- Make (or recommend, if investigation team does not include one of the Resolution Administrators) a finding, based on a preponderance of the evidence (whether a policy violation is more likely than not); and,
- The RA finalizes and presents the findings to the reporting and responding parties, without undue delay between notifications, and implements sanctions, if any.

At any point during the investigation, if it is determined there is no reasonable cause to believe that RMUoHP policy has been violated, the RA has authority to terminate the investigation and end resolution proceedings.

Witnesses (as distinguished from the parties) are expected to cooperate with and participate in the RMUoHP investigation and the ERP investigation team. Failure of a witness to cooperate with and/or participate in the investigation or ERP may constitute a violation of policy and may be subject to discipline. Exceptions may be made if the witness feels unsafe or threatened. Witnesses may provide written statements in lieu of interviews during the investigation and may be interviewed remotely by phone, or video conference/chat (Skype, Google Hangout, or similar technology), if they cannot be interviewed in person or if the investigators determine that timeliness or efficiency dictate a need for remote interviewing.

Failure of either party to offer evidence prior to an appeal does not automatically constitute grounds for appeal on the basis of new evidence.

No unauthorized audio or video recording of any kind is permitted during investigation meetings or other ERP proceedings.

## F. ADVISORS

Each party is allowed to have an advisor of their choice present with them for all ERP meetings and proceedings, from intake through to final determination. The parties may select whomever they wish to serve as their advisor as long as the advisor is eligible and available, and usually otherwise not involved

in the resolution process, such as serving as a witness. The advisor may be a friend, mentor, family member, attorney, or any other supporter a party chooses to advise them who is available and eligible. Witnesses cannot also serve as advisors. The parties may choose advisors from inside or outside the campus community. If requested, the RA may also offer to assign a trained ERP pool member to work as an advisor for any party. The parties may choose their advisor from the ERP pool, choose a non-trained advisor from outside the pool, if preferred, or proceed without an advisor.

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 their advisees prepare for each meeting, and are expected to advise ethically, with integrity and in good faith. The University 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, the University is not obligated to provide one.

All advisors are subject to the same rules, whether they are attorneys or not. Advisors may not address campus officials in a meeting or interview unless invited to do so. The advisor may not make a presentation or represent the reporting party or the responding party during any meeting or proceeding and may not speak on behalf of the advisee to the investigators or RAs. The parties are expected to ask and respond to questions on their own behalf, without representation by their advisor. Advisors may confer quietly with their advisees or in writing, as necessary, as long as they do not disrupt the process. For longer or more involved discussions, the parties and their advisors should ask for breaks or step out of meetings to allow for private conversation. Advisors may be given an opportunity to meet in advance of any interview or meeting with the administrative officials conducting that interview or meeting. This pre-meeting will allow advisors to clarify any questions they may have and allows the University an opportunity to clarify the role the advisor is expected to take.

Advisors are expected to refrain from interference with the investigation and resolution. Any advisor who steps out of their role will be warned only once. If the advisor continues to disrupt or otherwise fails to respect the limits of the advisor role, the advisor will be asked to leave the meeting. When an advisor is removed from a meeting, that meeting will typically continue without the advisor present. Subsequently, the RA will determine whether the advisor may be reinstated, or may be replaced by a different advisor.

RMUoHP expects that the parties will wish to share documentation related to the allegations with their advisors. RMUoHP shall provide a consent and nondisclosure form that authorizes such sharing. The parties must complete this form before the University is able to share records with an advisor, though parties may share the information directly with their advisor if they wish. 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 RMUoHP. The role of any advisor who does not respect the sensitive nature of the process or who fails to abide by the University's privacy expectations will be excused from the proceedings.

The University expects an advisor to adjust their schedules to allow them to attend University meetings. Scheduled meetings will not typically be rescheduled to accommodate an advisor's inability to attend. However, reasonable provisions will be permitted to allow an advisor who cannot attend in person to attend a meeting by telephone, video, and/or virtual meeting technologies as may be convenient and available.

A party may elect to change advisors during the process.

The parties must advise the investigators of the identity of their advisor at least one working day 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 must provide notice within one working day to investigators if they change advisors at any time.

## G. RESOLUTION

Proceedings are private. All persons present at any time during the resolution process are expected to maintain the privacy of the proceedings. While the contents of a hearing are private, the parties have discretion to share their own experiences if they so choose, and should discuss doing so with their advisors.

### Conflict Resolution

A conflict resolution process is often used for less serious, yet inappropriate, behaviors. Conflict resolution is encouraged as an alternative to the formal process. It is not necessary to pursue conflict resolution first in order to pursue administrative resolution, and any party participating in conflict resolution can stop that process at any time and request a shift to administrative resolution.

Conflict resolution will not be the primary resolution mechanism used to address reports of violent behavior of any kind or in other cases of serious violations of policy (for example, sexual violence, threat, pattern, predation, and/or weapon use is evidenced), though it may be made available after the formal process is completed should the parties and the RA believe that it could be beneficial. The RA will determine if conflict resolution process is appropriate, based on the willingness of the parties, the nature of the conduct at issue, and the susceptibility of the conduct to conflict resolution.

In a conflict resolution meeting, a trained administrator will facilitate a dialogue with the parties to an effective resolution, if possible. Sanctions are not expected to be a result of a conflict resolution process, though the parties may agree to appropriate remedies. The administrator will keep records of all resolutions reached as a result of the conflict resolution process and inform the IEO of any outcomes. Failure to abide by the resolution can result in responsive actions including reopening the investigation.

### Administrative Resolution

Administrative Resolution (AR) can be pursued for any behavior that falls within Policy 3006 at any time during the process.

During AR, the RA has the authority to address all collateral misconduct, including all allegations of discrimination, harassment, and retaliation, as well as any additional alleged policy violations that have occurred in concert with the discrimination, harassment, or retaliation, even though those collateral allegations may not specifically fall within this handbook. Accordingly, investigations should be conducted with as wide a scope as necessary. (An example: Student A reports being sexually harassed by Classmate B. During the investigation it comes to light that said harassment occurred after Student A witnessed the classmate cheating on an exam, and as a result Classmate B used sexual harassment as a means to intimidate Student A into not speaking with the academic program regarding the cheating.)

AR relies on the evidence, information, and recommended findings within the investigative report to render a determination. Upon completion of the investigation, the ERP investigator(s) will provide the RA(s) with a written report summarizing the evidence gathered and examined, including an assessment of credibility of the parties and witnesses, an analysis of the information and a recommended finding and, if applicable, a recommended sanction. Any evidence that the RA believes is relevant and credible may be considered, including history and pattern evidence. The RA may exclude irrelevant or immaterial

evidence and may choose to disregard evidence lacking in credibility or that is improperly prejudicial. The RA will conduct any additional necessary inquiry and then finalize a determination in accordance with the following procedures. The RA will consider, but is not bound by, the recommendations of the investigation.

Unless the RA determines it is appropriate, the investigation and the finding will not consider: (1) incidents not directly related to the possible violation, unless they show a pattern, (2) the sexual history of the reporting party (though there may be a limited exception made in regards to the sexual history between the parties), (3) or the character of either party, although lack of credibility will influence the investigation. While previous conduct violations by the responding party are not generally admissible as information about the present allegation, the investigators will supply the RA with information about previous good faith allegations and/or findings to consider as evidence of patterns and/or predatory conduct.

Neither the RA nor investigators will meet with character witnesses, but investigators will accept up to two letters supporting the character of each of the parties.

The RA will base the determination(s) on the preponderance of the evidence, whether it is more likely than not that the responding party violated policy as alleged.

The responding party may choose to admit responsibility for all or part of the alleged policy violations at any point during the investigation or AR process. If the responding party admits responsibility, the RA will render a determination that the individual is in violation of RMUoHP policy.

If the responding party admits the violation, or is found in violation, the RA (in conjunction with others as appropriate) will determine and implement an appropriate sanction or responsive action and act promptly and effectively to stop the harassment or discrimination, prevent its recurrence, and remedy the effects of the misconduct.

The RA will inform the parties of the final determination within three days of the resolution, without significant time delay between notifications. 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; or emailed to the parties' RMUoHP-issued email account. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered. The notification of outcome will specify the finding on each alleged policy violation, any sanctions that may result which RMUoHP is permitted or compelled to share according to state or federal law, and the rationale supporting the essential findings to the extent the University is permitted or compelled to share under state or federal law. The notice will also include information on when the results are considered final, and any changes that occur prior to finalization.

### Sanctions

Factors considered when determining a sanction/responsive action may include:

- The nature, severity of, and circumstances surrounding the violation.
- An individual's disciplinary history.
- Previous allegations or allegations involving similar conduct.
- Any other information deemed relevant by the RAs or investigators.
- 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 reporting party and the community.

#### *Possible Student Sanctions (not in any order)*

The following are the usual sanctions that may be imposed upon students or organizations, singly or in combination, and in any order or level, as determined by the RA. Sanctions are coordinated through the Provost.

- *Warning:* A formal statement that the behavior was unacceptable and a warning that further infractions of any policy, procedure or directive will result in more severe sanctions/responsive actions.
- *Probation:* A written reprimand for violation of the Code of Student Conduct, providing for more severe disciplinary sanctions in the event that the student or organization is found in violation of any policy, procedure, or directive within a specified period of time. Terms of the probation will be specified and may include denial of specified social privileges, exclusion from co-curricular activities, non-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. This sanction may be noted as a Behavioral Suspension on the student's official transcript, at the discretion of the RA or IEO.
- *Dismissal:* Permanent termination of student status, revocation of rights to be on campus for any reason or attend RMUoHP-sponsored events. This sanction will be noted as a Behavioral Dismissal on the student's official transcript.
- *Withholding Conferral of Degree:* RMUoHP may withhold the conferral of a student's degree for a specified time and/or deny a student participation in commencement activities if the student has an allegation pending or as a sanction if the student is found responsible for an alleged violation.
- *Sanctions of Groups or Organizations:* Deactivation, de-recognition, loss of all privileges (including University registration), for a specified time.
- *Other Actions:* In addition to or in place of the formal sanctions above, RMUoHP may assign any other sanctions as deemed appropriate.

#### *Possible Employee Sanctions (not in any order)*

Possible responsive actions for an employee who has engaged in harassment, discrimination, and/or retaliation may include but are not limited to the list below. Sanctions for faculty are coordinated through HR and the Provost; non-faculty employee sanctions are coordinated through HR.

- Warning – Verbal or Written
- Performance Improvement/Management Process
- Required Counseling
- Required Training or Education
- Probation
- Loss of Annual Pay Increase
- Loss of Oversight or Supervisory Responsibility
- Demotion
- Suspension with pay
- Suspension without pay
- Termination

- Other Actions: In addition to or in place of the above sanctions, RMUoHP may assign any other sanctions as deemed appropriate.

#### Withdrawal or Resignation while Charges Pending

*Students:* Should a student decide to withdraw and/or not participate in the ERP, the process will nonetheless proceed in the student's absence to a reasonable resolution and that student will not be permitted to return to RMUoHP unless all sanctions have been satisfied. The student will not have access to an academic transcript until the allegations have been resolved.

*Employees:* Should an employee resign with unresolved allegations pending, the records of RMUoHP will reflect that status, and any University responses to future inquiries regarding employment will indicate the former employee is ineligible for rehire.

#### Appeals

All requests for appeal consideration must be submitted in writing to the IEO within three working days of the delivery of the written finding of the RA. Any party may appeal the findings and/or sanctions only under the grounds described as follows.

A two-member appeals review group chosen from the ERP pool will be designated by the IEO from those who have not been involved in the process previously, usually including at least one RA, and under most circumstances, both remaining RAs not already involved with the investigation and outcome. Any party may appeal, but appeals are limited to the following grounds:

- A procedural error or omission occurred that significantly impacted the outcome of the hearing (e.g., substantiated bias, material deviation from established procedures, etc.). A summary of this error or omission based upon this handbook or Policy 3006 must be included in the appeal.
- To consider new evidence, unknown or unavailable during the original investigation that could substantially impact the original finding or sanction. A summary of this new evidence and its potential impact must be included.
- The sanctions imposed fall outside the range of sanctions the University has designated for this offense and the cumulative record of the responding party. A reference to this handbook must be included describing the inappropriate sanction.

In addressing appeals, the original finding and responsive actions are presumed to have been decided reasonably and appropriately.

The appeals review group will review the appeal request(s). The original finding and sanction/responsive actions will stand if the appeal is received within three days or is not based on the grounds listed above. Such a decision is final.

Any party requesting appeal must show that the grounds for an appeal request have been met, per the bullet points above. A second or more parties may respond to show the grounds have not been met or that additional grounds are met.

Where the appeals group finds that at least one of the grounds is met by at least one party, additional principles governing the hearing of appeals will include the following:

- Decisions by the appeals group are to be deferential to the original decision, making changes to the finding only where there is clear error and to the sanction/responsive action only if there is a compelling justification to do so.
- Appeals are not intended to be full re-hearings (de novo) of the allegation. 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 appeals group members to substitute their judgment for that of the original investigator(s) or RA merely because they disagree with its finding and/or responsive actions.

- Appeals granted based on new evidence should normally be remanded to the investigator(s) for reconsideration. Other appeals may be remanded at the discretion of the RA or, in limited circumstances, heard by the two-member appeals group.
- Remedies and responsive actions imposed as the result of Administrative Resolution are implemented immediately unless the RA or designee stays their implementation in extraordinary circumstances, pending the outcome of the appeal.
- For students: Commencement, study abroad, internships/externships, and similar do not in and of themselves constitute exigent circumstances and students may not be able to participate in those activities during their appeal.
- The IEO will confer with the appeals group, incorporate the results of any remanded grounds, and render a written decision on the appeal to all parties within three working days of the resolution of the appeal or remand.
- Where appeals result in no change to the finding or sanction, that decision is final. Where 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.
- All parties will be informed in writing within three working days of the outcome of the appeals group, without significant time delay between notifications, and in accordance with the standards for notice of outcome as defined above.
- In rare cases where a procedural [or substantive] error cannot be cured by the original investigator(s) and/or RA (as in cases of bias), the appeals group may recommend a new investigation and/or AR process, including a new RA. The results of a remand cannot be appealed. The results of a new AR process can be appealed once on any of the three applicable grounds for appeals.
- In cases where the appeal results in reinstatement to the University or resumption of privileges, all reasonable attempts will be made to restore the responding party to their prior status, recognizing that some opportunities lost may be irreparable in the short term.

#### Long-Term Remedies/Actions

Following the conclusion of the ERP and in addition to any sanctions implemented, the RA, in coordination with appropriate parties, may utilize long-term remedies or actions to stop the harassment or discrimination, remedy its effects, and prevent their reoccurrence. These remedies/actions may include, but are not limited to:

- Referral to counseling or health services.
- Referral to the Employee Assistance Program.
- Education to the community.
- Support to alter the housing situation of the responding party (resident student or resident employee (or the reporting party, if desired)).
- Permanently altering work arrangements for employees, such as physical location or responsibilities.
- Providing campus guides.
- Climate surveys.
- Policy modification.
- Providing transportation accommodations.
- Implementing long-term contact limitations between the parties.

- Offering adjustments to academic deadlines, course schedules, etc.

Regardless of the determination of responsibility and at the discretion of the RA, long-term remedies may also be recommended.

RMUoHP will maintain as confidential any long-term remedies/actions or protective measures, provided confidentiality does not impair the University's ability to provide the actions or protective measures.

#### **Failure to Complete Sanctions or to Comply with Remedies or Responsive Actions**

All responding parties are expected to comply with conduct sanctions and/or responsive actions within the timeframe specified by the RA. Failure to abide by these conduct sanctions, responsive actions and corrective actions by the date specified, whether by refusal, neglect or any other reason, may result in additional sanctions/responsive/corrective actions and/or suspension, expulsion and/or termination, and may be noted on a student's official transcript. A suspension will only be lifted when compliance is achieved to the satisfaction of the RA.

#### **Records**

To ensure compliance with federal guidelines, records of all allegations, investigations, resolutions, and hearings will be maintained by the IEO indefinitely in the RMUoHP Institutional Equity Office database.

#### **Statement of the Rights of the Parties**

Statement of the Reporting Party's rights:

- The right to investigation and appropriate resolution of all credible allegations of misconduct or discrimination made in good faith to RMUoHP officials;
- The right to be informed in advance of any public release of information regarding the incident;
- The right not to have any personally identifiable information released to the public without their consent;
- The right to be treated with respect by RMUoHP officials;
- The right to have policies and 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 RMUoHP officials from reporting sexual misconduct or discrimination to both on-campus and off-campus authorities;
- The right to be informed by RMUoHP officials of options to notify proper law enforcement authorities, including local police, and the option to be assisted by campus authorities in notifying such authorities, if the reporting party so chooses. This also includes the right not to be pressured to report, as well;
- The right to have reports of sexual misconduct responded to promptly and with sensitivity by campus officials;
- The right to be notified of available counseling, mental health, victim advocacy, health, legal assistance, student financial aid, visa and immigration assistance, or other student services, both on campus and in the community;
- The right to a campus no contact order (or a trespass order against a non-affiliated third party) when someone has engaged in or threatens to engage in stalking, threatening, harassing, or other improper behavior that presents a danger to the welfare of the reporting party or others;
- The right to notification of, options for, and available assistance in changing academic and living situations after an alleged sexual misconduct incident, if so requested by the reporting party and

if such changes are reasonably available (no formal report, or investigation, campus or criminal, need occur before this option is available). Accommodations may include:

- Transportation accommodations;
  - Exam (paper, assignment) rescheduling;
  - Taking an incomplete in a class;
  - Transferring class or cohort sections;
  - Temporary withdrawal;
  - Alternative course completion options.
- The right to maintain such accommodations for as long as is necessary and for protective measures to remain confidential, provided confidentiality does not impair the Institution's ability to provide the accommodations or protective measures;
  - The right to be informed of campus policies and procedures as well as the nature and extent of all alleged violations contained within the report;
  - The right to ask the investigators to identify and question relevant witnesses, including expert witnesses;
  - The right to review documentary evidence available regarding the report, subject to privacy limitations imposed by state and federal law, prior to a finding from the RA;
  - The right to be informed of the names of all witnesses whose information will be used to render a finding, in advance of that finding, except in cases where a witness's identity will not be revealed to the responding party for compelling safety reasons (this does not include the name of the reporting party, which will always be revealed);
  - The right not to have irrelevant prior sexual history admitted as evidence;
  - The right to regular updates on the status of the investigation and/or resolution;
  - The right to have reports addressed by investigators and RA who have received annual training;
  - The right to preservation of privacy, to the extent possible and permitted by law;
  - The right to participate in meetings and/or interviews that are closed to the public when they are the person being interviewed or when meeting with RAs and investigators;
  - The right to petition that any RMUoHP representative in the process be recused on the basis of demonstrated bias or conflict-of-interest;
  - The right to bring a victim advocate or advisor of the reporting party's choosing to all phases of the investigation and resolution proceeding;
  - The right to provide the investigators with a list of potential questions to ask of witnesses;
  - The right to challenge documentary evidence;
  - The right to submit an impact statement in writing to the RA following determination of responsibility, but prior to sanctioning;
  - The right to a decision based solely on evidence presented during the resolution process. Such evidence shall be credible, relevant, based in fact, and without prejudice;
  - The right to be promptly informed of the outcome and sanction of the resolution process in writing, without undue delay between the notifications to the parties;
  - The right to be informed in writing of when a decision is considered final, and any changes to the sanction to occur before the decision is finalized, and of options to appeal.

Statement of the Responding Party's rights:

- The right to investigation and appropriate resolution of all credible reports of misconduct and/or discrimination made in good faith to RMUoHP administrators;
- The right to be informed in advance, when possible, of any public release of information regarding the report;

- The right to be treated with respect by RMUoHP officials;
- The right to have policies and procedures followed without material deviation;
- The right to be informed of and have access to resources for medical, health, counseling, and advisory services;
- The right to timely written notice of all alleged violations, including the nature of the violation, the applicable policies and procedures and possible sanctions;
- The right to review all documentary evidence available regarding the report, subject to the privacy limitations imposed by state and federal law, prior to the finding by the RA;
- The right to be informed of the names of all witnesses whose information will be used to render a finding, prior to final determination, except in cases where a witness's identity will not be revealed to the responding party for compelling safety reasons (this does not include the name of the reporting party, which will always be revealed);
- The right not to have irrelevant prior sexual history admitted as evidence in the resolution process;
- The right to have reports addressed by investigators and RAs who have received annual training;
- The right to petition that any RMUoHP representative be recused from the resolution process on the basis of demonstrated bias and/or conflict-of-interest;
- The right to participate in meetings and/or interviews that are closed to the public when they are the person being interviewed or when meeting with RAs and investigators;
- The right to provide the investigators with a list of potential questions to ask of witnesses;
- The right to have an advisor of their choice to accompany and assist throughout the resolution process;
- The right to a fundamentally fair resolution based on the guidelines in this handbook;
- The right to provide an impact statement in writing to the RA following any determination of responsibility, but prior to sanctioning;
- The right to a decision based solely on evidence presented during the resolution process. Such evidence shall be credible, relevant, based in fact, and without prejudice;
- The right to be promptly informed of the outcome and sanction of the resolution process in writing, without undue delay between the notifications to the parties;
- The right to be informed in writing of when a decision is considered final, any changes to the sanction to occur before the decision is finalized, and of options to appeal.

## H. DISABILITIES ACCOMMODATION IN THE EQUITY RESOLUTION PROCESS

RMUoHP is committed to providing students, employees, or others with disabilities reasonable accommodations and support needed to ensure equal access to the ERP. Anyone needing such accommodations or support should contact the IEO, who will review the request and, in consultation with the person requesting the accommodation, determine which accommodations are appropriate and necessary for full participation.

## I. REVISION

This handbook will be reviewed and updated annually by the IEO, the Office of Human Resources, and related RMUoHP officials. RMUoHP reserves the right to make changes to this document as necessary. The IEO may make minor modifications to procedure that do not materially jeopardize the fairness owed to any party, such as to accommodate summer schedules. The IEO may also vary procedures materially with notice (on the institutional web site, with appropriate date of effect 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 government regulations in their most recent form.

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

## J. RELATED AND REFERENCED UNIVERSITY POLICIES

1000 Academic Freedom

1075 Equal Opportunity and Access

1230 Academic Accommodations

3006 Nondiscrimination, Nonharassment, and Misconduct

4402 Americans with Disabilities Act – Reasonable Accommodation

2018 Employee Handbook

2018 University Handbook

Departmental Handbooks: DPT, PA, MS Med SLP