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POLICY: Policy on Addressing Sexual Violence, Discrimination, and Protected Class Harassment

Preamble

On August 14, 2020, the 2020 Title IX regulations (34 CFR § 106.45) of the U.S. Department of Education became effective. These regulations mandate recipients of federal funding to adopt specific definitions and procedures related to the Department’s definition of Sexual Harassment. Incidents that fall under the jurisdiction of the Title IX regulations that are alleged to have occurred on or after August 14, 2020 will be resolved under the Formal Grievance Procedure referred to as “Process A.” Sexual harassment that falls outside the jurisdiction of the Title IX regulations, protected class harassment, discrimination, and other prohibited conduct will be resolved under “Process B”, except that a Process B allegation may be resolved under Process A where there also is a Process A allegation.

DeSales University is committed to addressing all forms of sexual violence and protected class discrimination and harassment, regardless of the process that incident may fall under.

1. Rationale for Policy

In alignment with our institution’s Catholic, Salesian Mission and Core Values, DeSales University (DSU) is committed to providing equal opportunity in the admission of students, the administration of educational programs, and activities for employees and applicants for employment, without discrimination based on protected categories, and retaliation for engaging in a protected activity. To ensure compliance with federal, state, and local civil rights laws and regulations, and to affirm its commitment to promoting the goals of fairness and equity in all aspects of the educational program or activity, DeSales University has developed internal policies and procedures that provide a prompt, fair, and impartial process for those involved in an allegation of discrimination or harassment on the basis of protected class status, and for allegations of retaliation. DeSales University values and upholds the equal dignity of all members of its community and strives to balance the rights of the parties in the grievance process during what is often a difficult time for all those involved.

2. Applicable Scope

The core purpose of this policy is the prohibition of all forms of discrimination. Sometimes, discrimination involves exclusion from or different treatment in activities, such as admission, athletics, or employment. At other times, discrimination takes the form of harassment or, in the case of sex-based discrimination, it can encompass sexual harassment, sexual assault, stalking, sexual exploitation, dating violence or domestic violence. When an alleged violation of this policy is reported, the allegations are subject to resolution using DeSales University's "Process A" or "Process B," as determined by the Title IX Coordinator, and as detailed below.

When the Respondent is a member of the DeSales University community, a formal complaint may be filed and a grievance process may be available regardless of the status of the Complainant, who may or may not be a member of the DeSales University community. This community includes, but is not limited to, students¹, student organizations, faculty, administrators, staff, and third parties such as guests, visitors, volunteers, invitees, and campers. The procedures below may be applied to incidents, to patterns, and/or to the campus climate, all of which may be addressed and investigated in accordance with this policy.

3. Definitions

- *Advisor* means a person chosen by a party or appointed by the institution to accompany the party to meetings related to the resolution process, to advise the party on that process, and to conduct questioning for the party at the hearing, if any.
- *Complainant* means an individual who is alleged to be the victim of conduct that could constitute harassment or discrimination based on a protected class, or retaliation for engaging in a protected activity.
- *Complaint (formal)* means a document submitted or signed by a Complainant or signed by the Title IX Coordinator alleging harassment or discrimination based on a protected class or retaliation for engaging in a protected activity against a Respondent and requesting that DeSales University investigate the allegation.

¹ For the purpose of this policy, DeSales University defines "student" as any individual who has accepted an offer of admission, or who is registered or enrolled for credit or non-credit bearing coursework, and who maintains an ongoing relationship with DeSales University.

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- *Confidential Resource* means an employee who is not a *Responsible employee* of notice of harassment, discrimination, and/or retaliation (irrespective of Clery Act Campus Security Authority status).
- *Day* means a business day when DeSales University is in normal operation
- Decision-maker is the person, panel, and/or Chair who hears evidence, determines relevance, and makes the Final Determination of whether this Policy has been violated and/or assigns sanctions
- *Directly Related Evidence* is evidence connected to the complaint, but which is neither inculpatory (tending to prove a violation) nor exculpatory (tending to disprove a violation) and cannot be relied upon by the investigation report, or Decision-maker. *Compare to Relevant Evidence, below.*
- *Education program or activity* means locations, events, or circumstances where DeSales University exercises substantial control over both the Respondent and the context in which the sexual harassment, discrimination, and/or retaliation occurs and also includes any building owned or controlled by a student organization that is officially recognized by DeSales University.
- *Final Determination*: A conclusion by the preponderance of the evidence that the alleged conduct occurred and whether it did or did not violate policy.
- *Finding*: A conclusion by the preponderance of the evidence that the conduct did or did not occur as alleged (as in a “finding of fact”).
- *Formal Grievance Process* means “Process A,” a method of formal resolution designated by DeSales University to address conduct that falls within the policies included below, and which complies with the requirements of the Title IX regulations (34 CFR § 106.45).
- *Grievance Process Pool* includes any investigators, hearing officers, Decision-makers, appeal officers, and Advisors who may perform any or all of these roles (though not at the same time or with respect to the same case).
- *Hearing Decision-maker or Panel* refers to those who have decision-making and sanctioning authority within DeSales University’s Formal Grievance process.
- *Investigator* means the person or persons charged by a DeSales University with gathering facts about an alleged violation of this Policy, assessing relevance and credibility, synthesizing the evidence, and compiling this information into an investigation report of

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relevant evidence and file of directly related evidence.

- *Notice* means that an employee, student, or third-party informs the Title IX Coordinator or other Official with Authority of the alleged occurrence of harassing, discriminatory, and/or retaliatory conduct.
- Office of Civil Rights (OCR) Compliance Coordinator is at least one official designated by DeSales University to ensure compliance with the University's programs prohibiting protected class harassment and discrimination. References to the OCR Compliance Coordinator throughout this policy may also encompass a designee of the Coordinator for specific tasks
- *Office of Civil Rights (OCR) Compliance Team* refers to the Office of Civil Rights Compliance Coordinator, Title IX Coordinator, Deputy Title IX Coordinator, and any member of the Grievance Process Pool.
- *Official with Authority (OWA)* means an employee of DeSales University explicitly vested with the responsibility to implement corrective measures for harassment, discrimination, and/or retaliation on behalf of DeSales University.
- *Parties* include the Complainant(s) and Respondent(s), collectively.
- *Preponderance of the Evidence* means whether it is more likely than not that the Respondent violated the Policy as alleged
- *Process A* means Formal Grievance process as defined above.
- *Process B* means the administrative resolution procedures that only apply when Process A does not, as determined by the Title IX Coordinator (or designee).
- Relevant Evidence is evidence that tends to prove (inculpatory) or disprove (exculpatory) an issue in the complaint
- *Remedies* are post-finding actions directed to the Complainant and/or the community as mechanisms to address safety, prevent recurrence, and restore access to DeSales University's educational program.

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- *Respondent* means an individual who has been reported to be the perpetrator of conduct that could constitute harassment or discrimination based on a protected class, or retaliation for engaging in a protected activity.
- *Responsible Employee* means an employee of DeSales University who is obligated by policy to share knowledge, notice, and/or reports of harassment, discrimination, and/or retaliation with the Title IX Coordinator or other officials designated in this policy.
- *Resolution* means the result of an informal or Formal Grievance Process.
- *Sanction* means a consequence imposed by DeSales University on a Respondent who is found to have violated this policy.
- *Sexual Harassment* is the umbrella category including the offenses of sexual harassment, sexual assault, stalking, and dating violence, and domestic violence. [See Section 17.b.](#), for greater detail.
- *Show Cause Meeting* is a meeting a Respondent may request related to an emergency removal to show cause why the action/removal should not be implemented or should be modified.
- *Title IX Coordinator* is at least one official designated by DeSales University to ensure compliance with Title IX and the University's Title IX program. References to the Coordinator throughout this policy may also encompass a designee of the Coordinator for specific tasks.

4. Title IX Coordinator

The OCR Compliance Coordinator oversees implementation of DeSales University's Affirmative Action and Equal Opportunity plan, disability compliance, and this policy. The OCR Compliance Coordinator has the primary responsibility for coordinating DeSales University's efforts related to the intake, investigation, resolution, and implementation of supportive measures to stop, remedy, and prevent discrimination, harassment, and retaliation prohibited under this policy.

5. Independence and Conflict-of-Interest

The OCR Compliance Coordinator manages the OCR Compliance Team and acts with independence and authority free from bias and conflicts of interest. The OCR Compliance Coordinator oversees all

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resolutions under this policy and these procedures. The members of the OCR Compliance Team are vetted and trained to ensure they are not biased for or against any party in a specific case, or for or against Complainants and/or Respondents, generally. A concern about bias related to any member of the OCR Compliance Team can be sent to the OCR Compliance Coordinator at ocr@desales.edu.

To raise any concern involving bias or conflict of interest by the OCR Compliance Coordinator, contact the Vice President of Finance and Administration at Robert.snyder@desales.edu which will designate an administrator to review. Concerns of bias or a potential conflict of interest by any other OCR Compliance Team member should be raised with the OCR Compliance Coordinator.

Reports of misconduct or discrimination committed by the Title IX Coordinator should be reported to the Vice President of Finance and Administration at Robert.snyder@desales.edu. Reports of misconduct or discrimination committed by any other OCR Compliance Team member should be reported to the OCR Compliance Coordinator.

6. Administrative Contact Information

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

Peter Rautzhan
Associate Vice President for Administration
OCR Compliance Coordinator
Office of Civil Rights Compliance
Lawless Hall
(610) 282-1100 ext. 1332
peter.rautzhan@desales.edu

Tom Johnson
Title IX Coordinator
Deputy OCR Compliance Coordinator
Lawless Hall
(610) 282-1100 ext. 2131
thomas.johnson@desales.edu

Gracia Perilli
Associate Director of Athletics
Deputy Title IX Coordinator
Billera Hall, 101A
(610) 282-1100 ext. 1218

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Gracia.perilli@desales.edu

DeSales University has determined that the following administrators are *Officials with Authority* to address and correct harassment, discrimination, and/or retaliation. In addition to the OCR Compliance Team members listed above, these *Officials with Authority* listed below may also accept notice or complaints on behalf of DeSales University. These individuals will then forward complaints to the OCR Compliance Coordinator (or designee) for review of applicable procedure under this policy. List all *Officials with Authority* here:

President

Cabinet Level Officials

Academic Deans and Division Heads

Executive Director of Human Resources

Director of Athletics

Chief of University Police

Associate Dean of Students for Campus Life and Student conduct

Director of Residence Life

Senior On Call Officials

DeSales University has also classified most employees as Responsible Employees of any knowledge they have that a member of the community is experiencing harassment, discrimination, and/or retaliation. The section below on Responsible Employees details which employees have this responsibility and their duties, accordingly.

All DeSales University employees (faculty, administrators and staff) are considered responsible employees EXCEPT for those listed below. Responsible employees also include students who are employed by Residence Life as Resident Assistants and Residence Hall Directors. The following are NOT Responsible employees.

- Counseling Center and Student Health Center staff.
- University Chaplain
- Contracted dining, custodial, bookstore, and third party contracted staff are NOT DeSales employees and are therefore NOT considered Responsible employees.

Responsible employees are University employees who have the duty to promptly report incidents of harassment, discrimination, and sexual violence as described in this Policy. When a Responsible employee learns about an alleged violation of the Policy, the Responsible employee shall report the incident to the Title IX Coordinator or other designated officials, who shall take immediate and appropriate steps to investigate, respond, and offer remedies.

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To the extent possible, information reported to Responsible employees will be shared only with people responsible for handling the University's response to the report.

Responsible employees will not pressure a Complainant to request confidentiality and will not pressure a Complainant to make a full report if the Complainant is not ready to do so.

Reports and inquiries may also be made externally to:

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

Office of the Attorney General
Civil Right's Enforcement Section
14th Floor, Strawberry Square
Harrisburg, PA 17120
717-787-0822
<https://www.attorneygeneral.gov/submit-a-complaint/civil-rights-complaint/>

Employees wishing to file a complaint may also contact: [Equal Employment Opportunity Commission](#) (EEOC)

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

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

- 1) File a complaint with, or give verbal notice to the OCR Compliance Coordinator, Title IX Coordinator, Deputy Title IX Coordinator or any official with authority (see list above). Such a report may be made at any time (including during non-business hours) by using the telephone number or email address, or by mail, to the office address listed for the Title IX Coordinator or any other official listed.

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2) Report online, using the reporting form posted [here](#). Anonymous reports are accepted but can give rise to a need to investigate to determine if the parties can be identified. If not, not further formal action is taken, though measures intended to protect the community may be enacted. DeSales University tries to provide supportive measures to all Complainants, which may be impossible with an anonymous report that does not identify the Complainant. Because reporting carries no obligation to initiate a formal response, and because DeSales University respects Complainant requests to dismiss complaints unless there is a compelling threat to health and/or safety, the Complainant is largely in control and should not fear a loss of privacy by making a report that allows DeSales University to discuss and/or provide supportive measures.

3) Contact the DeSales University Police at 610.282.1002.

A Formal Complaint means a document submitted or signed by the Complainant or signed by the Title IX Coordinator alleging a policy violation by a Respondent and requesting that DeSales University investigate the allegation(s). A complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail; by using the contact information in the section immediately above; or as described in this section. As used in this paragraph, the phrase “document filed by a Complainant” means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by DeSales University) that contains the Complainant’s physical or digital signature, or otherwise indicates that the Complainant is the person filing the complaint, and requests that DeSales University investigate the allegations.

If notice is submitted in a form that does not meet this standard, the Title IX Coordinator (or designee) will contact the Complainant to ensure that it is filed correctly.

8. Supportive Measures

DeSales University will offer and implement appropriate and reasonable supportive measures to the parties upon notice of alleged harassment, discrimination, and/or retaliation.

Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate and as reasonably available. They are offered without fee or charge to the parties to restore or preserve access to DeSales University’s education program or activity, including measures designed to protect the safety of all parties and/or DeSales University’s educational environment, and/or to deter harassment, discrimination, and/or retaliation.

The Title IX Coordinator promptly makes supportive measures available to the parties upon receiving notice or a complaint. At the time that supportive measures are offered, DeSales University will inform the Complainant, in writing, that they may file a formal complaint with DeSales University either at that time or in the future, if they have not done so already. The Title IX

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Coordinator works with the Complainant to ensure that their wishes are considered with respect to the supportive measures that are planned and implemented.

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

These actions may include, but are not limited to:

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

Violations of no contact orders, no communication orders, or other restrictions will be referred to appropriate student or employee conduct processes for enforcement.

9. Emergency Removal

DeSales University can act to remove a Respondent entirely or partially from its education program or activities on an emergency basis when an individualized safety and risk analysis has determined that an immediate threat to the physical health or safety of any student or other individual justifies removal. This risk analysis is performed by the Title IX Coordinator (or designee) and may be done

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in consultation with member of the Student Welfare Committee or Employee Assistant Program.

In all cases in which an emergency removal is imposed, the student, employee, or two (2) representatives from a student organization will be given notice of the action and the option to request a Show Cause Meeting with the Title IX Coordinator (or designee) prior to such action/removal being imposed, or as soon thereafter as reasonably possible, to show cause why the action/removal should not be implemented or should be modified.

This show-cause meeting is not a hearing on the merits of the allegation(s), but rather is an administrative process intended to determine solely whether the emergency removal is appropriate. This meeting must be requested no later than two (2) days after delivery of the notification of emergency removal, or objections to the emergency removal shall be deemed waived. At the sole discretion of the Title IX Coordinator (or designee), such time period may be extended for good cause. A Complainant and their Advisor may be permitted to participate in this meeting if the Title IX Coordinator determines it is equitable to do so. This section also applies to any restrictions that a coach or athletic administrator may place on a student-athlete arising from allegations related to Title IX. There is no appeal process for emergency removal decisions.

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

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

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

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

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10. Promptness

All allegations are acted upon promptly by DeSales University once it has received notice or a formal complaint. Complaints can take 60-90 business days to resolve, typically. There are always exceptions and extenuating circumstances that can cause a resolution to take longer, but DeSales University will avoid all undue delays within its control.

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

11. Privacy

Every effort is made by DeSales University to preserve the privacy of reports.² DeSales University will not share the identity of any individual who has made a report or complaint of harassment, discrimination, or retaliation; any Complainant, any individual who has been reported to be the perpetrator of sex discrimination, any Respondent, or any witness, except as permitted by the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g; FERPA regulations, 34 CFR part 99; or as required by law; or to carry out the purposes of 34 CFR Part 106, including the

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

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conducting of any investigation, hearing, or grievance proceeding arising under these policies and procedures.

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

Only a small group of officials who need to know will typically be told about the complaint, including but not limited to members of the following offices and divisions: Human Resources, Division of Student Affairs, Office of University Police, and the Student Welfare Committee. Information will be shared as necessary with Investigators, Hearing Panel members/Decision-makers, witnesses, and the parties. The circle of people with this knowledge will be kept as tight as possible to preserve the parties' rights and privacy.

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

Confidentiality and reporting obligations are addressed more specifically [below](#).

12. Jurisdiction of DeSales University

This policy applies to the education program and activities of DeSales University, to conduct that takes place on the campus or on property owned or controlled by DeSales University, at DeSales University-sponsored events, and in buildings owned or controlled by DeSales University's recognized student organizations.

Examples include but are not limited to:

- A residence hall room on DeSales University's campus
- An off-campus trip sponsored by DeSales University, such as a Student Activities sponsored trip to a professional sporting event
- Learning Management software utilized by DeSales University for academic programs, such as Blackboard
- Use of DeSales University email or network
- A class conducted over Zoom or other web conferencing technology

The Respondent must be a member of DeSales University's community in order for this policy to apply.

This policy can also be applicable to the effects of off-campus misconduct that effectively deprive a person of access to DeSales University's educational program. DeSales University may also extend

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jurisdiction to off-campus and/or to online conduct when the Title IX Coordinator (or designee) determines that the conduct affects a substantial DeSales University interest.

Regardless of where the conduct occurred, DeSales University will address notice/complaints to determine whether the conduct occurred in the context of its employment or educational program or activity and/or has continuing effects on campus or in an off-campus sponsored program or activity. A substantial DeSales University interest includes:

- a. 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;
- b. Any situation in which it is determined that the Respondent poses an immediate threat to the physical health or safety of any student, employee, or other individual;
- c. Any situation that significantly impinges upon the rights, property, or material interests of oneself or others, significantly breaches the peace, and/or causes social disorder; and/or
- d. Any situation that is detrimental to the educational interests or mission of DeSales University.

If the Respondent is unknown or is not a member of the DeSales University community, the OCR Compliance Coordinator (or designee) will assist the Complainant in identifying appropriate campus and local resources and support options. If criminal conduct is alleged, DeSales University can assist in contacting local or campus law enforcement if the individual wants to file a police report.

Further, even when the Respondent is not a member of DeSales University community, supportive measures, remedies, and resources may be provided to the Complainant by contacting the OCR Compliance Coordinator.

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

All vendors serving DeSales University through third-party contracts are subject to the policies and procedures of their employers or to these policies and procedures to which their employer has agreed to be bound by their contracts.

When the Respondent is enrolled in or employed by another institution, the OCR Compliance Coordinator (or designee) can assist the Complainant in contacting the appropriate individual at that institution, as it may be possible to allege violations through that institution's policies.

Similarly, the OCR Compliance Coordinator (or designee) may be able to assist and support a student or employee Complainant who experiences discrimination in an externship, study abroad

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program, or other environment external to DeSales University where sexual harassment or nondiscrimination policies and procedures of the facilitating or host organization may give recourse to the Complaint.

13. Time Limits on Reporting

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

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

DeSales University will typically apply the policy in place at the time of the alleged misconduct and the procedures in place at the time of notice/complaint. Previous versions of this are available from the OCR Compliance Coordinator.

14. Online Harassment and Misconduct

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

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

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

15. Policy on Nondiscrimination

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DeSales University adheres to all federal, state, and local civil rights laws and regulations prohibiting discrimination in private institutions of higher education.

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

1. Race
2. Religion
3. Color
4. Sex
5. Pregnancy
6. Residence
7. Religion
8. Creed
9. Ethnicity
10. National origin (including ancestry)
11. Physical or mental disability (including perceived disability, the use, handling, or training of support of guide animals for disability)
12. Age (40 and over)
13. Familial status
14. Sexual orientation
15. Gender identity
16. Veteran or military status (including disabled veteran, recently separated veteran, active duty wartime or campaign badge veteran, and Armed Forces Service Medal veteran)
17. or any other protected category under applicable local, state, or federal law, including protections for those opposing discrimination or participating in any grievance process on campus, with the Equal Employment Opportunity Commission, and/or other human/civil rights agencies.

This policy covers nondiscrimination in both employment and access to educational opportunities. Therefore, any member of the DeSales University community whose acts deny, deprive, or limit the educational or employment, and/or opportunities of any member of the DeSales University community, guest, or visitor on the basis of that person's actual or perceived membership in the protected classes listed above is in violation of DeSales University's policy on nondiscrimination.

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

16. Policy on Disability Discrimination and Accommodation

DeSales University is committed to full compliance with the Americans With Disabilities Act of 1990 (ADA), as amended, and Section 504 of the Rehabilitation Act of 1973, which prohibit discrimination against qualified persons with disabilities, as well as other federal, state, and local laws and regulations pertaining to individuals with disabilities.

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

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

The Associate Vice President for Administration has been designated as DeSales University's ADA/504 Coordinator responsible for overseeing efforts to comply with these disability laws, including responding to grievances and conducting investigations of any allegation of noncompliance or discrimination based on disability.

Grievances related to disability status and/or accommodations will be addressed using the procedures below. For details relating to disability accommodations in DeSales University's resolution process, see page 41 (Process A) and page 97 (Process B).

a. Students with Disabilities

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

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

The Director of the Office of Student Accessibility reviews documentation provided by the student and, in consultation with the student, determines which accommodations are appropriate for the student's particular needs and academic program(s) in accordance with DeSales University's applicable policies.

b. Employees with Disabilities

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

An employee with a disability is responsible for submitting a request for an accommodation to the Executive Director of Human Resources and providing necessary documentation. The Executive Director of Human Resources will work with the employee's supervisor to identify which essential functions of the position are affected by the employee's disability and what reasonable accommodations could enable the employee to perform those duties in accordance with DeSales University's applicable policies.

17. Policy on Discriminatory Harassment

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

The sections below describe the specific forms of legally prohibited harassment that are also prohibited under DeSales University policy. Speech or conduct legitimately protected by academic freedom will not be considered a violation of DeSales University policy, though supportive measures will be offered to those impacted. All policies encompass actual and/or attempted offenses.

a. Discriminatory Harassment/Hostile Environment

Discriminatory harassment constitutes a form of discrimination that is prohibited by DeSales University policy. Discriminatory harassment is defined as unwelcome conduct by any member or group of the community on the basis of actual or perceived membership in a class protected by policy or law.

DeSales University will act to remedy all forms of harassment when the harassment rises to the level of creating a “hostile environment.”

A hostile environment is one that unreasonably interferes with, limits, or effectively denies an individual's educational or employment access, benefits, or opportunities.³ This discriminatory

³ 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 DeSales Universitys Investigative Guidance.](#)

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effect results from harassing verbal, written, graphic, and/or physical conduct that is severe or pervasive **and** objectively offensive.

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

DeSales University reserves the right to address offensive conduct and/or discriminatory harassment that 1) does not rise to the level of creating a hostile environment, or 2) that is of a generic nature and not based on a protected status. Addressing such conduct may result in the imposition of discipline under relevant DeSales University policy. Such behavior may also be addressed through respectful conversation, remedial actions, education, and/or other alternative resolution mechanisms.

b. Sexual Harassment

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

DeSales University has adopted the following definition of sexual harassment in order to address the unique environment of an academic community.

Acts of sexual harassment may be committed by any person upon any other person, regardless of the sex, sexual orientation, and/or gender identity of those involved.

Sexual harassment, as an umbrella category, includes the offenses of quid pro quo, sexual harassment, sexual assault, domestic violence, dating violence, and stalking, and is defined as:

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

- 1) Quid Pro Quo:
 - an employee of DeSales University,
 - conditions the provision of an aid, benefit, or service of DeSales University,
 - on an individual's participation in unwelcome sexual conduct; and/or

- 2) Sexual Harassment:
 - unwelcome conduct⁴,
 - determined by a reasonable person,

⁴ Unwelcomeness is subjective and determined by the Complainant (except when the Complainant is below the age of consent). Severity, pervasiveness, and objective offensiveness are evaluated based on the totality of the circumstances from the perspective of a reasonable person in the same or similar circumstances ("in the shoes of the Complainant"), including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

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- to be so severe, and
- pervasive, and,
- objectively offensive,
- that it effectively denies⁵ a person equal access to DeSales University's education program or activity.

⁵ Effectively denies

- Can include but is not limited to skipping classes to avoid a harasser, a decline in a student's grade point average, having difficulty in class
- Examples of specific situations that likely constitute effective denial of equal access to educational opportunities also include "a third grader who starts bed-wetting or crying at night due to sexual harassment, or a high school wrestler who quits the team but carries on with other school activities following sexual harassment."
- A complainant does not need to have "already suffered loss of education before being able to report sexual harassment
- Effective denial of equal access to education does not require "that a person's total or entire educational access has been denied.
- While these examples help illustrate an effective denial of access, "[n]o concrete injury is required" to prove an effective denial of equal access
- Complainants do not need to have "dropped out of school, failed a class, had a panic attack, or otherwise reached a 'breaking point'" or exhibited specific trauma symptoms to be effectively denied equal access.

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3) Sexual assault, defined as:

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- Any sexual act⁶ directed against another person⁷,
- Without the consent of the Complainant,
- Including instances in which the Complainant is incapable of giving consent

4) Sex Offenses, Non-forcible:

⁶ A "sexual act" is specifically defined by federal regulations to include one or more of the following:

Forcible Rape:

- Penetration,
- no matter how slight,
- of the vagina or anus with any body part or object, or
- oral penetration by a sex organ of another person,
- without the consent of the Complainant.

Forcible Sodomy:

- Oral or anal sexual intercourse with another person,
- forcibly,
- and/or against that person's will (non-consensually), or
- not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age[#] or because of temporary or permanent mental or physical incapacity.

Sexual Assault with an Object:

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

Forcible Fondling:

- The touching of the private body parts of another person (buttocks, groin, breasts),
- for the purpose of sexual gratification,
- forcibly,
- and/or against that person's will (non-consensually),

or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

⁷ This would include having another person touch you sexually, forcibly, or without their consent.

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- i) Incest:
 - 1) Non-forcible sexual intercourse,
 - 2) between persons who are related to each other,
 - 3) within the degrees wherein marriage is prohibited by Pennsylvania law.
 - ii) Statutory Rape:
 - 1) Non-forcible sexual intercourse,
 - 2) with a person who is under the statutory age of consent under applicable law.
- 5) Dating Violence, defined as:
- violence,
 - on the basis of sex,
 - committed by a person,
 - who is in or has been in a social relationship of a romantic or intimate nature with the Complainant.
 - i. The existence of such a relationship shall be determined based on the Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition—
 - ii. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
 - iii. Dating violence does not include acts covered under the definition of domestic violence.

6) Domestic Violence⁸, defined as:

⁸ To categorize an incident as Domestic Violence under this policy, the relationship between the Respondent and the Complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.

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- violence,
- on the basis of sex,
- committed by a current or former spouse or intimate partner of the Complainant,
- by a person with whom the Complainant shares a child in common, or
- by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or
- by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of Pennsylvania or
- by any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of Pennsylvania

7) Stalking, defined as:

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

For the purposes of this definition—

- (i) Course of conduct means two or more acts, including, but not limited to, acts in which the Respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
- (ii) Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.
- (iii) Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

See [Appendix B](#) for DeSales University's Statement on Consensual Relationships between Faculty and Students.

DeSales University reserves the right to impose any level of sanction, ranging from a reprimand up to and including suspension or expulsion/termination, for any offense under this Policy. When applying sanctions, the imposition of a higher-level sanction does not preclude sanctions for any lower level violation.

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Student Sanctions:

- a. Discrimination (Level 1 to 4)
- b. Discriminatory Harassment (Level 1 to 4)
- c. Sexual Harassment (Level 1 to Level 4)
- d. Sex Assault (Level 1 to Level 3)
- e. Sex Offenses, Non-Forcible (Level 1 to Level 3)
- f. Dating Violence (Level 1 to Level 3)
- g. Domestic Violence (Level 1 to Level 3)
- h. Stalking (Level 1 to Level 3)

Employee Sanctions:

- a. Discrimination (Level 1 to 4)
- b. Discriminatory Harassment (Level 1 to 4)
- c. Sexual Harassment (Level 1 to Level 4)
- d. Sex Assault, Forcible (Level 1 to Level 3)
- e. Sex Offenses, Non-Forcible (Level 1 to Level 3)
- f. Dating Violence (Level 1 to Level 3)
- g. Domestic Violence (Level 1 to Level 3)
- h. Stalking (Level 1 to Level 3)

Student Sanction Levels

Level 1

1. The student may be expelled from the University indefinitely and possibly permanently.
2. The student must be dismissed for a minimum of one year.
3. As with any other separation from the University, students wishing to return to DeSales must re-apply for admission to the Dean of Students. Students found responsible at this level are not entitled to a refund of tuition or housing costs.

Level 2

1. The student may be dismissed from the University for a period not to exceed one year.
2. If the option in "a" above is not warranted, then the hearing authority must remove the student from residency on campus and impose restrictions on that student's access to campus areas. In the case of a commuter, the student shall be restricted from entry into non-academic buildings.
3. As with any other separation from the University, suspended students wishing to return to DeSales must re-apply for admission to the Dean of Students. In the case of removal from

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residency, students must apply for housing to the director of residence life. Students found responsible at this level are not entitled to a refund of tuition or housing costs.

4. The student may be put on disciplinary probation for a specific time period. The hearing authority may impose any other consequence(s), other than dismissal, which it considers applicable including but not limited to, delay of diploma, non-attendance at commencement ceremonies, disallowance from entry to campus buildings or areas, loss of group recognition, recommended loss of Greek charter, personal counseling, community restitution, financial restitution, assigned tasks, etc.

Level 3

1. The student's residency status may be terminated or altered, and they may be restricted from areas on campus. A commuter student may be restricted from some campus buildings or areas. In the case of removal from residency, the student(s) must apply for housing to the director of residence life. In the case of a commuter student, they shall be restricted from non-academic areas and unable to attend campus-wide events.
2. Students found responsible at this level are not entitled to a refund of housing costs.
3. In addition to option "a," a student may be put on disciplinary probation for a period of time.
4. If the options in "a" and "b" above are not warranted, then the hearing authority shall impose a consequence of community restitution hours, or social restrictions for a specified time, during which certain privileges may be revoked including, but not limited to, ability to participate in extracurricular activities, ability to attend or sponsor events such as intramurals or Greek Week, ability to use campus facilities, etc. It may also impose any other consequence(s) which it considers applicable including, but not limited to, non-attendance at commencement ceremonies, assigned tasks, participation in counseling, etc. Note: A violation of the Alcohol Policy at this level requires participation in the Alcohol Education Program.

Level 4

1. The student may have social restrictions imposed for a specified period during which certain privileges may be revoked which include, but are not limited to, participation in intramurals, Greek Week, or other social events, ability to visit other buildings or use certain facilities, etc.
2. If the options in "a" above are not warranted, then the hearing authority must include a warning to the student regarding future violations. It may also impose any other consequence(s), excluding those in "a" above, which it considers applicable, including, but not limited to, restitution, assigned tasks, community restitution hours, participation in counseling. Note: A violation of the Alcohol Policy at this level requires participation in Alcohol Education Program.

Employee Sanction Levels

Level 1

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1. The employee may be terminated from their position at DeSales University and not be eligible for rehire.
2. The employee may be demoted from their position; and/or.
3. The employee may be suspended without pay for a minimum of one month

Level 2

1. The employee may be suspended without pay for no more than one month; and/or.
2. The employee may be deemed ineligible for promotion/tenure for a period of time

Level 3

1. The employee may receive a written warning that will be placed in their personnel file
2. The employee may be subject to a performance improvement plan

Level 4

1. The employee may be assigned to complete coaching, training, or other educational initiatives as deemed appropriate.
2. The employee may receive a verbal warning

c. Force, Coercion, Consent, and Incapacitation

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

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

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

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

Consent is:

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

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

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

For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. For example, if a person consents to intercourse using a specific safe sex product, it is not reasonable to assume they have consented to intercourse without the safe sex product. Reasonable reciprocation can be implied. For example, if someone kisses you, you can kiss them back (if you want to) without the need to explicitly obtain *their* consent to being kissed back.

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

Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). A current or previous intimate relationship is not sufficient to constitute consent.

Proof of consent or non-consent at a hearing is not a burden placed on either party involved in an incident. Instead, DeSales University must determine whether its policy has been violated. The existence of consent is based on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged incident occurred and any similar and previous patterns that may be evidenced.

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

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

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

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

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

d. Other Prohibited Conduct

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

- Sexual Exploitation, defined as: an individual taking non-consensual or abusive sexual advantage of another for their own benefit or for the benefit of anyone other than the person being exploited, and that conduct does not otherwise constitute sexual harassment under this policy. Examples of Sexual Exploitation include, but are not limited to:
 - Sexual voyeurism (such as observing or allowing others to observe a person undressing or using the bathroom or engaging in sexual acts, without the consent of the person being observed)
 - Invasion of sexual privacy
 - Taking pictures, video, or audio recording of another in a sexual act, or in any other sexually-related activity when there is a reasonable expectation of privacy during the activity, without the consent of all involved in the activity; or exceeding the boundaries of consent (such as allowing another person to hide in a closet and observe sexual activity; or disseminating sexual pictures without the photographed person's consent), including the making or posting of revenge pornography
 - Prostituting another person
 - Engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or a sexually-transmitted disease (STD) or infection (STI), without informing the other person of the virus, disease, or infection
 - Causing or attempting to cause the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give consent to sexual activity, or for the purpose of making that person vulnerable to non-consensual sexual activity
 - Misappropriation of another person's identity on apps, websites, or other venues designed for dating or sexual connections
 - Forcing a person to take an action against that person's will by threatening to show, post, or share information, video, audio, or an image that depicts the person's nudity or sexual activity

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- Knowingly soliciting a minor for sexual activity
- Engaging in sex trafficking
- Knowing creation, possession, or dissemination of child pornography

- Threatening or causing physical harm; extreme verbal, emotional, or psychological 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, including disparate treatment;

- Intimidation, defined as implied threats or acts that cause an unreasonable fear of harm in another;

- Hazing, defined as:
 - Any activity suspected of someone affiliating with or joining a group that humiliates, degrades, abuses, or endangers, regardless of the persons willingness to participate. Furthermore, this definition includes any action which results in the disruption of the educational process, the impairment of academic performance, or failure to properly fulfill obligations to University sponsored groups or organizations.⁹

- Bullying, defined as:
 - Repeated and/or severe
 - Aggressive behavior
 - Likely to intimidate or intentionally hurt, control, or diminish another person, physically and/or mentally

⁹DeSales University unconditionally opposes all forms of hazing and adheres to Pennsylvania Penal Law which defines hazing as follows *“Any action or situation which recklessly or intentionally endangers the mental or physical health or safety of a student or which willfully destroys or removes public or private property for the purpose of initiation or admission into or affiliation with, or as a condition for continued membership in, any organization operating under the sanction of or recognized as an organization by an institution of higher education. The term shall include but not be limited to, any brutality of a physical nature such as whipping, beating, branding, forced calisthenics, exposure to the elements, forced consumption of any food, liquor drug, or other substance, or any other forced physical activity which would subject the individual to extreme mental distress, such as sleep deprivation, forced exclusion from social contact, forced conduct which could result in extreme embarrassment, or any other forced activity which could adversely affect the mental health or dignity of the individual, or any willful destruction or removal of public or private property. For purposes of this definition, any activity as described in this definition upon which the initiation or admission into or affiliation with or continued membership in an organization is directly or indirectly conditioned shall be presumed to be “forced” activity, the willingness of an individual to participate in such activity notwithstanding.” (Penal Law, P.S. 5325)*

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Violation of any other DeSales University policies may constitute an offense when a violation is motivated by actual or perceived membership in a protected class, and the result is a discriminatory limitation or denial of employment or educational access, benefits, or opportunities.

Sanctions for the above-listed offenses range from reprimand through expulsion/termination.

18. Retaliation

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

Acts of alleged retaliation should be reported immediately to the OCR Compliance Coordinator (or an Official with Authority as designated above) and will be promptly investigated. DeSales University will take all appropriate and available steps to protect individuals who fear that they may be subjected to retaliation.

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

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

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

19. Responsible Employees

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

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

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

The following sections describe the reporting options at DeSales University for a Complainant or third-party (including parents/guardians when appropriate):

a. Confidential Resources

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

- Counseling Services Office, Dorothy Day Student Center, click [here](#) to schedule
- Student Health Services, Dorothy Day Student Center, 610-282-1100 ext. 1776
- University Chaplin
- Crime Victim Council of Lehigh Valley
24-Hour Hotline: 610-437-6611
<https://cvclv.org/>
65 E. Elizabeth Avenue
Suite 208
Bethlehem, PA 18018

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

Campus counselors and/or the Employee Assistance Program are available to help free of charge and may be consulted on an emergency basis during normal business hours.

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

b. Responsible employees and Formal Notice/Complaints

All employees of DeSales University (including student employees employed by Residence Life), with the exception of those who are designated as Confidential Resources, are Responsible employees and must promptly share with the OCR Compliance Coordinator all known details of a report made to them in the course of their employment.

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

Complainants may want to carefully consider whether they share personally identifiable details with non-confidential Responsible employees, as those details must be shared with the OCR Compliance Coordinator.

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

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

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

20. When a Complainant Does Not Wish to Proceed

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

The OCR Compliance Coordinator or Title IX Coordinator has ultimate discretion over whether DeSales University proceeds when the Complainant does not wish to do so, and the Coordinators

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may sign a formal complaint to initiate a grievance process, usually upon completion of an appropriate risk assessment.

A Coordinator's decision should be based on results of the risk assessment that show a compelling risk to health and/or safety that requires DeSales University to pursue formal action to protect the community.

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

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

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

When DeSales University proceeds, the Complainant (and/or their Advisor) may have as much or as little involvement in the process as they wish. The Complainant retains all rights of a Complainant under this Policy irrespective of their level of participation.

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

In cases in which the Complainant requests confidentiality/no formal action and the circumstances allow DeSales University to honor that request, DeSales University may offer informal resolution options (see below), supportive measures, and remedies to the Complainant and the community, but will not otherwise pursue formal action.

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

21. Federal Timely Warning Obligations

Parties reporting sexual assault, domestic violence, dating violence, and/or stalking should be aware that under the Clery Act, DeSales University must issue timely warnings for reported incidents that pose a serious or continuing threat of bodily harm or danger to members of the campus community.

DeSales University will ensure that a Complainant's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger. When possible, DeSales University will make a good faith effort to notify the Complainant before issuing a timely warning.

22. False Allegations and Evidence

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

Additionally, witnesses and parties knowingly providing false evidence, tampering with or destroying evidence after being directed to preserve such evidence, or deliberately misleading an official conducting an investigation can be subject to discipline under appropriate DeSales University policies.

23. Amnesty for Complainants and Witnesses

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

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

To encourage reporting and participation in the process, DeSales University maintains a policy of offering parties and witnesses amnesty from minor policy violations – such as underage

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consumption of alcohol or the use of illicit drugs – related to the incident. Amnesty does not apply to more serious allegations such as physical abuse of another or illicit drug distribution and is rarely applicable to a Respondent with respect to a Complainant.

Students: Sometimes, students are hesitant to assist others for fear that they may get in trouble themselves (for example, an underage student who has been drinking or using marijuana might hesitate to help take an individual who has experienced sexual assault to the Office of University Police.

DeSales University maintains a policy of amnesty for students who offer help to others in need. Although policy violations cannot be overlooked, DeSales University may provide purely educational options with no official disciplinary finding, rather than punitive sanctions, to those who offer their assistance to others in need.

Employees:¹⁰ Sometimes, employees are hesitant to report harassment or discrimination they have experienced for fear that they may get in trouble themselves. DeSales University may, at its discretion, offer employee Complainants amnesty from policy violations (typically more minor policy violations) related to the incident. Amnesty may also be granted to Respondents and witnesses on a case-by-case basis.

24. Federal Statistical Reporting Obligations

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

- a) All “primary crimes,” which include homicide, sexual assault, robbery, aggravated assault, burglary, motor vehicle theft, and arson;
- b) Hate crimes, which include any bias-motivated primary crime as well as any bias motivated larceny or theft, simple assault, intimidation, or destruction/damage/vandalism of property;
- c) VAWA¹¹-based crimes, which include sexual assault, domestic violence, dating violence, and stalking; and
- d) Arrests and referrals for disciplinary action for weapons-related law violations, liquor-related law violations, and drug abuse-related law violations.

All personally identifiable information is kept private, but statistical information must be reported to the Office of University Police regarding the type of incident and its general location (on or off-

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¹¹ VAWA is the Violence Against Women Act, enacted in 1994 codified in part at 42 U.S.C. sections 13701 through 14040.

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campus or in the surrounding area, but no addresses are given) for publication in the Annual Security Report and daily campus crime log.

Campus Security Authorities may include: student affairs/student conduct staff, [campus law enforcement/public safety/security], local police, coaches, athletic directors, residence life staff, student activities staff, human resources staff, advisors to student organizations, and any other official with significant responsibility for student and campus activities.

INTERIM RESOLUTION PROCESS FOR ALLEGED VIOLATIONS OF THE ANTI-HARASSMENT AND NON-DISCRIMINATION POLICY UNDER THE REGULATIONS APPEARING AT 34 CFR § 106.45(KNOWN AS "PROCESS A")

1. Overview

DeSales University will act on any formal notice/complaint of Sexual Harassment as defined in the Anti-Harassment and Non-Discrimination Policy ("the Policy") that is received by the Title IX Coordinator¹² or any other Official with Authority by applying these procedures, known as "Process A."

The procedures below apply only to qualifying allegations of sexual harassment (including quid pro quo, sexual assault, dating violence, domestic violence, and stalking, as defined above) involving students, staff, administrators, or faculty members.

If other policy definitions are invoked, such as protected class harassment or discrimination as defined above, please see a description of the procedures applicable to the resolution of such offenses, known as "Process B".

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

The procedures below may be used to address collateral misconduct arising from the investigation of or occurring in conjunction with reported misconduct (e.g., vandalism, physical abuse of another) when alleged violations of the policy are being addressed at the same time. All other allegations of misconduct unrelated to incidents covered by the Policy will be addressed through procedures described in the Student Code of Social Conduct (for students), or by relevant employment policies for employees.

¹² Anywhere this procedure indicates "Title IX Coordinator," DeSales University may substitute a trained designee.

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2. Notice/Complaint

Upon receipt of a complaint or notice to the Title IX Coordinator of an alleged violation of the Policy, the Title IX Coordinator will initiate a prompt initial assessment to determine the next steps the University needs to take.

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

- 1) Offering supportive measures because the Complainant does not want to submit a formal complaint; and/or
- 2) An informal resolution; and/or
- 3) A Formal Grievance Process including an investigation and a hearing.

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

3. Initial Assessment

Following receipt of notice or a complaint of an alleged violation of this Policy, the Title IX Coordinator¹³ engages in an initial assessment, typically within one to five business days. The steps in an initial assessment can include:

- The Title IX Coordinator seeks to determine if the person impacted wishes to make a formal complaint, and will assist them to do so, if desired.
 - If they do not wish to do so, the Title IX Coordinator determines whether to initiate a complaint themselves because a risk assessment indicates a compelling threat to health and/or safety.
- If a formal complaint is received, the Title IX Coordinator assesses its sufficiency and works with the Complainant to make sure it is correctly completed.
- The Title IX Coordinator reaches out to the Complainant to offer supportive measures.
- The Title IX Coordinator works with the Complainant to ensure they are aware of the right to have an Advisor.
- The Title IX Coordinator works with the Complainant to determine whether the Complainant prefers a supportive and remedial response, an informal resolution option, or a formal investigation and grievance process.

¹³ If circumstances require, the Office of the Vice President of Administration or the OCR Compliance Officer will designate another person to oversee the process below should an allegation be made about the Coordinator or the Coordinator be otherwise unavailable or unable to fulfill their duties.

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- If a supportive and remedial response is preferred, the Title IX Coordinator works with the Complainant to identify their wishes, assesses their request(s), and implements accordingly. No Formal Grievance Process is initiated, though the Complainant can elect to initiate one later, if desired.
- If an informal resolution option is preferred, the Title IX Coordinator assesses whether the complaint is suitable for informal resolution, which informal mechanism may serve the situation best or is available, and may seek to determine if the Respondent is also willing to engage in informal resolution.
- If a Formal Grievance Process is preferred by the Complainant, the Title IX Coordinator determines if the misconduct alleged falls within the scope of the 2020 Title IX regulations:
 - If it does, the Title IX Coordinator will initiate the formal investigation and grievance process, directing the investigation to address:
 - an incident, and/or
 - a pattern of alleged misconduct, and/or
 - a culture/climate issue, based on the nature of the complaint.
 - If alleged misconduct does not fall within the scope of the 2020 Title IX regulations, the Title IX Coordinator determines that the regulations do not apply (and will “dismiss” that aspect of the complaint, if any), assesses which policies may apply, which resolution process is applicable, and will refer the matter accordingly, including referring the matter for resolution under Process B, if applicable. Please note that dismissing a complaint under the 2020 Title IX regulations is solely a procedural requirement under the applicable regulations, and does not limit DeSales University’s authority to address a complaint with an appropriate process and remedies.

a. Risk Assessment

In some cases, the Title IX Coordinator may determine that a risk assessment should be conducted in coordination with the OCR Compliance Team, Student Welfare Committee, and/or by the Employee Assistance Program as part of the initial assessment. A risk assessment can aid in ten critical and/or required determinations, including:

- Emergency removal of a Respondent on the basis of immediate threat to an individual or the community’s physical health/safety;
- Whether the Title IX Coordinator should pursue/sign a formal complaint absent a willing/able Complainant;
- Whether the scope of the investigation should include an incident, and/or pattern of misconduct, and/or climate of hostility/harassment;
- To help identify potential predatory conduct;
- To help assess/identify grooming behaviors;

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- Whether it is reasonable to try to resolve a complaint through informal resolution, and if so, what approach may be most successful;
- Whether to permit a voluntary withdrawal by the Respondent; and/or
- Whether a Clery Act Timely Warning/Persona Non-Grata Order is needed.

b. Dismissal (Mandatory and Discretionary)¹⁴

DeSales University must dismiss a formal complaint or any allegations therein if, at any time during the investigation or hearing, it is determined that:

- 1) The conduct alleged in the formal complaint would not constitute sexual harassment as defined in the Policy above, even if proved; and/or
- 2) The conduct did not occur in an educational program or activity controlled by DeSales University (including buildings or property controlled by recognized student organizations), and/or DeSales University does not have control of the Respondent; and/or
- 3) The conduct did not occur against a person in the United States; and/or
- 4) At the time of filing a formal complaint, a Complainant is not participating in or attempting to participate in the education program or activity of DeSales University.

DeSales University may dismiss a formal complaint or any allegations therein if, at any time during the investigation or hearing:

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

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

Upon any dismissal, DeSales University will promptly send written notice of the dismissal and the rationale for doing so simultaneously to the Parties.

This dismissal decision is appealable by any party under the procedures for appeal below in Section 37: Appeal

¹⁴ These dismissal requirements are mandated by the 2020 Title IX Regulations, 34 CFR Part 106.45.

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4. Counterclaims

DeSales University is obligated to ensure that the grievance process is not abused for retaliatory purposes. DeSales University permits the filing of counterclaims but uses an initial assessment, described above, to assess whether the allegations in the counterclaim are made in good faith. Counterclaims by a Respondent may be made in good faith, but are, on occasion, made for purposes of retaliation, instead. Counterclaims made with retaliatory intent will not be permitted.

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

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

5. Right to an Advisor

The Parties may each have an Advisor of their choice present with them for all meetings, interviews, and hearings within the resolution process if they so choose. The Parties may select whoever they wish to serve as their Advisor as long as the Advisor is eligible and available.¹⁵

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

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

a. Who Can Serve as an Advisor

The Advisor may be a friend, mentor, family member, attorney, or any other individual a party chooses to advise, support, and/or consult with them throughout the resolution process. The Parties may choose Advisors from inside or outside of the DeSales University community.

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

¹⁵ "Available" means the party cannot insist on an Advisor who simply doesn't have inclination, time, or availability. Also, the Advisor cannot have institutionally conflicting roles, such as being a Title IX administrator who has an active role in the matter, or a supervisor who must monitor and implement sanctions.

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b. Advisor's Role in Meetings and Interviews

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

DeSales 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, DeSales University is not obligated to provide an attorney.

c. Advisors in Hearings/DeSales University-Appointed Advisor

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

A party may reject this appointment and choose their own Advisor, but they may not proceed without an Advisor. If the party's Advisor will not conduct questioning, DeSales University will appoint an Advisor who will do so, regardless of the participation or non-participation of the advised party in the hearing itself. Extensive questioning of the parties and witnesses may also be conducted by the Decision-maker(s) during the hearing.

d. Pre-Interview Meetings

Advisors may request to meet with the administrative officials conducting interviews/meetings in advance of these interviews or meetings. This pre-meeting allows Advisors to clarify and understand their role and DeSales University's policies and procedures.

e. Advisor Violations of DeSales University Policy

All Advisors are subject to the same DeSales University policies and procedures, whether they are attorneys or not, and whether they are selected by a party or assigned by DeSales University. Advisors are expected to advise their advisees without disrupting proceedings. Advisors should not address DeSales University officials in a meeting or interview unless invited to do so (e.g., asking procedural questions). The Advisor may not make a presentation or represent their advisee¹⁶ during any meeting or proceeding and may not speak on behalf of the advisee to the Investigator(s) or

¹⁶ Subject to the state law provisions or the policy above.

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other Decision-maker(s) except during a hearing proceeding as part of questioning or when addressed by the Chair or Hearing Facilitator.

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

Any Advisor who oversteps their role as defined by this policy will be warned only once. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the meeting/interview/hearing will be ended, or other appropriate measures implemented. The Title IX Coordinator will determine how to address the Advisor's non-compliance and future role.

f. Sharing Information with the Advisor

The Parties may wish to have DeSales University share documentation and evidence related to the allegations with their Advisors. Parties may share this information directly with their Advisor or other individuals if they wish.

In order to share information directly with their Advisor, the parties must either complete and submit a consent form to the Title IX Coordinator authorizing DeSales University to share such information or provide similar documentation demonstrating consent to a release of information to the Advisor before DeSales University is able to share records with an Advisor.

If a party requests that all communication be made through their Advisor, DeSales University will comply with this request at the discretion of the Title IX Coordinator. A party will be copied on any communication the University sends to their Advisor.

g. Privacy of Records Shared with Advisor

Advisors are expected to maintain the privacy of the records shared with them. These records may not be shared with third parties, disclosed publicly, or used for purposes not explicitly authorized by DeSales University. DeSales University may seek to restrict the role of any Advisor who does not respect the sensitive nature of the process or who fails to abide by DeSales University's privacy expectations.

h. Expectations of an Advisor

DeSales University generally expects an Advisor to adjust their schedule to allow them to attend DeSales University meetings when planned but DeSales University may change scheduled meetings

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to accommodate an Advisor's inability to attend, if doing so does not cause an unreasonable delay or inconvenience.

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

i. Expectations of the Parties with Respect to Advisors

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

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

6. Resolution Processes

Resolution proceedings are private. All persons present at any time during the resolution process are expected to maintain the privacy of the proceedings in accordance with DeSales University policy.

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

The Formal Grievance Process is DeSales University's primary resolution approach unless Informal Resolution is elected by all parties and the University. Three options for Informal Resolution are detailed in this section, and the Formal Grievance Process is detailed starting in the next section.

a. Informal Resolution

Informal Resolution can include Three different approaches:

- Accepted Responsibility. When the Respondent accepts responsibility for violating policy,

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and desires to accept a sanction and end the resolution process; or

- Negotiated Resolution. When the Title IX Coordinator negotiates a resolution that is acceptable to all parties, and/or to accept a resolution that is proposed by the parties and/or their Advisors.
- Supportive Resolution. When the Title IX Coordinator can resolve the matter informally by providing supportive measures to remedy the situation.

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

It is not necessary to pursue Informal Resolution first in order to pursue a Formal Grievance Process, and any party participating in Informal Resolution can stop the process at any time and begin or resume the Formal Grievance Process.

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

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

a. Respondent Accepts Responsibility for Alleged Violations

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

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

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

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

b. Negotiated Resolution

The Title IX Coordinator, with the consent of the parties, may negotiate and implement an agreement to resolve the allegations that satisfies all parties and DeSales University. Negotiated Resolutions are not appealable.

7. Formal Grievance Process Pool

The Formal Grievance Process relies on a pool of administrators (“the Pool”) to carry out the process. Members of the Pool are announced in an annual distribution of this Policy to all students, parents/guardians of students, employees, prospective students, and prospective employees. External, trained third-party neutral professionals may also be used to serve in pool roles.

a. Pool Member Roles

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

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

b. Pool Member Training

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

- The scope of DeSales University’s Discrimination and Harassment Policy and Procedures

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

- Recordkeeping

Specific training is also provided for Appeal Decision-makers, intake personnel, Advisors (who are DeSales University employees), and Chairs. All Pool members are required to attend these trainings annually. The materials used to train all members of the Pool can be requested by contacting the Title IX Coordinator.

8. Formal Grievance Process: Notice of Investigation and Allegations

The Title IX Coordinator will provide written notice of the investigation and allegations (the “NOIA”)

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to the Respondent upon commencement of the Formal Grievance Process. The NOIA is also copied to the Complainant, who is will be given advance notice of when the NOIA will be delivered to the Respondent.

The NOIA will include:

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

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

Notice will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address(es) of the parties as indicated in official DeSales University records, or emailed to the parties' DeSales University-issued email or designated accounts. Email is the University's official means of communication and will be the common method utilized to deliver notice. Once mailed, emailed, or received in-person, notice will be presumptively delivered.

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9. Resolution Timeline

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

10. Appointment of Investigators

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

11. Ensuring Impartiality

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

The Title IX Coordinator will vet the assigned Investigator(s) for impartiality by ensuring there are no actual or apparent conflicts of interest or disqualifying biases. At any time during the resolution process, the parties may raise a concern regarding bias or conflict of interest involving any member of the OCR Compliance Team, and the Title IX Coordinator will determine whether the concern is reasonable and supportable. If so, another Pool member will be assigned and the impact of the bias or conflict, if any, will be remedied. If the source of the conflict of interest or bias is the Title IX Coordinator, concerns should be raised with the OCR Compliance Coordinator at ocr@desales.edu who will appoint an administrator to review the concern.

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

In compliance with applicable regulations, DeSales University presumes that the Respondent is not responsible for the reported misconduct unless and until the Respondent is determined to be responsible for a policy violation by the applicable standard of proof.

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12. Investigation Timeline

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

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

13. Delays in the Investigation Process and Interactions with Law Enforcement

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

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

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

14. Steps in the Investigation Process

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

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

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

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- Determine the identity and contact information of the Complainant
- Identify all policies implicated by the alleged misconduct and notify the Complainant and Respondent of all of the specific policies implicated
- Assist the Title IX Coordinator, if needed, with conducting a prompt initial assessment to determine if the allegations indicate a potential policy violation
- Commence a thorough, reliable, and impartial investigation by identifying issues and developing a strategic investigation plan, including a witness list, evidence list, intended investigation timeframe, and order of interviews for all witnesses and the parties
- Meet with the Complainant to finalize their interview/statement, if necessary
- Work with the Title IX Coordinator, as necessary, to prepare the initial Notice of Investigation and Allegation (NOIA). The NOIA may be amended with any additional or dismissed allegations
 - Notice should inform the parties of their right to have the assistance of an Advisor, who could be a member of the Pool or an Advisor of their choosing present for all meetings attended by the party
- Provide each interviewed party and witness an opportunity to review and verify the Investigator's summary notes (or transcript) of the relevant evidence/testimony from their respective interviews and meetings
- Make good faith efforts to notify the parties of any meeting or interview involving the other party, in advance when possible
- When participation of a party is expected, provide that party with written notice of the date, time, and location of the meeting, as well as the expected participants and purpose
- Interview all available, relevant witnesses and conduct follow-up interviews as necessary
- Allow each party the opportunity to suggest witnesses and questions they wish the Investigator(s) to ask of the other party and witnesses, and document in the report which questions were asked, with a rationale for any changes or omissions.
- Complete the investigation promptly and without unreasonable deviation from the intended timeline
- Provide regular status updates to the parties throughout the investigation.
- Prior to the conclusion of the investigation, provide the parties and their respective Advisors (if so desired by the parties) with a list of witnesses whose information will be used to render a finding
- Write a comprehensive investigation report fully summarizing the investigation, all witness interviews, and addressing all relevant evidence. Appendices including relevant physical or documentary evidence will be included
- The Investigator(s) gather, assess, and synthesize evidence, but make no conclusions, engage in no policy analysis, and render no recommendations as part of their report
- Prior to the conclusion of the investigation, provide the Parties and their respective Advisors (if so desired by the Parties) a secured electronic or hard copy of the draft investigation report as well as an opportunity to inspect and review all of the evidence obtained as part of the investigation that is directly related to the reported misconduct,

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including evidence upon which DeSales University does not intend to rely in reaching a determination, for a ten (10) business day review and comment period so that each party may meaningfully respond to the evidence. The Parties may elect to waive the full ten days. Each copy of the materials shared will be watermarked on each page with the role of the person receiving it (e.g., Complainant, Respondent, Complainant's Advisor, Respondent's Advisor).

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

15. Role and Participation of Witnesses in the Investigation

Witnesses (as distinguished from the parties) who are employees of DeSales University are expected to cooperate with and participate in DeSales University's investigation and resolution process. Failure of such witnesses to cooperate with and/or participate in the investigation or resolution process constitutes a violation of policy and may warrant discipline.

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

Witnesses may also provide written statements in lieu of interviews or choose to respond to written questions, if deemed appropriate by the Investigator(s), though not preferred. If a witness submits a written statement but does not intend to be and is not present for questioning at a hearing, their written statement may still be used as evidence.

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16. Recordings

No unauthorized audio or video recording of any kind is permitted during investigative meetings, process meetings, or resolution proceedings. If an audio and/or video record is being created, all involved parties should be made aware¹⁷ of the audio and/or video recording.

17. Evidentiary Considerations in the Investigation

The investigation does not consider: 1) incidents not directly related to the possible violation, unless they evidence a pattern; or 2) questions and evidence about the Complainant's sexual predisposition; or 3) questions and evidence about the Complainant's prior sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

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

18. Referral for Hearing

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

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

The Title IX Coordinator will select an appropriate Decision-maker or Decision-Makers from the Pool depending on whether the Respondent is an employee or a student. Allegations involving student-employees in the context of their employment will be directed to the appropriate Decision-maker depending on the context and nature of the alleged misconduct.

19. Hearing Decision-maker Composition

DeSales University will designate a single Decision-maker or a three-member panel from the Pool, at the discretion of the Title IX Coordinator. The single Decision-maker will also Chair the hearing.

¹⁷ Consent of the interviewer and interviewee is required in “dual-party recording” states.

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With a panel, one of the three members will be appointed as Chair by the Title IX Coordinator.

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

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

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

20. Evidentiary Considerations in the Hearing

Any evidence that the Decision-maker(s) determine(s) is relevant and credible may be considered. The hearing does not consider: 1) incidents not directly related to the possible violation, unless they evidence a pattern; 2) questions and evidence about the Complainant's sexual predisposition; 3) questions or evidence about the Complainant's prior sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

Any party or witness may choose not to offer evidence and/or answer questions at the hearing, either because they do not attend the hearing, or because they attend but refuse to participate in some or all questioning. The Decision-maker(s) can only rely on whatever relevant evidence is available through the investigation and hearing in making the ultimate determination of responsibility as long as it is not otherwise subject to exclusion under this Policy. This evidence can include, but is not limited to, opinions and statements in police reports or other official reports, medical records/reports, court records and filings, emails, text messages, video, written statements, affidavits, social media postings, and other similar documents.

The Decision-maker(s) may not draw any inference solely from a party's or witness's absence from the hearing or refusal to submit to cross-examination or answer other questions

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

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Previous disciplinary action of any kind involving the Respondent may be considered in determining an appropriate sanction upon a determination of responsibility. This information is only considered at the sanction stage of the process, and is not shared until then.

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

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

21. Notice of Hearing

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

The notice will contain:

- A description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable hearing procedures, and a statement of the potential sanctions/responsive actions that could result.
- The time, date, and location of the hearing.
- Description of any technology that will be used to facilitate the hearing
- Information about the option for the live hearing to occur with the parties located in separate rooms using technology that enables the Decision-maker(s) and parties to see and hear a party or witness answering questions. Such a request must be raised with the Title IX Coordinator at least five (5) business days prior to the hearing.
- A list of all those who will attend the hearing, along with an invitation to object to any Decision-maker(s) on the basis of demonstrated bias or conflict of interest. This must be raised with the Title IX Coordinator at least five (5) business days prior to the hearing.
- Information on how the hearing will be recorded and on access to the recording for the parties after the hearing.
- A statement that if any party or witness does not appear at the scheduled hearing, the hearing may be held in their absence. For compelling reasons, the Chair may reschedule the hearing in their discretion.
- Notification that the parties may have the assistance of an Advisor of their choosing at the hearing and will be required to have one present for any questions they may desire to ask. The party must notify the Title IX Coordinator if they do not have an Advisor, and DeSales University will appoint one. Each party must have an Advisor present. There are no exceptions.

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- A copy of all the materials provided to the Decision-maker(s) about the matter, unless they have been provided already.¹⁸
- An invitation to each party to submit to the Chair an impact statement pre-hearing that the Decision-maker(s) will review during any sanction determination.
- An invitation to contact the Title IX Coordinator to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing, at least seven (7) business days prior to the hearing.
- Whether parties can/cannot bring mobile phones/devices into the hearing.

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

22. Alternative Hearing Participation Options

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

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

23. Pre-Hearing Preparation

After any necessary consultation with the parties, Investigator(s) and/or Title IX Coordinator, the Chair or Hearing Facilitator will provide the names of persons who will be participating in the hearing, all pertinent documentary evidence, and the final investigation report to the parties at least ten (10) business days prior to the hearing.

Any witness scheduled to participate in the hearing must have been first interviewed by the Investigator(s) or have proffered a written statement or answered written questions, unless all parties and the Chair assent to the witness's participation in the hearing. The same holds for any

¹⁸ The final investigation report may be shared using electronic means that preclude downloading, forwarding, or otherwise sharing.

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evidence that is first offered at the hearing. If the parties and Chair do not assent to the admission of evidence newly offered at the hearing, the Chair may delay the hearing and/or instruct that the investigation be re-opened to consider that evidence.

The parties will be given a list of the names of the Decision-maker(s) at least ten (10) business days in advance of the hearing. All objections to any Decision-maker must be raised in writing, detailing the rationale for the objection, and must be submitted to the Title IX Coordinator as soon as possible and no later than five (5) business days prior to the hearing. Decision-makers will only be removed if the Title IX Coordinator concludes that their bias or conflict of interest precludes an impartial hearing of the allegation(s).

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

The Parties may choose to provide a written response to the investigative report, which must be submitted at least five (5) business days prior to the start of the hearing. The response may consist of a written statement not to exceed 2500 words. If a party has objections to evidence included or excluded from the investigation report, it should be included in this response as well. New evidence or rebuttal evidence will not be considered at this time. The Chair will review the objections to relevance and at least 48hrs prior to the hearing will issue a decision regarding whether to include or exclude the evidence in question. The Chair will ensure any evidence deemed newly relevant at this time is shared with both parties.

24. Pre-Hearing Meetings

At the Chair's discretion or at the request of a party, pre-hearing meetings may be scheduled with their advisor to explain the hearing protocol.

25. Hearing Procedures

At the hearing, the Decision-maker(s) has the authority to hear and make determinations on all alleged policy violations that have occurred in concert with the alleged Sexual Harassment, even though those collateral allegations may not specifically fall within the Anti-Harassment and Non-Discrimination Policy and may fall under applicable university policy.

Participants at the hearing may include the Chair, any additional panelists, the hearing facilitator, the Investigator(s) who conducted the investigation, the parties (or three (3) organizational

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representatives when an organization is the Respondent), Advisor(s) to the parties, any called witnesses, the Title IX Coordinator and anyone providing authorized accommodations, interpretation, and/or assistive services.

The Chair will answer all questions of procedure. Anyone appearing at the hearing to provide information will respond to questions on their own behalf.

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

26. Joint Hearings

In hearings involving more than one Respondent or in which two (2) or more Complainants have accused the same individual of substantially similar conduct, the default procedure will be to hear the allegations jointly.

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

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

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

The Chair AND/OR hearing facilitator then conducts the hearing according to the hearing script. At the hearing, recording, witness logistics, party logistics, curation of documents, separation of the parties, and other administrative elements of the hearing process are managed by a non-voting hearing facilitator appointed by the Title IX Coordinator. The hearing facilitator may attend to: logistics of rooms for various parties/witnesses as they wait; flow of parties/witnesses in and out of the hearing space; ensuring recording and/or virtual conferencing technology is working as intended; copying and distributing materials to participants, as appropriate, etc.

28. Investigator Presents the Final Investigation Report

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

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Neither the parties nor the Decision-maker(s) should ask the Investigator(s) their opinions on credibility, recommended findings, or determinations, and the Investigators, Advisors, and parties will refrain from discussion of or questions for Investigators about these assessments. If such information is introduced, the Chair will direct that it be disregarded.

29. Testimony and Questioning

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

All questions are subject to a relevance determination by the Chair. The Advisor, who will remain seated during questioning, will pose the proposed question orally, electronically, or in writing (orally is the default, but other means of submission may be permitted by the Chair upon request or agreed to by all parties and the Chair), the proceeding will pause to allow the Chair to consider the question, and the Chair will determine whether the question will be permitted, disallowed, or rephrased.

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

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

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

30. Recording Hearings

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

The Decision-maker(s), the parties, their Advisors, and appropriate administrators of DeSales University will be permitted to listen to the recording or review a transcript of the recording in a

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controlled environment determined by the Title IX Coordinator, upon request. No person will be given or be allowed to make a copy of the recording without permission of the Title IX Coordinator.

31. Deliberation, Decision-making, and Standard of Proof

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

When there is a finding of responsibility on one or more of the allegations, the Decision-maker(s) may then consider the previously submitted party impact statements in determining appropriate sanction(s).

The Chair will ensure that each of the parties has an opportunity to review any impact statement submitted by the other party(ies). The Decision-maker(s) may – at their discretion – consider the statements, but they are not binding.

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

32. Notice of Outcome

The Title IX Coordinator will work with the Chair to prepare a Notice of Outcome letter. The Notice of Outcome may then be reviewed by legal counsel for the university. The Title IX Coordinator will then share the letter, including the final determination, rationale, and any applicable sanction(s) with the parties and their Advisors within 5 business days of receiving the Decision-maker(s)' deliberation statement.

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

The Notice of Outcome will articulate the specific policy(ies) reported to have been violated, including the relevant policy section, and will contain a description of the procedural steps taken by DeSales University from the receipt of the misconduct report to the determination, including any

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and all notifications to the parties, interviews with parties and witnesses, site visits, methods used to obtain evidence, and hearings held.

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

The Notice of Outcome will also include information on when the results are considered by DeSales University to be final, any changes that occur prior to finalization, and the relevant procedures and bases for any available appeal options.

33. Statement of the Rights of the Parties ([see Appendix A](#))

34. Sanctions

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

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

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

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

a. Student Sanctions

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The following are the usual sanctions¹⁹ that may be imposed upon students:

- Expulsion – Permanent termination of student status.
- Suspension – Temporary separation of student from University. Such action may be deemed appropriate as a consequence for more serious or repetitious violation of campus regulations. Suspension shall not be construed as a permanent separation from the community and conditions of readmission (if any are ordered) shall be stated in the hearing authority's decision. Students suspended for violations of University policy are considered eligible for readmission to the University, and must apply for readmission through the Dean of Students Office prior to their anticipated return date.
- Removal from Residence – Requirement that the housing contract of the individual with the University be voided and that the individual be removed from the residence halls within five days of the date of the hearing. Note: Removal from residency may occur at the discretion of the Associate Dean of Residential Programs, consistent with the University Housing agreement, for failure to comply with all applicable rules and regulations of the University exclusive of any community standards process.
- Alteration of Residence Status – Requirement that the residence location of the student be changed by the Residence Life Office within five days of the date of the hearing.
- Disciplinary Probation – Time period during which any future violations will likely result in either removal from residency or suspension from the University depending on the offense and the student's community standards history.
- Social Restrictions – Restrictions from specific privilege(s), extracurricular activities, campus event(s), contact with person or organization, etc.
- Campus Restrictions – Restrictions from being present in campus buildings or areas.
- Community Restitution – Activities or actions designed to return to the community a portion of the goodwill that was taken away by the commission of the violation. Service to the community should be designed to better the social and/or physical environment of the University and its surrounding community.
- Financial Restitution – Reimbursement for damage to or misappropriation of property. Restitution may take the form of appropriate services to compensate for damages.
- Referral to Appropriate Counseling Services.
- Administrative Directive – A statement, written, oral, or as part of a University policy, from an administrator of the University to be complied with by student(s). May require refraining from conduct or completing an act.

¹⁹ DeSales University policies on transcript notation will apply to these proceedings.

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- Alcohol Education Program – Includes alcohol education class, an online program, and other educational activities to be determined by the Alcohol/Drug & Sexual Assault Prevention Education Coordinator (ASAP).
- Warning – Notice to the student, in writing, that continuation or repetition of the conduct found wrongful within a period of time as stated in the warning, may be cause for more severe disciplinary action.
- Withholding Diploma: DeSales University may withhold a student's diploma for a specified period of time and/or deny a student participation in commencement activities as a sanction if the student is found responsible for an alleged violation.
- Revocation of Degree: DeSales University reserves the right to revoke a degree previously awarded from DeSales University for fraud, misrepresentation, and/or other violation of DeSales University policies, procedures, or directives in obtaining the degree, or for other serious violations committed by a student prior to graduation.
- Organizational Sanctions: Deactivation, loss of recognition, loss of some or all privileges (including DeSales University registration) for a specified period of time.
- Other Actions: In addition to or in place of the above sanctions, DeSales University may assign any other sanctions as deemed appropriate.

b. Employee Sanctions

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

- Warning – Verbal or Written
- Performance Improvement/Management Process
- Required Counseling
- Required Training or Education
- Probation
- Demotion
- Suspension without pay
- Termination
- Other Actions: In addition to or in place of the above sanctions, DeSales University may assign any other sanctions as deemed appropriate.

35. Withdrawal or Resignation While Charges Pending

Students:

Should a Respondent decide not to participate in the resolution process, the process proceeds

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absent their participation to a reasonable resolution. Should a student Respondent permanently withdraw from DeSales University, the resolution process ends with a dismissal, as DeSales University no longer has disciplinary jurisdiction over the withdrawn student.

However, DeSales University will continue to address and remedy any systemic issues, variables that may have contributed to the alleged violation(s), and any ongoing effects of the alleged harassment, discrimination, and/or retaliation. The student respondent who withdraws or leaves while the process is pending may not return to DeSales University in any capacity. Such exclusion applies to all campuses of DeSales University. They may also be barred from DeSales University property and/or events.

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

Employees: Should an employee Respondent resign with unresolved allegations pending, the resolution process ends with dismissal, as DeSales University no longer has disciplinary jurisdiction over the resigned employee. The University also reserves the right to place a letter in the personnel file of the individual indicating they are not to be rehired.

However, DeSales University will continue to address and remedy any systemic issues, variables that contributed to the alleged violation(s), and any ongoing effects of the alleged harassment, discrimination, and/or retaliation.

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

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

36. Appeals

Any party may file a request for appeal ("Request for Appeal"), but it must be submitted in writing to the Title IX Coordinator within 5 days of the delivery of a decision to dismiss a formal complaint or the Notice of Outcome.

A panel, consisting of one or three people will be chosen from the Pool and will be designated by the Title IX Coordinator. No appeal panelists will have been involved in the process previously, including in any dismissal appeal that may have been heard earlier in the process. A voting Chair of the Appeal panel will be designated.

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The Request for Appeal will be forwarded to the Appeal Chair or designee for consideration to determine if the request meets the grounds for appeal (a Review for Standing).

This review is not a review of the merits of the appeal, but solely a determination as to whether the request meets the grounds and is timely filed.

a. Grounds for Appeal

Appeals are limited to the following grounds:

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

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

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

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

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

Neither party may submit any new requests for appeal after this time period. The Appeal Chair will collect any additional information needed and all documentation regarding the approved grounds for appeal, and the subsequent responses will be shared with the Appeal Panel/Chair,

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and the Chair/Panel will render a decision in no more than 5 business days, barring exigent circumstances. All decisions are by majority vote and apply the preponderance of the evidence.

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

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

b. Sanctions Status During the Appeal

Any sanctions imposed as a result of the hearing are stayed during the appeal process. Supportive measures may be reinstated, subject to the same supportive measure procedures above.

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

c. Appeal Considerations

- Decisions on appeal are to be deferential to the original decision, making changes to the finding only when there is clear error and to the sanction(s)/responsive action(s) only if there is a compelling justification to do so.
- Appeals are not intended to provide for a full re-hearing (de novo) of the allegation(s). In most cases, appeals are confined to a review of the written documentation or record of the original hearing and pertinent documentation regarding the specific grounds for appeal.
- An appeal is not an opportunity for Appeal Decision-makers to substitute their judgment for that of the original Decision-maker(s) merely because they disagree with the finding and/or sanction(s).
- The Appeal Chair/Decision-makers(s) may consult with the Title IX Coordinator and/or legal counsel on questions of procedure or rationale, for clarification, if needed. Documentation of all such consultation will be maintained.
- Appeals granted should normally be remanded (or partially remanded) to the original Investigator(s) and/or Decision-maker(s) for reconsideration.
- Once an appeal is decided, the outcome is final: further appeals are not permitted, even if a decision or sanction is changed on remand (except in the case of a new hearing).

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- In rare cases where an error cannot be cured by the original Decision-maker(s) (as in cases of bias), the appeal Chair/Panel may order a new investigation with new investigators and/or a new hearing with a new Decision-maker(s).
- The results of a new hearing can be appealed, once, on any of the three available appeal grounds.
- In cases in which the appeal results in reinstatement to DeSales University or resumption of privileges, all reasonable attempts will be made to restore the Respondent to their prior status, recognizing that this may not be possible in all cases.

37. Long-Term Remedies/Other Actions

Following the conclusion of the resolution process, and in addition to any sanctions implemented, the Title IX Coordinator may implement additional long-term remedies or actions with respect to the parties and/or the campus community that are intended to stop the harassment, discrimination, and/or retaliation, remedy the effects, and prevent reoccurrence.

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

- Referral to counseling and health services
- Referral to the Employee Assistance Program
- Education to the individual and/or the community
- Permanent alteration of housing assignments
- Permanent alteration of work arrangements for employees
- Provision of campus safety escorts
- Climate surveys
- Policy modification and/or training
- Provision of transportation accommodations
- Implementation of long-term communication and/or contact limitations between the parties
- Implementation of adjustments to academic deadlines, course schedules, etc.

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

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

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

38. Failure to Comply with Sanctions and/or Responsive Actions

All Respondents are expected to comply with the assigned sanctions, responsive actions, and/or

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corrective actions within the timeframe specified by the final Decision-maker(s) (including the Appeal Chair/Panel).

Failure to abide by the sanction(s)/action(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanction(s)/action(s), including suspension, expulsion, and/or termination from DeSales University.

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

39. Recordkeeping

DeSales University will maintain for a period of at least seven years records of:

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

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

41. Disabilities Accommodations in the Resolution Process

DeSales University is committed to providing reasonable accommodations and support to qualified students, employees, or others with disabilities to ensure equal access to DeSales University's resolution process.

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Anyone needing such accommodations or support should contact the Director of Student Accessibility Services (or Director of Human Resources, if an employee) who will review the request and, in consultation with the person requesting the accommodation and the Title IX Coordinator, determine which accommodations are appropriate and necessary for full participation in the process

INTERIM RESOLUTION PROCESS FOR ALLEGED VIOLATIONS OF THE ANTI-HARASSMENT AND NON-DISCRIMINATION POLICY (PROCESS B)²⁰

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

INTERIM RESOLUTION PROCESS FOR ALLEGED VIOLATIONS OF THE ANTI-HARASSMENT AND NON-DISCRIMINATION POLICY

DeSales University will act on any formal or informal allegation or notice of violation of the policy on Equal Opportunity, Harassment and Nondiscrimination that is received by the OCR Compliance Coordinator²¹ or a member of the administration, faculty, or other employee, with the exception of confidential resources, as articulated in the Policy above.

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

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

1. Initial Assessment

²¹ All references herein to a OCR Compliance Coordinator also include a designee of the OCR Compliance Coordinator.

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Following intake, receipt of notice, or a complaint of an alleged violation of DeSales University's nondiscrimination Policy, the OCR Compliance Coordinator²² engages in an initial assessment, which is typically one to five business (1-5) days in duration. The steps in an initial assessment can include:

- The OCR Compliance Coordinator reaches out to the Complainant to offer supportive measures.
- The OCR Compliance Coordinator works with the Complainant to ensure they are aware of their right to have an Advisor.
- The OCR Compliance Coordinator works with the Complainant to determine which of three options to pursue: A Supportive Response, an Informal Resolution, or an Administrative Resolution.
 - If a supportive and remedial response is preferred, the OCR Compliance Coordinator works with the Complainant to identify their wishes and then seeks to facilitate implementation. An Administrative Resolution process is not initiated, though the Complainant can elect to initiate it later, if desired.
 - If an Informal Resolution option is preferred, the OCR Compliance Coordinator assesses whether the complaint is suitable for informal resolution, which informal mechanism may serve the situation best or is available and may seek to determine if the Respondent is also willing to engage in Informal Resolution.
 - If Administrative Resolution is preferred, the OCR Compliance Coordinator initiates the investigation process and determines whether the scope of the investigation will address:
 - Incident, and/or
 - A potential pattern of misconduct, and/or
 - A culture/climate issue.
- The OCR Compliance Coordinator may determine that a risk assessment should be conducted with assistance by the OCR Compliance Team, CARE Team, and/or Employee Assistance Program as part of the initial assessment. A risk assessment can aid in ten critical and/or required determinations, including:
 - Interim suspension of a Respondent who is a threat to health/safety;
 - Whether the OCR Compliance Coordinator should pursue Administrative Resolution absent a willing/able Complainant;
 - Whether to put the investigation on the footing of incident and/or pattern and/or climate;
 - To help identify potentially predatory conduct;
 - To help assess/identify grooming behaviors;
 - Whether a Complaint is amenable to Informal Resolution, and what modality may be most successful;
 - Whether to permit a voluntary withdrawal by the Respondent;

²² If circumstances require, the Vice President of Finance will designate another person to oversee the process below should an allegation be made about the Coordinator or the Coordinator be otherwise unavailable or unable to fulfill their duties.

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- Whether a Clery Act Timely Warning/Persona-Non-Grata order is needed.

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

- Supportive Response – measures to help restore the Complainants education access, as described in the policy.
- Informal Resolution – typically used for less serious offenses and all parties agree to Informal Resolution, or when the Respondent is willing to accept responsibility for violating policy.
- Administrative Resolution – investigation of policy violation(s) and recommended finding (faculty/staff employee cases only), subject to a determination by the OCR Compliance Coordinator or Decision Maker and the opportunity to appeal to an Appeal Panel/Appeal Decision-Maker.

The investigation and the subsequent Administrative Resolution determine whether the nondiscrimination policy has been violated. If so, DeSales University will promptly implement effective remedies designed to end the discrimination, prevent recurrence, and address the effects.

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

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

2. Resolution Process Pool

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

Members of the Pool are trained annually in all aspects of the resolution process and can serve in any of the following roles, at the direction of the OCR Compliance Coordinator:

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

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- To serve on an Appeal Panel or as an Appeal Decision-maker

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

Pool members receive annual training organized by the OCR Compliance Coordinator, including a review of DeSales 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.

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

- The scope of DeSales University's Discrimination and Harassment Policy and Procedures
- How to conduct investigations and hearings that protect the safety of Complainants and Respondents and promote accountability
- Implicit bias
- Disparate treatment and impact
- Reporting, confidentiality, and privacy requirements
- Applicable laws, regulations, and federal regulatory guidance
- How to implement appropriate and situation-specific remedies
- How to investigate in a thorough, reliable, timely and impartial manner by individuals who receive training in conducting investigations of sexual harassment, trauma-informed practices, and impartiality
- How to uphold fairness, equity, and due process
- How to weigh evidence
- How to conduct questioning
- How to assess credibility
- Impartiality and objectivity
- Types of evidence
- Deliberation
- How to render findings and generate clear, concise, evidence-based rationales
- The definitions of all offenses
- How to apply definitions used by DeSales University with respect to consent (or the absence or negation of consent) consistently, impartially, and in accordance with policy
- How to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes
- How to serve impartially, by avoiding prejudgment of the facts at issue, conflicts of interest, and bias against Respondents and/or for Complainants, and on the basis of sex, race, religion, and other protected characteristics
- Any technology to be used
- Issues of relevance of questions and evidence

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- Issues of relevance to create an investigation report that fairly summarizes relevant evidence
- How to determine appropriate sanctions in reference to all forms of harassment and discrimination allegations

Specific training is also provided for Appeal Decision-makers, intake personnel, and Advisors. All Pool members are required to attend this annual training.

Individuals who are interested in serving in the Pool are encouraged to contact the OCR Compliance Coordinator.

External, trained third-party neutral professionals may also be used to serve in pool roles.

3. Counterclaims

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

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

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

4. Advisors

a. Expectations of an Advisor

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

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

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

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

A DeSales University employee is not expected to share information a party provides with them, regardless of their Responsible employee obligations, when serving as an advisor.

b. Expectations of the Parties with Respect to Advisors

Each party may choose an Advisor²³ who is eligible and available²⁴ to accompany them throughout the process. The Advisor can be anyone, including an attorney, but should not be someone who is also a witness in the process. A party may elect to change Advisors during the process and is not obligated to use the same Advisor throughout.

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

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

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

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

5. Resolution Options

²³ This could include an attorney, advocate, or support person. Witnesses are not entitled to Advisors within the process, though they can be advised externally..

²⁴ "Available" means the party cannot insist on an Advisor who simply doesn't have inclination, time, or availability. Also, the Advisor cannot have institutionally conflicting roles, such as being a Title IX administrator who has an active role in the matter, or a supervisor who must monitor and implement sanctions.

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Proceedings are private. All persons present at any time during the resolution process are expected to maintain the privacy of the proceedings in accord with DeSales University Policy.

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

a. Informal Resolution

Informal Resolution is applicable when the Respondent accepts responsibility for violating Policy, or when the OCR Compliance Coordinator can resolve the matter informally by providing remedies to resolve the situation.

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

i. Respondent Accepts Responsibility for Alleged Violations

The Respondent may accept responsibility for all or part of the alleged policy violations at any point during the resolution process. If the Respondent accepts responsibility, the OCR Compliance Coordinator makes a determination that the individual is in violation of DeSales University Policy.

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

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

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

ii. Negotiated Resolution

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The OCR Compliance Coordinator, with the consent of the parties, may negotiate and implement any agreement to resolve the allegations that satisfies all parties and DeSales University.

b. Administrative Resolution

Administrative Resolution can be pursued for any behavior for which the Respondent has not accepted responsibility that constitutes conduct covered by the Anti-Harassment and Non-Discrimination Policy at any time during the process. Administrative Resolution starts with a thorough, reliable, and impartial investigation.

The OCR Compliance Coordinator will provide written notice of the investigation and allegations (the "NOIA") to the Respondent upon commencement of the Administrative Resolution Process. This facilitates the Respondent's ability to prepare for the interview and to identify and choose an Advisor to accompany them. The NOIA is also copied to the Complainant, who is to be given advance notice of when the NOIA will be delivered to the Respondent.

The NOIA will include:

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

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

Notice will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address(es) of the parties as indicated in official DeSales University records, or emailed to the parties' DeSales University-issued email or designated accounts. Email is the University's official means of communication and will be the common method utilized to deliver notice. Once mailed, emailed, or received in-person, notice will be presumptively delivered.

6. Resolution Timeline

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

7. Appointment of Investigators

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

8. Ensuring Impartiality

Any individual materially involved in the administration of the resolution process including the OCR Compliance Coordinator, Investigator(s), and Decision-maker(s) may neither have nor demonstrate a conflict of interest or bias for a party generally, or for a specific Complainant or Respondent.

The OCR Compliance Coordinator will vet the assigned Investigator(s) to ensure impartiality by ensuring there are no actual or apparent conflicts of interest or disqualifying biases. The parties may, at any time during the resolution process, raise a concern regarding bias or conflict of interest, and the OCR Compliance Coordinator will determine whether the concern is reasonable and supportable. If so, another Pool member will be assigned and the impact of the bias or conflict, if any, will be remedied. If the source of the conflict of interest or bias is the OCR Compliance Coordinator, concerns should be raised with the OCR Compliance Coordinator at ocr@dessaes.edu who will designate an administrator to review the concerns.

DeSales University operates with the presumption that the Respondent is not responsible for the

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reported misconduct unless and until the Respondent is determined to be responsible for a policy violation by the applicable standard of proof.

9. Investigation Timeline

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

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

10. Delays in the Investigation Process and Interactions with Law Enforcement

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

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

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

11. Steps in the Investigation Process

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

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

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

- Determine the identity and contact information of the Complainant
- In coordination with campus partners (e.g., the OCR Compliance Coordinator), initiate or assist with any necessary supportive measures
- Identify all policies implicated by the alleged misconduct
- Assist the OCR Compliance Coordinator with conducting an initial assessment to determine if there is reasonable cause to believe the Respondent has violated policy
 - If there is insufficient evidence to support reasonable cause, the process is closed with no further action
- Commence a thorough, reliable, and impartial investigation by identifying issues and developing a strategic investigation plan, including a witness list, evidence list, intended investigation timeframe, and order of interviews for all witnesses and the parties
- Meet with the Complainant to finalize their statement, if necessary
- Prepare the initial Notice of Investigation and Allegation (NOIA) on the basis of the initial assessment. Notice may be one step or multiple steps, depending on how the investigation unfolds, and potential policy violations may be added or dropped as more is learned. Investigators will update the NOIA accordingly and provide it to the parties.
 - Notice should inform the parties of their right to have the assistance of an Advisor
- When formal notice is being given, it should provide the parties with a written description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable procedures, and a statement of the potential sanctions/responsive actions that could result
- Provide each interviewed party and witness an opportunity to review and verify the Investigator's summary notes (or transcript) of the relevant evidence/testimony from their respective interviews and meetings
- Make good faith efforts to notify the parties of any meeting or interview involving the other party, in advance when possible
- Interview all available, relevant witnesses and conduct follow-up interviews as necessary
- Allow each party the opportunity to suggest witnesses and questions they wish the Investigator(s) to ask of the other party and witnesses, and document in the report which questions were asked, with a rationale for any changes or omissions.
- Complete the investigation promptly and without unreasonable deviation from the intended timeline
- Provide regular status updates to the parties throughout the investigation.
- Write a comprehensive investigation report fully summarizing the investigation, all witness interviews, and addressing all relevant evidence. Appendices including relevant physical or documentary evidence will be included
- The Investigator(s) gather, assess, and synthesize evidence, but make no conclusions, engage in no policy analysis, and render no recommendations as part of their report

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- Provide parties with a copy of the draft investigation report when it is completed, including all relevant evidence and analysis
- Provide each party with a full and fair opportunity to respond to the draft report in writing within 5 business days and incorporate that response into the report
- Investigators may choose to respond in writing in the report to the responses of the parties, and/or to share the responses between the parties for their responses, while also ensuring that they do not create a never-ending feedback loop. Investigators may also conduct additional interviews and evidence collection as they deem necessary based on the responses of the parties.
- Provide the final investigation report to the OCR Compliance Coordinator who will then provide both parties with a copy.

12. Determination

Student Process

Referral for Hearing

Provided that the complaint is not resolved through Informal Resolution, once the final investigation report is shared with the OCR Compliance Coordinator, a review will occur to determine if there is reasonable cause to believe that the Respondent may have violated the Policy. If reasonable cause does not exist to believe a violation of this Policy has occurred, then the matter may be referred to the Office of Student Conduct to review for potential violations of the Student Code of Conduct. If reasonable cause does exist to believe a violation of the Policy, the OCR Compliance Coordinator will refer the matter for a hearing and designate a Board Chair. This hearing may also address potential violations of the Student Code of Conduct.

The hearing cannot be less than five (5) business days from the conclusion of the investigation – when the final investigation report is transmitted to the parties and the OCR Compliance Coordinator unless all parties and the OCR Compliance Coordinator agree to an expedited timeline.

Allegations involving student-employees will be directed to the appropriate Decision-maker depending on the context of the alleged misconduct.

Hearing Board

The OCR Compliance Coordinator will designate 1 or 3 individuals to serve as the Hearing Board (the Board). When there are 3 individuals serving on the Board the OCR Compliance Coordinator will designate one decision maker to serve as the Board Chair. The OCR Compliance Coordinator (or designee) may designate an administrator to act as a hearing moderator to be present at a hearing

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to control the hearing and ensure the hearing follows procedural guidelines. The moderator will be impartial and has no interest or input in the outcome of the hearing.

Hearing Notice

No later than five (5) business days prior to the hearing date, unless both parties and the OCR Compliance Coordinator agree, the Board Chair will provide both the Complainant and Respondent a Notice of Charge letter. The Notice of Charge letter will include the following information:

- A 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.
- The time, date, and location of the hearing and a reminder that attendance is mandatory, superseding all other campus activities.
- Any technology that will be used to facilitate the hearing.
- Information about the option for the live hearing to occur with the parties located in separate rooms using technology that enables the Board and parties to see and hear a party or witness answering questions. Such a request must be raised with the OCR Compliance Coordinator at least two (2) business days prior to the hearing.
- A list of all those who will attend the hearing, along with an invitation to object to any member of the Board on the basis of demonstrated bias or conflict of interest. This must be raised with the OCR Compliance Coordinator at least two (2) business days prior to the hearing.
- Information on how the hearing will be recorded and on access to the recording for the parties after the hearing.
- A statement that if any party or witness does not appear at the scheduled hearing, the hearing may be held in their absence, and the party's or witness's testimony and any statements given prior to the hearing may not be considered by the Board. For compelling reasons, the Chair may reschedule the hearing.
- Notification that the parties may have the assistance of an Advisor of their choosing at the hearing.
- A copy of all the materials provided to the Board about the matter, unless they have been provided already.²⁵
- An invitation to each party to submit to the Chair an impact statement pre-hearing that the Board will review during any sanction determination.
- An invitation to contact the Director of Student Accessibility to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing, at least seven (3) business days prior to the hearing.
- Whether parties can/cannot bring mobile phones/devices into the hearing.

Hearings for possible violations that occur near or after the end of an academic term (assuming the

²⁵ The final investigation report may be shared electronically and it will preclude downloading, forwarding, or otherwise sharing.

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Respondent is still subject to this Policy) and are unable to be resolved prior to the end of term will typically be held immediately after the end of the term or during the summer, as needed, to meet the resolution timeline followed by DeSales University and remain within the 60-90 business day goal for resolution.

In these cases, if the Respondent is a graduating student, a hold may be placed on graduation and/or official transcripts until the matter is fully resolved (including any appeal). A student facing charges under this Policy is not in good standing to graduate.

Pre-Hearing Submissions:

In the absence of good cause as determined by the Board Chair in their sole discretion, the Complainant and Responding Party may not introduce witnesses, documents, or other evidence at the hearing that were not provided during the investigation and response process. DeSales University will assist the Complainant and Respondent with attempting to secure the attendance of their proposed witnesses at the hearing.

Pre-Hearing Meeting(s) and Determination of Witnesses:

The Board Chair (or designee) will seek to schedule one or more pre-hearing meeting(s) with the Complainant and Respondent, either jointly or separately at the sole discretion of the Board Chair (or designee), no less than three (3) business days prior to the hearing date. At the meeting(s), the Board Chair (or designee) will review hearing procedures with the Complainant and Respondent. The Board Chair (or designee) will also review the list of proposed witnesses to assist the Complainant and Responding Party in eliminating redundant testimony. The Complainant and Respondent may be accompanied by their respective advisors at any pre-hearing meeting(s).

Persons Participating

Typically, the Complainant and Respondent, their respective advisors, the University's counsel, the Board members and a moderator are the only individuals present at the hearing. The Complainant and Responding Party may have an advisor of their choice present at the hearing and any related meetings. Advisors are not permitted to address the Board, examine witnesses or otherwise directly participate in the hearing on behalf of either party. The University may remove or dismiss advisors who become disruptive or who do not abide by the restrictions on their participation as defined in the Policy.

Should either the Complainant or Responding Party fail to appear at the scheduled hearing, the Board Chair may postpone the proceedings or the Board may proceed and determine the report on the basis of the evidence presented, provided the absent party was duly notified in advance of the scheduled hearing date as outlined above. The Complainant and Responding Party are not required to be present at the hearing. However, the exercise of that right does not preclude the Board from proceeding and determining responsibility on the basis of the facts and circumstances presented. If requested, the University will make arrangements such that the Complainant and Responding Party are not present in the same room at the same time as part of the hearing.

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Conduct of the Hearing

The hearing before the Board will not follow a courtroom model. The Board Chair will determine the order of the witnesses and resolve any questions of procedure arising during the hearing. The Investigator(s) may be asked to testify at the hearing at the discretion of the Board Chair. When an investigator does testify in a hearing, they will not provide opinions related to responsibility or the credibility of parties or witnesses. The Complainant and Responding Party will not be expected to repeat undisputed details or non-material circumstances that would merely duplicate the written materials collected as part of the investigation or provided prior to the hearing. The Board in its discretion, may seek to have other persons speak at the hearing. Only the Board Chair and the Board may question the Complainant, Responding Party, and any witnesses. However, the Complainant and Responding Party may ask the Board Chair to pose additional questions or inquire further into specific matters by submitting these requests in writing. If necessary, a brief recess may be granted to allow the Complainant and Responding Party an opportunity to prepare and submit such requests. The Board Chair is empowered to disallow any questions that are irrelevant or redundant. After all witnesses have been questioned, the Complainant and Responding Party may make a closing statement and request a short recess to prepare their statement(s). If the Board determines that unresolved issues exist that would be clarified by the presentation of additional evidence, the Board Chair may recess the Board hearing and reconvene it for the presentation of additional evidence in a timely manner. A recess may not be based on the failure of witnesses to appear without good cause or on the proposed introduction of documents or other evidence that should have been presented at the pre-hearing meeting(s).

After both parties have had the opportunity to provide a closing statement, the hearing is concluded. The Board will have up to 10 days to deliberate regarding whether the Respondent is responsible for any violations of the Policy or the Student Code of Social Conduct they may have been charged with.

Standard for Responsibility Finding

All decisions by the Board will be made by majority vote. The Board first determines whether the Respondent is responsible for the alleged violation(s) of the Policy (the "Responsibility Finding"), and then, if appropriate, determine by majority vote the sanction to be imposed Responding Party (the "Sanction Finding"). A finding of responsibility must be supported by a "preponderance of the evidence." "Preponderance of the evidence" means that the University establishes that it is more likely than not that the Respondent is responsible for committing the act or acts complained of.

Employee Process

Upon completion of the investigation report, the investigator(s) will provide the final report to the OCR Compliance Coordinator. The OCR Compliance Coordinator will designate a Decision-maker to

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review the investigation report and all relevant evidence. If the Decision-maker deems it necessary to speak with either the Complainant or Respondent regarding the report to ask clarifying questions, they may do so, but then must offer the same opportunity to both parties equally. The Decision-maker may also consult with the investigator(s) about the content of the report and information collected.

After a review of all necessary information, the Decision-maker will draft a recommendation letter regarding whether there exists violations of this Policy or other relevant policies that were listed in the Notice of Allegations using the preponderance of evidence standard. This recommendation letter will include the rationale for any and all decisions and if applicable recommended actions. This recommendation letter will be provided to the OCR Compliance Coordinator and the appropriate Vice-President/Division Head.

The Vice-President/Division Head will make a determination about whether to accept, reject, or modify the recommendations of the Decision-maker. Any changes to the recommendations by the Decision-maker will be documented and rationale provided in a final decision letter. The notice of outcome, appeal instructions, recommendation letter, and the investigation report will be provided to both the Complainant and Respondent simultaneously.

13. Additional Details of the Resolution Process

a. Witness responsibilities

Witnesses (as distinguished from the parties) who are faculty or staff of DeSales University are expected to cooperate with and participate in the investigation and resolution process.

b. Remote processes

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

c. Recording

No unauthorized audio or video recording of any kind is permitted during the resolution process

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including investigative interviews. If Investigator(s) elect to audio and/or video record interviews, all involved parties must be made aware audio and/or video recording.

d. Evidence

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

e. Sexual history/patterns

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

f. Previous allegations/violations

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

Previous disciplinary action of any kind involving the Respondent may be considered in determining the appropriate sanction(s).

g. Character witnesses

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

h. Notification of outcome

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

The OCR Compliance Coordinator informs the parties of the determination within two to three business days of the resolution, ideally simultaneously, but without significant time delay between

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notifications. Notifications are made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official DeSales University records, or emailed to the parties' DeSales University-issued or designated email account. Once mailed, emailed, or received in-person, notice is presumptively delivered.

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

The notice will detail when the determination is considered final and will detail any changes that are made prior to finalization.

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

14. Sanctions

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

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

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

a. Student Sanctions

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

- Expulsion – Permanent termination of student status.
- Suspension– Temporary separation of student from University. Such action may be deemed appropriate as a consequence for more serious or repetitious violation of campus regulations. Suspension shall not be construed as a permanent separation from the community and conditions of readmission (if any are ordered) shall be stated in the hearing authority's decision. Students dismissed for violations of University policy are considered eligible for readmission to the University and must apply for readmission through the Dean of Students Office prior to their anticipated return date.
- Removal from Residence – Requirement that the housing contract of the individual with the University be voided and that the individual be removed from the residence halls within five days of the date of the hearing. Note: Removal from residency may occur at the discretion of the Associate Dean of Residential Programs, consistent with the University Housing agreement, for failure to comply with all applicable rules and regulations of the University exclusive of any community standards process.
- Alteration of Residence Status – Requirement that the residence location of the student be changed by the Residence Life Office within five days of the date of the hearing.
- Disciplinary Probation – Time period during which any future violations will likely result in either removal from residency or suspension from the University depending on the offense and the student's community standards history.
- Social Restrictions – Restrictions from specific privilege(s), extracurricular activities, campus event(s), contact with person or organization, etc.
- Campus Restrictions – Restrictions from being present in campus buildings or areas.
- Community Restitution – Activities or actions designed to return to the community a portion of the goodwill that was taken away by the commission of the violation. Service to the community should be designed to better the social and/or physical environment of the University and its surrounding community.
- Financial Restitution – Reimbursement for damage to or misappropriation of property. Restitution may take the form of appropriate services to compensate for damages.
- Referral to Appropriate Counseling Services.
- Administrative Directive – A statement, written, oral, or as part of a University policy, from an administrator of the University to be complied with by student(s). May require refraining from conduct or completing an act.

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- Alcohol Education Program – Includes alcohol education class, an online program, and other educational activities to be determined by the Alcohol/Drug & Sexual Assault Prevention Education Coordinator (ASAP).
- Warning – Notice to the student, in writing, that continuation or repetition of the conduct found wrongful within a period of time as stated in the warning, may be cause for more severe disciplinary action.
- Withholding Diploma and/or Official Transcripts: DeSales University may withhold a student's diploma and/or official transcripts for a specified period of 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.
- Revocation of Degree: DeSales University reserves the right to revoke a degree previously awarded from DeSales University for fraud, misrepresentation, or other violation of DeSales University policies, procedures, or directives in obtaining the degree, or for other serious violations committed by a student prior to graduation.
- Organizational Sanctions: Deactivation, loss of recognition, loss of some or all privileges (including DeSales University registration), for a specified period of time.
- Other Actions: In addition to or in place of the above sanctions, DeSales University may assign any other sanctions as deemed appropriate.

b. Employee Sanctions

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

- Warning – Verbal or Written
- Performance Improvement/Management Process
- Required Counseling
- Required Training or Education
- Probation
- Demotion
- Suspension without pay
- Termination
- Other Actions: In addition to or in place of the above sanctions, DeSales University may assign any other sanctions as deemed appropriate.

Student Sanction Levels

Level 1

- The student may be expelled from the University indefinitely and possibly permanently.
- The student must be dismissed for a minimum of one year.

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- As with any other separation from the University, students wishing to return to DeSales must re-apply for admission to the Dean of Students. Students found responsible at this level are not entitled to a refund of tuition or housing costs.

Level 2

- The student may be dismissed from the University for a period not to exceed one year.
- If the option in “a” above is not warranted, then the hearing authority must remove the student from residency on campus and impose restrictions on that student’s access to campus areas. In the case of a commuter, the student shall be restricted from entry into non-academic buildings.
- As with any other separation from the University, suspended students wishing to return to DeSales must re-apply for admission to the Dean of Students. In the case of removal from residency, students must apply for housing to the director of residence life. Students found responsible at this level are not entitled to a refund of tuition or housing costs.
- The student may be put on disciplinary probation for a specific time period. The hearing authority may impose any other consequence(s), other than dismissal, which it considers applicable including but not limited to, delay of diploma, non-attendance at commencement ceremonies, disallowance from entry to campus buildings or areas, loss of group recognition, recommended loss of Greek charter, personal counseling, community restitution, financial restitution, assigned tasks, etc.

Level 3

- The student’s residency status may be terminated or altered, and they may be restricted from areas on campus. A commuter student may be restricted from some campus buildings or areas. In the case of removal from residency, the student(s) must apply for housing to the director of residence life. In the case of a commuter student, they shall be restricted from non-academic areas and unable to attend campus-wide events.
- Students found responsible at this level are not entitled to a refund of housing costs.
- In addition to option “a,” a student may be put on disciplinary probation for a period of time.
- If the options in “a” and “b” above are not warranted, then the hearing authority shall impose a consequence of community restitution hours, or social restrictions for a specified time, during which certain privileges may be revoked including, but not limited to, ability to participate in extracurricular activities, ability to attend or sponsor events such as intramurals or Greek Week, ability to use campus facilities, etc. It may also impose any other consequence(s) which it considers applicable including, but not limited to, non-attendance at commencement ceremonies, assigned tasks, participation in counseling, etc. Note: A violation of the Alcohol Policy at this level requires participation in the Alcohol Education Program.

Level 4

- The student may have social restrictions imposed for a specified period during which certain privileges may be revoked which include, but are not limited to, participation in intramurals, Greek Week, or other social events, ability to visit other buildings or use certain facilities, etc.

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- If the options in “a” above are not warranted, then the hearing authority must include a warning to the student regarding future violations. It may also impose any other consequence(s), excluding those in “a” above, which it considers applicable, including, but not limited to, restitution, assigned tasks, community restitution hours, participation in counseling. Note: A violation of the Alcohol Policy at this level requires participation in Alcohol Education Program.

Employee Sanction Levels

Level 1

- The employee may be terminated from their position at DeSales University and not be eligible for rehire.
- The employee may be demoted from their position; and/or.
- The employee may be suspended without pay for a minimum of one month

Level 2

- The employee may be suspended without pay for no more than one month; and/or.
- The employee may be deemed ineligible for promotion/tenure for a period of time

Level 3

- The employee may be supplied a written warning that will be placed in their personnel file
- The employee may receive a performance improvement plan

Level 4

- The employee may be assigned to complete coaching, training, or other educational initiatives as deemed appropriate.
- The employee may receive a verbal warning

15. Withdrawal or Resignation While Charges are Pending

Students: DeSales University does not typically permit a student to withdraw if that student has an allegation pending for violation of this policy. DeSales University may place a hold, bar access to an official transcript, and/or prohibit graduation as necessary to permit the resolution process to be completed.

Employees: Should an employee resign with unresolved allegations pending, the records of the OCR Compliance Coordinator will reflect that status, and any DeSales University responses to future inquiries regarding employment references for that individual may include the former employee’s unresolved status.

16. Withdrawal or Resignation While Charges Pending

Students:

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Should a Respondent decide not to participate in the resolution process, the process proceeds absent their participation to a reasonable resolution. Should a student Respondent permanently withdraw from DeSales University, the resolution process ends with a dismissal, as DeSales University no longer has disciplinary jurisdiction over the withdrawn student.

However, DeSales University will continue to address and remedy any systemic issues, variables that may have contributed to the alleged violation(s), and any ongoing effects of the alleged harassment, discrimination, and/or retaliation. The student respondent who withdraws or leaves while the process is pending may not return to DeSales University in any capacity. Such exclusion applies to all campuses of DeSales University. They may also be barred from DeSales University property and/or events.

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

Employees: Should an employee Respondent resign with unresolved allegations pending, the resolution process ends with dismissal, as DeSales University no longer has disciplinary jurisdiction over the resigned employee. The University also reserves the right to place a letter in the personnel file of the individual indicating they are not to be rehired.

However, DeSales University will continue to address and remedy any systemic issues, variables that contributed to the alleged violation(s), and any ongoing effects of the alleged harassment, discrimination, and/or retaliation.

17. Appeals

All requests for appeal consideration must be submitted in writing to the OCR Compliance Coordinator within 5 business days of the delivery of the written finding of the OCR Compliance Coordinator or Decision-maker. Any party may appeal the findings only under the grounds described below.

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

- (A) Procedural irregularity that significantly impacted the outcome of the matter;

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- (B) New evidence that was not reasonably available at the time the determination regarding responsibility was made, that could affect the outcome of the matter. A summary of this new evidence and its potential impact must be included in the appeal.
- (C) The OCR Compliance Coordinator, Investigator(s), or Decision-maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent that affected the outcome of the matter.

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

If new grounds are raised, the original appealing party will be permitted to submit a written response to these new grounds within 3 business days. These responses or appeal requests will be shared with each party. The Appeal Chair/Panel will review the appeal request(s) within 3 business days of completing the pre-appeal exchange of materials. If grounds are not sufficient for an appeal, or the appeal is not timely, the Appeal Chair/Panel dismisses the appeal.

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

- Decisions by the Appeal Chair/Panel are to be deferential to the original decision, making changes to the finding only when there is clear error and to the sanction(s)/responsive action(s) only if there is compelling justification to do so.
- Appeals are not intended to be full re-hearings (de novo) of the allegation(s). In most cases, appeals are confined to a review of the written documentation or record of the investigation and pertinent documentation regarding the grounds for appeal.
- An appeal is not an opportunity for the Appeal Chair/Panel to substitute their judgment for that of the original Investigator(s) or OCR Compliance Coordinator/Decision-maker merely because they disagree with the finding and/or sanction(s).
- Appeals granted based on new evidence should normally be remanded to the Investigator(s) for reconsideration. Other appeals should be remanded at the discretion of the Appeal Chair/Panel.
- Sanctions imposed as the result of an Administrative Resolution are stayed until the appeal process concludes unless the Board determines a sanction must be implemented immediately for the health and safety of the complainant and/or campus community.
- All parties will be informed in writing within 3 business days of the outcome of the appeal without significant time delay between notifications, and in accordance with the standards for Notice of Outcome as defined above.

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- Once an appeal is decided, the outcome is final; further appeals are not permitted, even if a decision or sanction is changed on remand.
- In rare cases when a procedural or substantive error cannot be cured by the original Investigator(s) and/or OCR Compliance Coordinator/Decision-maker (as in cases of bias), the Appeal Chair/Panel may recommend a new investigation and/or Administrative Resolution process, including a new resolution administrator.
- The results of a new Administrative Resolution process can be appealed once, on any of the three applicable grounds for appeals.
- In cases in which the appeal results in Respondent's reinstatement to DeSales University or resumption of privileges, all reasonable attempts will be made to restore the Respondent to their prior status, recognizing that this may not be possible in all cases.

18. Long-Term Remedies/Actions

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

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

- Referral to counseling and health services
- Referral to the Employee Assistance Program
- Education to the community
- Permanent alteration of housing assignments
- Permanent alteration of work arrangements for employees
- Provision of campus safety escorts
- Climate surveys
- Policy modification
- Provision of transportation accommodations
- Implementation of long-term contact limitations between the parties
- Implementation of adjustments to academic deadlines, course schedules, etc.

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

When no policy violation is found, the OCR Compliance Coordinator will address any remedial requirements owed by DeSales University to the Respondent.

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19. Failure to Complete Sanctions/Comply with Interim and Long-term Remedies/Responsive Actions

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

Failure to abide by the sanction(s)/action(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanction(s) and responsive/corrective action(s), including suspension, expulsion, and/or termination from DeSales University 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 OCR Compliance Coordinator.

20. Recordkeeping

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

21. Statement of the Rights of the Parties ([see Appendix A](#))

22. Disabilities Accommodation in the Resolution Process

DeSales University is committed to providing reasonable accommodations and support to qualified students, employees, or others with disabilities to ensure equal access to the resolution process at DeSales University. Any student needing such accommodations or support should contact the Director of Student Accessibility Service, who will review the request and, in consultation with the person requesting the accommodation, and the OCR Compliance Coordinator, determine which accommodations are appropriate and necessary for full participation in the process. Employees needing such accommodations or support should contact the OCR Compliance Coordinator.

Revision of this Policy and Procedures

This Policy and procedures supersede any previous policy(ies) addressing harassment, sexual misconduct, discrimination, and/or retaliation occurring on or after September 1, 2021 and will be reviewed and updated annually by the OCR Compliance Coordinator. DeSales University reserves

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the right to make changes to this document as necessary, and once those changes are posted online, they are in effect.

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

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

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

This Policy and procedures are effective September 1, 2021.

ATIXA 2020 ONE POLICY, TWO PROCEDURES MODEL

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APPENDIX A: STATEMENT OF RIGHTS OF THE PARTIES

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

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

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- The right to know the relevant and directly related evidence obtained and to respond to that evidence.
- The right to a fair opportunity to provide the Investigator(s) with their account of the alleged misconduct and have that account be on the record.
- The right to receive a copy of the investigation report, including all factual, policy, and/or credibility analyses performed, and all relevant and directly related evidence available and used to produce the investigation report, subject to the privacy limitations imposed by state and federal law, prior to the hearing, and the right to have at least ten (10) business days to review the report prior to the hearing.
- The right to respond to the investigation report, including comments providing any additional relevant evidence after the opportunity to review the investigation report, and to have that response on the record.
- The right to be informed of the names of all witnesses whose information will be used to make a finding, in advance of that finding, when relevant.
- The right to regular updates on the status of the investigation and/or resolution.
- The right to have reports of alleged Policy violations addressed by Investigators, Title IX Coordinators, and Decision-maker(s) who have received relevant annual training.
- The right to a Hearing Panel that is not single-sex in its composition, if a panel is used.
- The right to preservation of privacy, to the extent possible and permitted by law.
- The right to meetings, interviews, and/or hearings that are closed to the public.
- The right to petition that any DeSales University representative in the process be recused on the basis of disqualifying bias and/or conflict of interest.
- The right to have an Advisor of their choice to accompany and assist the party in all meetings and/or interviews associated with the resolution process.
- The right to the use of the appropriate standard of evidence, preponderance of the evidence, to make a finding after an objective evaluation of all relevant evidence.
- The right to be present, including presence via remote technology, during all testimony given and evidence presented during any formal grievance hearing.

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- The right to have an impact statement considered by the Decision-maker(s) following a determination of responsibility for any allegation, but prior to sanctioning.
- The right to be promptly informed in a written Notice of Outcome letter of the finding(s) and sanction(s) of the resolution process and a detailed rationale of a decision (including an explanation of how credibility was assessed), delivered simultaneously (without undue delay) to the parties.
- The right to be informed in writing of when a decision by DeSales University is considered final and any changes to the sanction(s) that occur before the decision is finalized.
- The right to be informed of the opportunity to appeal the finding(s) and sanction(s) of the resolution process, and the procedures for doing so in accordance with the standards for appeal established by DeSales University.
- The right to a fundamentally fair resolution as defined in these procedures.

APPENDIX B: STATEMENT ON CONSENSUAL RELATIONSHIPS²⁶

Maintaining appropriate relationships between student-teacher, and supervisor-employee is central to the mission of DeSales University and its sense of community. Personal ties should not interfere with the professional integrity of these relationships. Romantic and/or sexual relations by individuals between these groupings may appear to be consensual, but in fact, are not always so. These situations often create a conflict of interest and can lead to abuse of power. In addition, such relationships carry the appearance of bias or preferential treatment. They can endanger the sense of community, the openness of communication, or the presumption of fairness. All of this seriously threatens the foundation of the University's mission.

The Catholic faith clearly holds that sexual activity is appropriate only within the context of marriage, where a man and a woman, equal in status and mature in development, freely decide to share their lives in a life-long union. This is not the context of the relationship between student-teacher or supervisor-employee. Even romantic relationships that might be acceptable in other circumstances always pose the inherent risk that they will result in sex discrimination when they involve members of the University community where a significant power or status differential between the parties exists. This includes, but is not limited to, any teacher, graduate student, administrator, coach, program director, advisor, counselor, or residence-life staff member who has supervisory responsibility and/or oversight for students or employees.

Voluntary consent by a student or a subordinate in a dating relationship, even if present, is always suspect given the fundamentally asymmetrical nature of status and power. Professionalism is threatened by any relationship where one party has professional responsibility for the other. Such relationships place, or seem to place, the person with the power or status advantage in a position to favor or advance the other party's interests at the expense of others and implicitly make, or seem to make, obtaining benefits contingent on romantic or sexual favors. Participation in such relationships can ruin the careers and reputations of both participants in the relationship. Such participation can also adversely affect the University's sense of community and the integrity of the learning environment. Faculty and supervisors need to understand that complaints of sex discrimination can follow them years after the relationship ends. Professionalism within the University demands that those with authority neither abuse nor seem to abuse, the power with which they are entrusted.

²⁶ Violation of this policy is a Human Resources/Employee Relations matter and will not be addressed under this resolution process unless the elements of the definition of harassment are met

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DeSales University takes the position that all such relationships are ill-advised and inherently unethical. Therefore, the University will not tolerate them. Violation of this policy will be considered grounds for dismissal.

APPENDIX C: DESALES UNIVERSITY ANTI-HARASSMENT AND NON-DISCRIMINATION STATEMENT

DeSales University adheres to all federal, state, and local civil rights laws prohibiting discrimination in employment and education. DeSales University does not discriminate in its admissions practices in its employment practices, or in its educational programs or activities on the basis of race, sex/gender, religion, national origin, or other protected class status. As a recipient of federal financial assistance for education activities, DeSales University is required by Title IX of the Education Amendments of 1972 to ensure that all of its education programs and activities do not discriminate on the basis of sex/gender.

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

The policy also prohibits harassment and discrimination based on any protected class. Any member of the campus community, guest, or visitor who acts to deny, deprive, or limit the educational, employment, residential, or social access, opportunities and/or benefits of any member of the DeSales University community on the basis of a protected in violation of the Anti-Harassment and Non-Discrimination Policy. Any person may report discriminatory harassment, sexual harassment, or sexual violence (whether or not the person reporting is the person alleged to have experienced the conduct), in person, by mail, by telephone, by video, or by email, using the contact information listed for the Title IX Coordinator (below). A report may be made at any time (including during non-business hours) by submitting emailing titleix@desales.edu

Tom Johnson
Title IX Coordinator
Deputy OCR Compliance Coordinator
Lawless Hall
2755 Station Ave
Center Valley, PA 18034
(610) 282-1100 ext. 2131
Thomas.johnson@desales.edu

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

Inquiries may be made externally to:

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

Equal Employment Opportunity Commission – Philadelphia Office
801 Market Street
Suite 1000
Philadelphia, PA 19107-3126
Phone: 1-800-669-4000/267-589-9700
Fax: 215-440-2606
TTY: 1-800-669-6820
ASL Video Phone: 844-234-5122
Email: PDOContact@eeoc.gov

Office of the Attorney General
Civil Right's Enforcement Section
14th Floor, Strawberry Square
Harrisburg, PA 17120
717-787-0822
<https://www.attorneygeneral.gov/submit-a-complaint/civil-rights-complaint/>