

Chapter 3: Carlow Equal Opportunity, Harassment and Non-Discrimination Policy

Purpose

Carlow University is committed to providing an educational and employment environment that is free from discrimination based on protected characteristics, harassment, and retaliation for engaging in protected activity.

Carlow University values and upholds the equal dignity of all members of its community and strives to balance the rights of the Parties in the resolution process during what is often a difficult time for all involved.

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

Notice of Nondiscrimination

Carlow University seeks to comply with all federal, state, and local laws, regulations, and ordinances prohibiting discrimination in private post-secondary education institutions.

Carlow does not discriminate and prohibits discrimination against any employee, applicant for employment, student, or applicant for admission on the basis of actual or perceived:

Age (40 years and over in the employment context)
Citizenship status
Color
Creed
Disability (physical or mental)
Domestic violence victim status
Ethnicity
Family responsibilities
Family status
Gender expression
Gender identity

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Genetic information (including family medical history)
Height
Marital status
National origin (including ancestry)
Parental status
Personal appearance
Place of business
Political belief or affiliation
Pregnancy or related conditions
Race
Religion
Residence
Sex
Sexual orientation
Source of income
Veteran or military status (including disabled veteran, recently separated veteran, active-duty, wartime, or campaign badge veteran, and Armed Forces Service Medal veteran)
Weight
or any other protected characteristic under applicable local, state, or federal law, including protections for those opposing discrimination or participating in any grievance process within the institution, with the Equal Employment Opportunity Commission, and/or other human/civil rights agency.

This Policy covers nondiscrimination in both employment and access to educational opportunities. Therefore, any member of the Carlow community whose acts deny, deprive, unreasonably interfere with or limit the education or employment, residential and/or social access, benefits, and/or opportunities of any member of the Carlow community, guest, or visitor on the basis of that person's actual or perceived protected characteristic(s), is in violation of this Policy.

Carlow University will promptly and effectively address any such discrimination of which it has Knowledge/Notice using the resolution process in the Equal Opportunity, Harassment, and Nondiscrimination Procedures.



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Nondiscrimination Team Contacts

Carlow University has appointed the Nondiscrimination Team, comprised of the following individual(s), to coordinate the University's compliance with federal, state, and local civil rights laws and ordinances:

Maleea Johnson, EdD
Director, Office of Inclusion and Belonging
University Commons, UC219D
Carlow University
3333 Fifth Avenue,
Pittsburgh, PA 15213
412-578-6227
mdjohnson4833@carlow.edu

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Carlow University
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Pittsburgh, PA 15213
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Chief Diversity, Equity, Ethics & Inclusion Officer
University Commons,
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3333 Fifth Avenue,
Pittsburgh, PA 15213
412-578-8897
sjoliver-carter@carlow.edu

Timothy Phillips
Vice President of Student and Dean of Students
Student Affairs
University Commons, UC 416
Carlow University
3333 Fifth Avenue
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Ashley Testa

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Pittsburgh, PA 15213

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antesta@carlow.edu

Lou Zadecky

Director of Athletics

Student Affairs

St. Joseph's Hall 206 B

3333 Fifth Avenue

412-578- 8826

lvzadecky@carlow.edu

For discrimination and harassment allegations [not based on sex or disability]:

Sara Oliver-Carter

Chief Diversity, Equity, Ethics & Inclusion Officer

University Commons,

Carlow University

3333 Fifth Avenue,

Pittsburgh, PA 15213

412-578-8897

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University Commons, UC219D

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3333 Fifth Avenue,

Pittsburgh, PA 15213

412-578-6227

mdjohnson4833@carlow.edu

For sex discrimination and sex-based harassment allegations:

Title IX Coordinator

Jacqueline M. Smith

Title IX Coordinator

Room 411-E University Commons

Carlow University



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3333 Fifth Avenue
Pittsburgh, PA 1521412-578-6050
Titleix@carlow.edu

For disability-based allegations:

Jacqueline M. Smith
Assistant Dean
Disabilities Services & Title IX Coordinator
Room 411-E University Commons
Carlow University
3333 Fifth Avenue
Pittsburgh, PA 15213
412-578-6050
Jmsmith@carlow.edu

Collectively, these individuals are responsible for providing comprehensive nondiscrimination education and training; coordinating the Carlow's timely, thorough, and fair response, investigation, and resolution of all alleged prohibited conduct under this Policy; and monitoring the effectiveness of this Policy and related procedures to ensure an education and employment environment free from discrimination, harassment, and retaliation.

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

External Contact Information

Concerns about the University's application of this Policy and compliance with certain federal civil rights laws may also be addressed to the Office for Civil Rights (OCR):

Office for Civil Rights
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

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Email: OCR@ed.gov

Web: <http://www.ed.gov/ocr>

For Complaints involving employee-on-employee conduct, employees may choose to contact the Equal Employment Opportunity Commission ("EEOC"): [Equal Employment Opportunity Commission](#) (EEOC)

EEOC – Pittsburgh Area Office
William S. Moorhead Federal Building
1000 Liberty Avenue, Suite 1112
Pittsburgh, PA 15222

Phone: 1-800-669-4000

Facsimile: 412-395-5749

TTY#: 1-800-669-6820

Magee Women's Hospital (300 Halket Street, Pittsburgh 1.866.MyMagee) and UPMC Mercy (1400 Locus Street, Pittsburgh 412.232.8111) have Forensic Nurses available 24 hours a day, seven days a week at their emergency departments. These Forensic Nurses, called Sexual Assault Nurse Examiners (SANE), are highly trained to collect evidence and connect individuals with advocates and community resources.

Pittsburgh Action Against Rape (PAAR) provides prevention and education services on campus. PAAR also provides a 24-hour confidential hotline (1.866.END.RAPE), counseling, and support through the medical, legal, and Title IX process. 412.431.5665.

Women's Center and Shelter of Greater Pittsburgh provides a shelter, assistance in obtaining protection orders, counseling, group work, outreach, and education services for those who experience dating and domestic violence. They have specialized workers on abuse in LGBTQ+ relationships and services for immigrants and refugees. They also offer a men's program who have been abusive to their partners. Their hotline number is 412.687.8005.

Protection from Abuse Orders (PFA) can be obtained at Family Division Court in Downtown Pittsburgh. Court information can be found at: <http://alleghenycountyda.us/domestic-violence/protection-fromabuse/>

Center for Victims

(General Victim Services, Domestic Violence Services, Sexual Assault Services)

<https://www.centerforvictims.org/victim-services/>

Crisis Hotline: 1-866-644-2882

Rape, Abuse, and Incest National Network (RAINN) is the largest anti-sexual assault organization in the country. They provide access to a wide variety of support and educational services to survivors of sexual misconduct and those who support them. 1.800.656.HOPE (4673)

Mandated Reporting and Confidential Employees

All Carlow University faculty and employees (including student-employees), other than those deemed Confidential Employees, are Mandated Reporters and are expected to promptly report all known details of actual or suspected discrimination, harassment, and/or retaliation to appropriate officials immediately, although there are some limited exceptions. Supportive measures may be offered as the result of such disclosures without formal Carlow University action.

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

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

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

Confidential Employees

To enable Complainants to access support and resources without filing a Complaint, the University has designated specific employees as Confidential Resources. Those designated by Carlow University as Confidential Resources are not required to report actual or suspected discrimination, harassment, or retaliation in a way that identifies the Parties. They will, however, provide the Complainant with the Title IX Coordinator's contact information and offer options and resources without any obligation to inform an outside agency or University official unless a Complainant has requested the information be shared.

There are three categories of Confidential Employees:

- 1) Those with confidentiality bestowed by law or professional ethics, such as lawyers, medical professionals, clergy, and counselors only with respect to information received while the employee is functioning within the scope of their duties;
- 2) Those whom the University has specifically designated as confidential for purposes of providing support and resources to the Complainant, if such an employee has a duty not associated with providing these services, their confidential status is only with respect to information received about sex discrimination in connection with providing these services; and

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- 3) Those conducting human subjects research as part of a study approved by the University's Institutional Review Board (IRB) only with respect to information received while conducting the study.

For those in category 1), above, to be able to respect confidentiality, they must be in a confidential relationship with the person reporting, such that they are within the scope of their licensure, professional ethics, or confidential role at the time of receiving the Notice. These individuals will maintain confidentiality except in extreme cases of immediacy of threat or danger or abuse of a minor, elder, or individual with a disability, or when required to disclose by law or court order.

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

Confidential Employees

- Confidential Campus Resources
- Health and Counseling Services
 - Phone: [412.578.6474](tel:412.578.6474)
 - Email: hcs@carlow.edu
- Assistant to the President for Mercy Heritage
 - Phone: [412.578.6424](tel:412.578.6424)
 - Email: sacarney@carlow.edu

Designated Confidential Employees

Carlow University has designated the following individuals as Campus Security Authorities under the Clery Act and Responsible Employees under Title IX. The list is the same. Anyone who witnesses, experiences, or learns of a crime, or any form of sexual misconduct, on our campus should immediately report it to one of these individuals.

Non-Confidential Resources

Notice or complaints of discrimination, harassment, and/or retaliation may be made at any time (including during non-business hours) by using the telephone number or email address, or by mail using any of the following options:

Position	Personnel	Contact Number	Email
Title IX Coordinator/Director of Disabilities Services	Jackie Smith	+1 (412) 578-6050	titleix@carlow.edu
Assistant Dean of Students	Ashley Testa	+1 (412) 578-8774	antesta@carlow.edu
Associate Vice President, Human Resources, Diversity, and Inclusion	Mary Anne Koleny	+1 (412) 578-6105	hroffice@carlow.edu
Director of Athletics	Louis Zadecky	+1 (412) 578-8826	lvzadecky@carlow.edu

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Dean of Students & VP of Student Affairs	Timothy Phillips	+1 (412) 578-6087	tpphillips@carlow.edu
Chief of Police	Corrin Culhane	+1 (412) 578-8898	cmculhane@carlow.edu
Dean of the College of Arts and Sciences	Matthew Gordley	+1 (412) 578-6262	megordley@carlow.edu
Dean of the College of Health and Wellness	Rhonda Maneval	+ (412) 578-6115	remaneval@carlow.edu
Resident Assistant Staff (all individuals)			reslife@carlow.edu
University Police (all personnel)		+1 (412) 578-6007	

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

Employees who have confidentiality as described above, and who receive Notice 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.

Failure of a Mandated Reporter, as described above in this section, to report an incident of discrimination, harassment, or retaliation of which they become aware is a violation of University Policy and can be subject to disciplinary action for failure to comply/failure to report. This also includes situations when a harasser is a Mandated Reporter. Such individuals are obligated to report their own misconduct, and failure to do so is a chargeable offense under this Policy.

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

In addition, Complainants may speak with individuals unaffiliated with Carlow University without concern that this Policy will require them to disclose information to the institution without permission:

- Licensed professional counselors and other medical providers
- Local rape crisis counselors
- Domestic violence resources
- Local or state assistance agencies
- Clergy/Chaplains
- Attorneys

Disability-Related Complaints

If a Complainant or Respondent is a student with a disability, the Title IX Coordinator may consult, as appropriate, with the Disability Services Office to determine how to comply with Section 504

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of the Rehabilitation Act of 1973. In general, complaints related to disability status and/or provision of accommodations are addressed using the procedures in the Disability Services Policies.

Scope

This Policy is only applicable to alleged incidents that occur after August 1, 2024. For alleged incidents of sexual harassment occurring prior to August 1, 2024, the policy and procedures in place at the time of the alleged incident apply. Applicable versions of those policies and procedures are available from the Title IX Coordinator and at this link <https://www.carlow.edu/title-ix/>

This Policy applies to all faculty, employees, students, and other individuals participating in or attempting to participate in the University's program or activities, including education and employment.

This Policy prohibits all forms of discrimination on the basis of the protected characteristic(s) listed in the Notice of Nondiscrimination. The Equal Opportunity, Harassment, and Nondiscrimination Procedures may be applied to specific incidents, to patterns of behavior, and/or to address concerns regarding the institutional culture at the University, all of which may be addressed in accordance with this Policy.

Jurisdiction

This Policy applies to the Carlow University's education programs and activities (defined as including locations, events, or circumstances in which the University exercises substantial control over both the Respondent and the context in which the conduct occurred), circumstances where the University has disciplinary authority, and to misconduct occurring within any building owned or controlled by a Carlow University-recognized student organization. A Complainant does not have to be a member of the Carlow University community to file a Complaint, at the discretion of Title IX Coordinator.

This Policy may also apply to the effects of off-campus misconduct that limit or deny a person's access to University's education program or activities. The University may also extend jurisdiction to off-campus and/or to online conduct when the conduct affects a substantial Carlow University interest.

A substantial Carlow University interest includes:

- 1) Any action that constitutes a criminal offense as defined by law. This includes, but is not limited to, single or repeat violations of any local, state, or federal law.

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- 2) Any situation in which it is determined that the Respondent poses an immediate threat to the physical health or safety of any student, employee, or other individual.
- 3) Any situation that significantly impinges upon the rights, property, or achievements of others, significantly breaches the peace, and/or causes social disorder.
- 4) Any situation that substantially interferes with the Recipient's educational interests or mission.

For disciplinary action to be issued under this Policy, the Respondent must be a Carlow University faculty member, student, or employee at the time of the alleged incident. If the Respondent is unknown or is not a member of the University community, the Title IX Coordinator will offer to assist the Complainant in identifying appropriate institutional and local resources and support options and will implement appropriate supportive measures and/or remedial actions (e.g., trespassing a person from campus). The University can also assist in contacting local or institutional law enforcement if the individual would like to file a police report about criminal conduct.

All vendors serving the University through third-party contracts are subject to the policies and procedures of their employers and/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 Title IX Coordinator can assist the Complainant in contacting the appropriate individual at that institution, as it may be possible to pursue action under that institution's policies.

Similarly, the Title IX Coordinator may be able to assist and support a student or employee Complainant who experiences discrimination in an externship, study abroad program, or other environment external to the University where sexual harassment or nondiscrimination policies and procedures of the facilitating or host organization may give the Complainant recourse. If there are effects of that external conduct that impact a student or employee's work or educational environment, those effects can often be addressed remedially by the Title IX Coordinator if brought to their attention.

Supportive Measures

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

The Title IX Coordinator promptly makes supportive measures available to the Parties upon receiving Notice/Knowledge or a Complaint. At the time that supportive measures are offered, if

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a Complaint has not been filed, the University will inform the Complainant, in writing, that they may file a Complaint with the University either at that time or in the future. The Title IX Coordinator will work with a party to ensure that their wishes are considered with respect to any planned and implemented supportive measures.

The University will maintain the confidentiality of the supportive measures, provided that confidentiality does not impair the University's ability to provide those supportive measures. Carlow University will act to ensure as minimal an academic/occupational impact on the Parties as possible. The University will implement measures in a way that does not unreasonably burden any 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 assistance
- Implementing contact limitations (no contact orders) between the Parties
- Academic support, extensions of deadlines, or other course/program-related adjustments
- Trespass, Persona Non Grata (PNG), or Be-On-the-Lookout (BOLO) orders
- Timely warnings
- Class schedule modifications, withdrawals, or leaves of absence
- Increased security and monitoring of certain areas of the campus
- Any other actions deemed appropriate by the Title IX Coordinator

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

The Parties are provided with a timely opportunity to seek modification or reversal of the University's decision to provide, deny, modify, or terminate supportive measures applicable to them. A request to do so should be made in writing to the Title IX Coordinator. An impartial employee other than the employee who implemented the supportive measures, who has authority to modify or reverse the decision, will determine whether to provide, deny, modify, or

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terminate the supportive measures if they are inconsistent with the definition of supportive measures in § 106.2 of the federal Title IX Regulations. The University will also provide the Parties with the opportunity to seek additional modification or termination of supportive measures applicable to them if circumstances change materially. The University typically renders decisions on supportive measures within seven (7) business days of receiving a request and provides a written determination to the impacted party(ies) and the Title IX Coordinator.

Online Harassment and Misconduct

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

Although Carlow University may not control websites, social media, and other venues through which harassing communications are made, when such communications are reported to the University, it will engage in a variety of means to address and mitigate the effects. These means may include use of the Resolution Process to address off-campus conduct whose effects contribute to limiting or denying a person access to University's education program or activity.

Nothing in this Policy is intended to infringe upon or limit a person's right to free speech. Any online posting or other electronic communication by students, including technology-facilitated bullying, stalking, harassment, etc., occurring completely outside of the Carlow University's control (e.g., not on Carlow University networks, websites, or between University email accounts) will only be subject to this Policy when such online conduct can be shown to cause (or will likely cause) a substantial in-program disruption or infringement on/harm to the rights of others. Otherwise, such communications are considered speech protected by the First Amendment. Supportive measures for Complainants will be provided.

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

Inclusion Related to Gender Identity/Expression

Carlow University strives to ensure that all individuals are safe, included, and respected in their working and learning environments, regardless of their gender identity or expression, including intersex, nonbinary, transgender, agender, two-spirit, and gender-diverse students and employees.

Discrimination and harassment on the basis of gender identity or expression are not tolerated by Carlow University. If a member of the University community believes they have been subjected to discrimination under this Policy, they should follow the appropriate reporting process described herein.

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In upholding the principles of equity and inclusion, Carlow University supports the full integration and healthy development of those who are transgender, transitioning, nonbinary, or gender-diverse, and seeks to eliminate any stigma related to gender identity and expression.

Carlow University is committed to fostering a climate where all identities are valued, contributing to a more vibrant and diverse community. The purpose of this Policy is to have the University administratively address issues that some students and employees, including those identifying as intersex, transgender, agender, nonbinary, and gender-diverse, may confront as they navigate systems originally designed around the assumption that gender is binary. As our society's understanding of gender evolves, so do the University's processes and policies.

Concepts like misgendering and deadnaming may not be familiar to all but understanding them is essential to the University's goal of being as welcoming and inclusive a community as possible.

Misgendering or mispronouncing is the intentional or unintentional use of pronouns or identifiers that are different from those used by an individual. Unintentional misgendering is usually resolved with a simple apology if someone clarifies their pronouns for you. Intentional misgendering is inconsistent with the type of community we hold ourselves out to be and may constitute a Policy violation if the effect is greater than *de minimis* harm. We each have a right to determine our own gender identity and expression, but we don't get to choose or negate someone else's.

Deadnaming, along with misgendering, can be very traumatic to a person who is transgender, transitioning, nonbinary, or gender-diverse. Deadnaming means using someone's birth-assigned (cisgender) name, rather than the name they have chosen.

To a person who is transgender, transitioning, nonbinary, or gender-diverse, their cisgender identity may be something that is in their past -- dead, buried, and behind them. To then revive their deadname could trigger issues, traumas, and experiences of the past that the individual has moved past, or is moving past, and can interfere with their health and well-being.

Again, unintentional deadnaming can be addressed by a simple apology and an effort to use the person's chosen name. Intentional deadnaming could be a form of bullying, outing, or otherwise harassing an individual, and thus should be avoided.

This Policy should be interpreted consistent with the goals of maximizing the inclusion of intersex, transgender, transitioning, agender, nonbinary, and gender-diverse students and employees, including:

- Maintaining the privacy of all individuals consistent with law
- Ensuring all students have equal access to educational programming, activities, and facilities, including restrooms and locker rooms
- Ensuring all employees have equal access to employment opportunities and work, service, or health-related facilities

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- Providing professional development for employees and education for students on topics related to gender inclusion
- Encouraging all students and employees to respect the pronoun usage and identities of all members of the Carlow University community

Carlow University uses a number of interventions to address concerns that are raised related to gender-based harassment or discrimination, including problem-solving, intervention, confrontation, investigation, and Policy enforcement. When conflicts arise between the right of members of the community to be free from gender-identity discrimination and those exercising their right to religious freedom, the University will try to balance rights and interests to find mutually agreeable outcomes or compromises. When that is not possible, the University will offer remedial solutions or enforce its Policies while also respecting the rights of all members of its community.

Prohibited Conduct

Students, staff, administrators, and faculty are entitled to an employment and educational environment that is free of discrimination, harassment, and retaliation. 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 discrimination, harassment, and retaliation that are also prohibited under University Policy. When speech or conduct is protected by academic freedom, it will not be considered a violation of Carlow University Policy, though supportive measures will be offered to those impacted.

All offense definitions below encompass actual and/or attempted offenses.

Any of the following offenses can be charged as or combined as pattern offenses, in which case the Notice of Investigation and Allegation (NOIA) will clearly indicate that both individual incidents and a pattern of conduct are being investigated. A pattern may exist and be charged when there is a potential substantial similarity to incidents where the proof of one could make it more likely that the other(s) occurred, and vice-versa. Patterns may exist based on target selection, similarity of offense, or other factors. Where a pattern is found, it can be the basis to enhance sanctions, accordingly.

Violation of any other Carlow University policies may constitute discrimination or harassment when motivated by actual or perceived protected characteristic(s), and the result is a limitation or denial of employment or educational access, benefits, or opportunities.

Discrimination

Discrimination is different treatment with respect to an individual's employment or participation in an education program or activity based, in whole or in part, upon the individual's actual or

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perceived protected characteristic. Discrimination also includes allegations of a failure to provide reasonable accommodations as required by law or policy, such as for disability, religion, or creed.

Discrimination can take two primary forms:

1) Disparate Treatment Discrimination:

- Any intentional differential treatment of a person or persons that is based on an individual's actual or perceived protected characteristic and that:
 - Excludes an individual from participation in;
 - Denies the individual benefits of; or
 - Otherwise adversely affects a term or condition of an individual's participation in a University program or activity.

2) Disparate Impact Discrimination:

- Disparate impact occurs when policies or practices that appear to be neutral unintentionally result in a disproportionate impact on a protected group or person that:
 - Excludes an individual from participation in;
 - Denies the individual benefits of; or
 - Otherwise adversely affects a term or condition of an individual's participation in a University program or activity.

Discriminatory Harassment

- unwelcome conduct on the basis of actual or perceived protected characteristic(s), that
- based on the totality of the circumstances,
- is subjectively and objectively offensive, and
- is so severe or pervasive,
- that it limits or denies a person's ability to participate in or benefit from the University's education program or activity

Sex-based Harassment (Applicable under Title IX, Title VII, and the Fair Housing Act)

Sex-based Harassment is a form of sex discrimination and means sexual harassment and other harassment on the basis of sex,¹ including sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity; sexual assault, dating violence, domestic violence, and stalking.

¹ Throughout this Policy, "on the basis of sex" means conduct that is sexual in nature, or that is directed to the Complainant because of his/her/their actual or perceived sex or gender identity.

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1) **Quid pro quo:**

- an employee agent, or other person authorized by the University,
- to provide an aid, benefit, or service under the University's education program or activity,
- explicitly or impliedly conditioning the provision of such aid, benefit, or service,
- on a person's participation in unwelcome sexual conduct.

2) **Hostile Environment Harassment:**

- unwelcome sex-based conduct, that
- based on the totality of the circumstances,
- is subjectively and objectively offensive, and
- is so severe or pervasive,
- that it limits or denies a person's ability to participate in or benefit from the University's education program or activity

The University reserves the right to address offensive conduct and/or harassment that (1) does not rise to the level of creating a hostile environment, or (2) that is of a generic nature and not based on a protected characteristic. Addressing such conduct will not result in the imposition of discipline under Carlow University Policy, but may be addressed through respectful conversation, remedial actions, education, effective Alternative Resolution, and/or other Informal Resolution mechanisms.

For assistance with Alternative Resolution and other Informal Resolution techniques and approaches, contact the Title IX Coordinator.

3) **Sexual Assault:**²³

An offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.

Sex Offenses, Forcible:

Any sexual act directed against another person, without the consent of the victim including instances where the victim is incapable of giving consent, including:

- a. **Rape (Except Statutory Rape):**
 - The carnal knowledge (sexual intercourse) of a person,
 - without the consent of the Complainant,
 - including instances where the Complainant is incapable of giving consent
 - because of the Complainant's age or

³ This definition of sexual assault does not constitute a chargeable offense under the Policy. It is a description encompassing the six chargeable offenses listed below it.

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- because of the Complainant's temporary or permanent mental or physical incapacity
- b. Sodomy**
 - Oral or anal sexual intercourse with another person,
 - without the consent of the Complainant,
 - including instances where the Complainant is incapable of giving consent
 - because of the Complainant's age or
 - because of the Complainant's temporary or permanent mental or physical incapacity
- c. Sexual Assault with an Object**
 - To use an object or instrument
 - to unlawfully penetrate, however slightly, the genital or anal opening
 - of the body of the Complainant,
 - forcibly and/or against the Complainant's will or
 - not forcibly or against the Complainant's will in instances where the Complainant is incapable of giving consent
 - because of the Complainant's youth or
 - because of the Complainant's temporary or permanent mental or physical incapacity.
- d. Fondling:**
 - The touching of the private body parts of the Complainant by the Respondent
 - for the purpose of sexual gratification,
 - forcibly and/or against the Complainant's will or
 - not forcibly or against the Complainant's will in instances where the Complainant is incapable of giving consent
 - because of the Complainant's age or
 - because of the Complainant's temporary or permanent mental or physical incapacity

Sex Offenses, Nonforcible:

(Except Prostitution Offenses) Unlawful, nonforcible sexual intercourse, including:

- a. Incest:**

Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- b. Statutory Rape:**

Nonforcible sexual intercourse with a person who is under the statutory age of consent of in the state of Pennsylvania.

4) **Dating Violence:**

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- Violence⁴ committed by a Respondent,
- who is in or has been in a social relationship of a romantic or intimate nature with the Complainant; **and**
- where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - length of the relationship
 - type of relationship and
 - frequency of the interaction between the Parties involved in the relationship.

5) **Domestic Violence:**

- Felony or misdemeanor crimes committed by a person who:
 - is a current or former spouse or intimate partner of the Complainant under the family or domestic violence laws of Pennsylvania or a person similarly situated to a spouse of the Complainant;
 - is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner;
 - shares a child in common with the Complainant; **or**
 - commits acts against a youth or adult Complainant who is protected from those acts under the family or domestic violence laws of Pennsylvania

6) **Stalking:**

- engaging in a course of conduct⁵ on the basis of sex, that is,
- directed at a specific person that would cause a reasonable person⁶ to:
 - fear for the person's safety, or
 - the safety of others; or
 - suffer substantial emotional distress.⁷

Sanction Ranges

⁴ For purposes of this Policy, violence is defined as intentionally or recklessly causing the Complainant physical, emotional, or psychological harm. Legitimate use of violence for self-defense is not chargeable under this Policy because the purpose is safety, not harm. Consensual use of violence, such as in kink relationships, would also not meet this definition, in most circumstances.

⁵ For purposes of this definition, "A 'course of conduct' requires that there be more than one incident and the conduct must be directed at a specific person. Stalking can occur in person or using technology, and the duration, frequency, and intensity of the conduct should be considered. Stalking tactics can include, but are not limited to watching, following, using tracking devices, monitoring online activity, unwanted contact, property invasion or damage, hacking accounts, threats, violence, sabotage, and attacks. (Federal Register, Vol 89, No. 83, 04/29/2024, p. 33523). Merely annoying conduct, even if repeated, is a nuisance, but is not typically chargeable as stalking.

⁶ Reasonable person is an objective standard meaning a person in the Complainant's shoes (having similar characteristics/demographics to the Complainant).

⁷ In the context of stalking, a Complainant is not required to obtain medical or other professional treatment and counseling is not required to show substantial emotional distress.

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- The range of sanctions for sex discrimination is warning through expulsion or termination. Sanctions can be assigned outside this range based on aggravating or mitigating circumstances, or the cumulative conduct record of the Respondent.
- The range of sanctions for Quid Pro Quo harassment is warning through expulsion/termination. Sanctions can be assigned outside this range based on aggravating or mitigating circumstances, or the cumulative conduct record of the Respondent.
- The range of sanctions for Hostile Environment harassment is warning through expulsion/termination. Sanctions can be assigned outside this range based on aggravating or mitigating circumstances, or the cumulative conduct record of the Respondent.
- The range of sanctions for Rape is suspension through expulsion/termination. Sanctions can be assigned outside this range based on aggravating or mitigating circumstances, or the cumulative conduct record of the Respondent.
- The range of sanctions for Sexual Assault with an Object is suspension through expulsion/termination. Sanctions can be assigned outside this range based on aggravating or mitigating circumstances, or the cumulative conduct record of the Respondent.
- The range of sanctions for Sodomy is suspension through expulsion/termination. Sanctions can be assigned outside this range based on aggravating or mitigating circumstances, or the cumulative conduct record of the Respondent.
- The range of sanctions for Fondling is warning through suspension (termination for employees). Sanctions can be assigned outside this range based on aggravating or mitigating circumstances, or the cumulative conduct record of the Respondent.
- The range of sanctions for Incest is warning through probation. Sanctions can be assigned outside this range based on aggravating or mitigating circumstances, or the cumulative conduct record of the Respondent.
- The range of sanctions for Statutory Rape is warning through suspension (termination for employees). Sanctions can be assigned outside this range based on aggravating or mitigating circumstances, or the cumulative conduct record of the Respondent.
- The range of sanctions for Stalking is probation through expulsion/termination. Sanctions can be assigned outside this range based on aggravating or mitigating circumstances, or the cumulative conduct record of the Respondent.
- The range of sanctions for Dating/Domestic Violence is probation through expulsion/termination. Sanctions can be assigned outside this range based on aggravating or mitigating circumstances, or the cumulative conduct record of the Respondent.
- The range of sanctions for Sexual Exploitation is warning through expulsion/termination. Sanctions can be assigned outside this range based on aggravating or mitigating circumstances, or the cumulative conduct record of the Respondent.

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- The range of sanctions for Retaliation is warning through expulsion/termination. Sanctions can be assigned outside this range based on aggravating or mitigating circumstances, or the cumulative conduct record of the Respondent.

Sexual Misconduct

7) *Sexual Exploitation*:⁸

- an individual taking non-consensual or abusive sexual advantage of another, that does not constitute Sex-based Harassment as defined above.
- for their own benefit or for the benefit of anyone other than the person being exploited.

8) *Indecent Exposure*

- an individual exposes his or her genitals in any public place or in any place where there are present other persons under circumstances
- in which he or she knows or should know that this conduct is likely to offend, affront or alarm.

9) *Unlawful Dissemination of an Intimate Image*

- an individual commits the offense of unlawful dissemination of intimate image if
 - with intent to harass, annoy or alarm a current or former sexual or intimate partner,
 - the individual disseminates a visual depiction of the current or former sexual or intimate partner in a state of nudity or engaged in sexual conduct.

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

- Sexual voyeurism (such as observing or allowing others to observe a person undressing or using the bathroom or engaging in sexual acts, without the consent of the person being observed)
- Invasion of sexual privacy (e.g., doxxing)
- Knowingly making an unwelcome disclosure of (or threatening to disclose) an individual's sexual orientation, gender identity, or gender expression
- Taking pictures, video, or audio recording of another in a sexual act, or in any other sexually related activity when there is a reasonable expectation of privacy during the activity, without the consent of all involved in the activity; or exceeding the boundaries of consent (such as allowing another person to hide in a closet and observe sexual activity, or disseminating sexual pictures without the photographed person's consent), including the making or posting of non-consensual pornography
- Prostituting another person

⁸ This offense is not classified under Title IX as "Sex-based harassment," but it is included here in this Policy as a tool to address a wider range of behaviors.

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- Engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or a sexually transmitted disease (STD) or infection (STI), without informing the other person of the virus, disease, or infection
- Causing or attempting to cause the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give consent to sexual activity, or for the purpose of making that person vulnerable to non-consensual sexual activity
- Misappropriation of another person's identity on apps, websites, or other venues designed for dating or sexual connections (e.g., spoofing)
- Forcing a person to take an action against that person's will by threatening to show, post, or share information, video, audio, or an image that depicts the person's nudity or sexual activity
- Knowingly soliciting a minor for sexual activity
- Engaging in sex trafficking
- Knowingly creating, possessing, or disseminating child sexual abuse images or recordings
- Creating or disseminating synthetic media, including images, videos, or audio representations of individuals doing or saying sexually-related things that never happened, or placing identifiable real people in fictitious pornographic or nude situations without their consent (i.e., Deepfakes)
- Creating or disseminating images or videos of child sexual abuse material

Other Prohibited Conduct

1) **Bullying:**⁹

- repeated and/or severe aggressive behavior
- that is likely to intimidate or intentionally hurt, control, or physically or mentally diminish the Complainant,
- that is not speech or conduct that is otherwise protected by the First Amendment.

2) **Endangerment:**

- 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 or damages their property.

3) **Hazing:**

- any act or action

⁹ For Bullying, Hazing, and Endangerment, these offenses can be applied when the conduct is on the basis of protected characteristics but is not a form of Sex-based Harassment.

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- which does or is likely to endanger the mental or physical health or safety of any individual
- as it relates to an individual's initiation, admission into, or affiliation with any Carlow University group or organization.

For the purposes of this definition:

- It is not necessary that a person's initiation or continued membership is contingent upon participation in the activity, or that the activity was sanctioned or approved by the Student Group or Student Organization, for an allegation of hazing to be upheld.
- It shall not constitute an excuse or defense to a hazing allegation that the participants took part voluntarily, gave consent to the conduct, voluntarily assumed the risks or hardship of the activity, or that no injury was suffered or sustained.
- The actions of alumni, active, new, and/or prospective members of a Student Group or Student Organization may be considered hazing.
- Hazing is not confined to the Student Group or Student Organization with which the individual subjected to the hazing is associated.

4) **Retaliation:**

- Adverse action, including intimidation, threats, coercion, or discrimination,
- against any person,
- by the University a Carlow University student, employee, or a person authorized by the University to provide aid, benefit, or service under the University's education program or activity,
- for the purpose of interfering with any right or privilege secured by law or Policy, or
- because the person has engaged in protected activity, including reporting information, making a Complaint, testifying, assisting, or participating or refusing to participate in any manner in an investigation or Resolution Process under the Equal Opportunity, Harassment, and Nondiscrimination Procedures, including an Informal Resolution process, or in any other appropriate steps taken by the University to promptly and effectively end any sex discrimination in its education program or activity, prevent its recurrence, and remedy its effects.

The exercise of rights protected under the First Amendment does not constitute retaliation. It is also not retaliation for the University to pursue Policy violations against those who make materially false statements in bad faith in the course of a resolution under the Equal Opportunity, Harassment, and Nondiscrimination Policy. However, the determination of responsibility, by itself, is not sufficient to conclude that any party has made a materially false statement in bad faith.

5) **Unauthorized Disclosure:**¹⁰

¹⁰ Nothing in this section restricts the ability of the Parties to: obtain and present evidence, including by speaking to witnesses (as long as it does not constitute retaliation under this Policy), consult with their family

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- Distributing or otherwise publicizing materials created or produced during an investigation or Resolution Process except as required by law or as expressly permitted by the University or
- publicly disclosing a party's personally identifiable information without authorization or consent.

6) ***Failure to Comply/Process Interference***

- Intentional failure to comply with the reasonable directives of Title IX Coordinator in the performance of their official duties, including with the terms of a no contact order
- Intentional failure to comply with emergency removal or interim suspension terms
- Intentional failure to comply with sanctions
- Intentional failure to adhere to the terms of an agreement achieved through informal resolution
- Intentional failure to comply with mandated reporting duties as defined in this Policy
- Intentional interference with the Title IX resolution process, including but not limited to:
 - Destruction of or concealing of evidence
 - Actual or attempted solicitation of knowingly false testimony or providing false testimony or evidence
 - Intimidating or bribing a witness or party

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

Consent, Force, and Incapacitation

As used in this Policy, the following definitions and understandings apply:

1) ***Consent***

Consent is defined as:

- knowing, and
- voluntary, and
- clear permission
- by word or action
- to engage in sexual activity.¹¹

members, confidential resources, or Advisors; or otherwise prepare for or participate in the Resolution Process.

¹¹ The definition of consent used by Carlow to address Policy violations is different from the definition of consent which is applicable to criminal prosecutions for sex offenses in Pennsylvania

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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. Consent is evaluated from the perspective of what a reasonable person would conclude are mutually understandable words or actions. Reasonable reciprocation can establish consent. For example, if someone kisses you, you can kiss them back (if you want to) without the need to explicitly obtain *their* consent to be kissed back.

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

Silence or the absence of resistance alone should not be interpreted as 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.

Consent to some sexual contact (such as kissing or fondling) cannot be assumed to be consent for other sexual activity (such as intercourse). A current or previous intimate relationship is not sufficient to constitute consent. If an individual expresses conditions on their willingness to consent (e.g., use of a condom) or limitations on the scope of their consent, those conditions and limitations must be respected. If a sexual partner shares the clear expectation for the use of a condom, or to avoid internal ejaculation, and those expectations are not honored, the failure to use a condom, removing a condom, or internal ejaculation can be considered acts of sexual assault.

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

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Going beyond the boundaries of consent is prohibited. Thus, unless a sexual partner has consented to slapping, hitting, hair pulling, strangulation, or other physical roughness during otherwise consensual sex, those acts may constitute dating violence or sexual assault.¹²

2) Force

Force is the use of physical violence and/or physical imposition to gain sexual access. Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Force is conduct that, if sufficiently severe, can negate consent.

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.”).

Coercion is unreasonable pressure for sexual activity. Coercive conduct, if sufficiently severe, can render a person’s consent ineffective, because it is not voluntary. When someone makes clear that they do not want to engage in 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. Coercion is evaluated based on the frequency, intensity, isolation, and duration of the pressure involved.

3) Incapacitation

Incapacitation is a state where a person is incapable of giving consent. An incapacitated person 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). A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious for any reason, including because of alcohol or other drug consumption.

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

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

If the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated, the Respondent is not in violation of this Policy. “Should have known” is an objective, reasonable person standard that assumes that a reasonable person is both sober and exercising sound judgment.

¹² Consent in relationships must also be considered in context. When Parties consent to BDSM (bondage, discipline, sadism, masochism) or other forms of kink, non-consent may be shown by the use of a safe word. Resistance, force, violence, or even saying “no” may be part of the kink and thus consensual.

Unethical Relationships

Standard of Proof

The University uses the preponderance of the evidence standard of proof when determining whether a Policy violation occurred. This means that the University will decide whether it is more likely than not, based upon the available information at the time of the decision, that the Respondent is in violation of the alleged Policy violation(s).

Reports/Complaints of Discrimination, Harassment, and/or Retaliation

A Report provides notice to the University of an allegation or concern about discrimination, harassment, or retaliation and provides an opportunity for the Title IX Coordinator to provide information, resources, and supportive measures. A Complaint provides notice to the University that the Complainant would like to initiate an investigation or other appropriate resolution procedures. A Complainant or individual may initially make a report and may decide at a later time to make a Complaint. Reports 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 or written report which constitutes Notice directly to, the Title IX Coordinator or to any member of the Nondiscrimination Team. Such a Complaint may be made at any time (including during non-business hours) by using the telephone number, email address, or by mail to the office of the Title IX Coordinator or any other Nondiscrimination Team member listed in this Policy. 412-578-6050 or titleix@carlow.edu
- 2) Submit online Notice at <https://www.carlow.edu/title-ix/report-an-incident/>. Anonymous Notice is accepted, but the Notice may give rise to a need to try to determine the Parties' identities. Anonymous Notice typically limits Carlow University's ability to investigate, respond, and provide remedies, depending on what information is shared. Measures intended to protect the community or redress or mitigate harm may be enacted. It also may not be possible to provide supportive measures to Complainants who are the subject of anonymous Notice.

Reporting carries no obligation to initiate a Complaint, and in most situations, Carlow University is able to respect a Complainant's request to not initiate a resolution process. However, there may be circumstances, such as pattern behavior, allegations of severe misconduct, or a compelling threat to health and/or safety, where the University may need to initiate a resolution process. If a Complainant does not wish to file a Complaint, the University will maintain the privacy of information to the extent possible. The Complainant should not fear a loss of confidentiality by giving Notice that allows the University to discuss and/or provide supportive measures, in most circumstances.

- 3) Report using the discrimination/harassment hotline at 877-778-5463 or www.reportit.net

- 4) Email titleix@carlow.edu

Time Limits on Reporting

There is no time limitation on providing Notice/Complaints to the Title IX Coordinator. However, if the Respondent is no longer subject to the 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 Title IX Coordinator's discretion; they may document allegations for future reference, offer supportive measures and/or remedies, and/or engage in informal or formal action, as appropriate.

False Allegations and Evidence

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

Additionally, witnesses and Parties who knowingly provide false evidence, tamper with or destroy evidence, or deliberately mislead an official conducting an investigation or resolution process can be subject to discipline under appropriate University policies.

Confidentiality/Privacy

Carlow University makes every effort to preserve the Parties' privacy. The University will not share the identity of any individual who has made a Complaint of harassment, discrimination, or retaliation; any Complainant; any individual who has been reported to be the perpetrator of discrimination, harassment, or retaliation; any Respondent; or any witness, except as permitted by, or to fulfill the purposes, of applicable laws and regulations (e.g., Title IX), Family Educational Rights and Privacy Act (FERPA) and its implementing regulations, or as required by law; including any investigation, or resolution proceeding arising under these policies and procedures.^{13,14} Additional information regarding confidentiality and privacy can be found in [Appendix E](#).

Unauthorized Disclosure of Information

Parties, Advisors, and any other party with information pertaining to a Complaint are prohibited from unauthorized disclosure of information obtained by the University through the Resolution Process to the extent that information is the work product of the University (meaning it has been produced, compiled, or written by Carlow University for purposes of its investigation and

¹³ 20 U.S.C. 1232g

¹⁴ 34 C.F.R. § 99

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resolution of a Complaint). It is also a violation of University Policy to publicly disclose work product or a party's personally identifiable information without authorization or consent. Violation of this Policy is subject to significant sanctions.

Emergency Removal/Interim Actions/Leaves

The University can act to remove a student Respondent accused of Sex Discrimination or Sex-based Harassment from its education program or activities, partially or entirely, on an emergency basis when an individualized safety and risk analysis has determined that an immediate threat to the physical health or safety of any student or other individual justifies removal. This risk analysis is performed by the Title IX Coordinator and may be done in conjunction with the Behavioral Intervention Team using its standard objective violence risk assessment procedures. Employees are subject to existing procedures for interim actions and leaves.

Complainant's Privacy Rights Under Federal Timely Warning Obligations

In accordance with federal law and Carlow University's Timely Warning Policy, Carlow must issue timely warnings for reported incidents that pose a serious or continuing threat of bodily harm or danger to members of the University community. The 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.

Amnesty

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

It is in the best interests of the Carlow University community that Complainants choose to give Notice of misconduct to 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, Carlow University maintains a Policy of offering Parties and witnesses amnesty from minor policy violations, such as underage alcohol consumption or the use of illicit drugs, related to the incident. Granting amnesty is a discretionary decision made by the University, and amnesty does not apply to more serious allegations, such as physical abuse of another or illicit drug distribution.

Students

The University maintains an amnesty policy for students who offer help to others in need.

Employees

Sometimes, employees are hesitant to report discrimination, harassment, or retaliation they have experienced for fear of getting in trouble themselves. The University may, at its discretion,

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offer employee Complainants amnesty from such 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.

Preservation of Evidence

The preservation of evidence is critical to potential criminal prosecution and to obtaining restraining/protective orders, and it is particularly time sensitive. The University will inform the Complainant of the importance of preserving evidence by advising the Complainant to take actions such as the following:

Sexual Assault

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

Stalking/Dating Violence/Domestic Violence/Sex-Based Harassment

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

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

Federal Statistical Reporting Obligations

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

- 1) All “primary crimes,” which include criminal homicide, sexual assault, robbery, aggravated assault, burglary, motor vehicle theft, and arson
- 2) Hate crimes, which include any bias-motivated primary crime as well as any bias-motivated larceny or theft, simple assault, intimidation, or destruction/damage/vandalism of property
- 3) Violence Against Women Act (VAWA-based crimes), which include sexual assault, domestic violence, dating violence, and stalking¹⁵
- 4) Arrests and referrals for disciplinary action for weapons law violations, liquor law violations, and drug law violations

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

Independence and Conflicts of Interest

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

To raise any concern involving bias, conflict of interest, misconduct, or discrimination by the Title IX Coordinator, contact the [Carlow University President or other appropriate official contact information]. Concerns of bias, misconduct, discrimination, or a potential conflict of interest by any other Resolution Pool member should be raised with the Title IX Coordinator.

Revision of this Policy

This Policy succeeds previous policies addressing discrimination, harassment, sexual misconduct, and/or retaliation, though previous policies and procedures remain in force for incidents occurring before August 1, 2024. The Title IX Coordinator reviews and updates these policies and

¹⁵ VAWA is the Violence Against Women Act, enacted in 1994 and codified in part at 42 U.S.C. sections 13701 through 14040.

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

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

This document does not create legally enforceable protections beyond the protections of the background state and federal laws that frame such policies and codes, generally. This Policy is effective August 1, 2024.

RESOLUTION PROCESS FOR ALLEGED VIOLATIONS OF POLICY ON EQUAL OPPORTUNITY, HARASSMENT, AND NONDISCRIMINATION (Hereinafter the “Resolution Process”)

Overview

Carlow University will act on any Notice, Complaint, or Knowledge of a potential violation of the Equal Opportunity, Harassment, and Nondiscrimination Policy (“the Policy”) that is received by the Title IX Coordinator or any other Mandated Reporter by applying the Resolution Process below.

The procedures below apply to all allegations of discrimination on the basis of an actual or perceived protected characteristic, harassment, retaliation, or Other Prohibited Conduct as involving students, staff, administrators, faculty members, or third parties. [Unionized employees are subject to the terms of their collective bargaining agreements to the extent those agreements do not conflict with federal or state compliance obligations as outlined under this Policy. Where a conflict arises between the collective bargaining agreement and the procedures and requirements outlined in this Policy, Carlow will work with legal counsel to resolve the conflict under applicable federal and state law.

Notice/Complaint

Upon receipt of Notice, a Complaint, or Knowledge of an alleged Policy violation, the Title IX Coordinator will initiate a prompt initial evaluation to determine the University’s next steps. The Title IX Coordinator will contact the Complainant/source of the Notice to offer supportive measures, provide information regarding resolution options, and determine how they wish to proceed.

Collateral Misconduct

Collateral misconduct is defined to include potential violations of other University policies not incorporated into the Policy on Equal Opportunity, Harassment, and Nondiscrimination that occur in conjunction with alleged violations of the Policy, or that arise through the course of the

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investigation, for which it makes sense to provide one resolution for all charges. Thus, the collateral allegations may be charged along with potential violations of the Policy, to be resolved jointly under these Procedures. In such circumstances, the Title IX Coordinator may consult with University officials who typically oversee such conduct (e.g., human resources, student conduct, academic affairs) to solicit their input as needed on what charges should be filed, but the exercise of collateral charges under these procedures is within the discretion of Title IX Coordinator. All other allegations of misconduct unrelated to incidents covered by the Policy will typically be addressed separately through procedures described in the student, faculty, and staff handbooks.

Initial Evaluation

The Title IX Coordinator conducts an initial evaluation typically within seven (7) business days of receiving Notice/Complaint/Knowledge of alleged misconduct.¹⁶ The initial evaluation typically includes:

- Assessing whether the reported conduct may reasonably constitute a violation of the Policy.
 - If the conduct may not reasonably constitute a violation of the Policy, the matter is typically dismissed from this process, consistent with the dismissal provision in these procedures. It may then be referred to another process, if applicable.
- Determining whether Carlow University has jurisdiction over the reported conduct, as defined in the Policy.
 - If the conduct is not within University jurisdiction, the matter is typically dismissed from this process, consistent with the dismissal provision in these procedures. If applicable, the conduct will be referred to the appropriate University office for resolution.
- Offering and coordinating supportive measures for the Complainant.
- Offering and coordinating supportive measures for the Respondent, as applicable.
- Notifying the Complainant, or the person who reported the allegation(s), of the resolution processes, including an Informal Resolution option, or the Resolution Process described below.
- Determining whether the Complainant wishes to make a Complaint.
- Notifying the Respondent of the resolution processes, including an Informal Resolution option if appropriate under the circumstances, or the Resolution Process described below, if a Complaint is made.

Helping a Complainant to Understand Options

If the Complainant indicates they wish to initiate a Complaint (in a manner that can reasonably be construed as reflecting intent to make a Complaint), the Title IX Coordinator will help to facilitate the Complaint, which will include:

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

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- Working with the Complainant to determine whether the Complainant wishes to pursue one of two resolution options:
 - Informal Resolution, or
 - the Resolution Process described below.

The Title IX Coordinator will seek to abide by the wishes of the Complainant but may have to take an alternative approach depending on their analysis of the situation.

If the Complainant elects for the Resolution Process below, and the Title IX Coordinator has determined the Policy applies and that the University has jurisdiction, they will route the matter to the appropriate Resolution Process, will provide the Parties with a Notice of Investigation and Allegation(s), and will initiate an investigation consistent with these Procedures.

If any Party indicates (either verbally or in writing) that they want to pursue an Informal Resolution option, the Title IX Coordinator will assess whether the matter is suitable for Informal Resolution and refer the matter, accordingly.

If the Complainant indicates (either verbally or in writing) that they do not want any action taken, no Resolution Process will be initiated (unless deemed necessary by the Title IX Coordinator), though the Complainant can elect to initiate one later, if desired.

Title IX Coordinator Authority to Initiate a Complaint

If the Complainant does not wish to file a Complaint, the Title IX Coordinator, who has ultimate discretion as to whether a Complaint is initiated, will offer supportive measures and determine whether to initiate a Complaint themselves. To make this determination, the Title IX Coordinator will evaluate that request to determine if there is a serious and imminent threat to someone's safety or if the University cannot ensure equal access without initiating a Complaint. The Title IX Coordinator will consider the following non-exhaustive factors to determine whether to file a Complaint:

- The Complainant's request not to proceed with initiation of a Complaint;
- The Complainant's reasonable safety concerns regarding initiation of a Complaint;
- The risk that additional acts of discrimination would occur if a Complaint is not initiated;
- The severity of the alleged discrimination, including whether the discrimination, if established, would require the removal of a Respondent from campus or imposition of another disciplinary sanction to end the discrimination and prevent its recurrence;
- The age and relationship of the Parties, including whether the Respondent is a Carlow University employee;

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- The scope of the alleged discrimination, including information suggesting a pattern, ongoing discrimination, or discrimination alleged to have impacted multiple individuals;
- The availability of evidence to assist a Decision-maker in determining whether discrimination occurred;
- Whether the University could end the alleged discrimination and prevent its recurrence without initiating its resolution process.

If deemed necessary, the Title IX Coordinator may consult with appropriate University employees, and/or conduct a violence risk assessment to aid their determination whether to initiate a Complaint.

When the Title IX Coordinator initiates a Complaint, they do not become the Complainant. The Complainant is the person who experienced the alleged conduct that could constitute a violation of this Policy.

Dismissal

The University **may** dismiss a Complaint if, at any time during the investigation or Resolution Process, one or more of the following grounds are met:

- 1) The University is unable to identify the Respondent after taking reasonable steps to do so
- 2) The University no longer enrolls or employs the Respondent
- 3) A Complainant voluntarily withdraws any or all of the allegations in the Complaint, the Title IX Coordinator declines to initiate a Complaint, and the University determines that, without the Complainant's withdrawn allegations, the conduct that remains alleged in the Complaint, if any, would not constitute a Policy violation even if proven
- 4) The University determines the conduct alleged in the Complaint would not constitute a Policy violation, if proven

A Decision-maker can recommend dismissal to the Title IX Coordinator, if they believe the grounds are met. A Complainant who decides to withdraw a Complaint must do so in writing and may later request to reinstate or refile the Complaint.

Upon any dismissal, the University will promptly send the Complainant written notification of the dismissal and the basis for the dismissal. If the dismissal occurs after the Respondent has been made aware of the allegations, the University will notify the parties of the dismissal and the basis for the dismissal simultaneously.

This dismissal decision is appealable to any party.

Appeal of Dismissal

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The Complainant may appeal a dismissal of their Complaint. The Respondent may also appeal the dismissal of the Complaint if dismissal occurs after the Respondent has been made aware of the allegations. All dismissal appeal requests must be filed within three (5) business days of the notification of the dismissal.

The Title IX Coordinator will notify the Parties of any appeal of the dismissal. If, however, the Complainant appeals, but the Respondent was not notified of the Complaint, the Title IX Coordinator must then provide the Respondent with a NOIA and will notify the Respondent of the Complainant's appeal with an opportunity to respond.

Throughout the dismissal appeal process, the University will:

- Implement dismissal appeal procedures equally for the Parties;
- Assign a trained Dismissal Appeal Officer who did not take part in an investigation of the allegations or dismissal of the Complaint;
- Provide the Parties a reasonable and equal opportunity to make a statement in support of, or challenging, the dismissal; and
- Notify the Parties of the result of the appeal and the rationale for the result.

The grounds for dismissal appeals are limited to:

- 1) Procedural irregularity that would change the outcome;
- 2) New evidence that would change the outcome and that was not reasonably available when the dismissal was decided;
- 3) The Title IX Coordinator, Investigator, or Decision-maker had a conflict of interest or bias for or against complainants or respondents generally or the individual Complainant or Respondent that would change the outcome.
- 4) The dismissal was erroneously granted or denied

Upon receipt of a dismissal appeal in writing from one or more Parties, the Title IX Coordinator will share the petition with the other party and provide three (5) business days for other Parties to respond to the request. The appeal should specify at least one of the grounds above and provide any reasons or supporting evidence for why the ground is met. This appeal will be provided in writing to the other Parties, and the Title IX Coordinator, who will be invited to respond in writing. At the conclusion of the response period, the Title IX Coordinator will forward the appeal, as well as any response provided by the other Parties to the Dismissal Appeal Officer for consideration.

If the Request for Appeal does not provide information that meets the grounds in this Policy, the request will be denied by the Dismissal Appeal Officer, and the Parties, their Advisors, and the Title IX Coordinator will be notified in writing of the denial and the rationale.

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If any of the asserted grounds in the appeal satisfy the grounds described in this Policy, then the Dismissal Appeal Officer will notify all Parties and their Advisors, and the Title IX Coordinator, of their decision and rationale in writing. The effect will be to reinstate the Complaint.

In most cases, appeals are confined to a review of the written documentation or record of the original determination and pertinent documentation regarding the specific appeal grounds. The Dismissal Appeal Officer has seven (7) business days to review and decide on the appeal, though extensions can be granted at the discretion of the Title IX Coordinator, and the Parties will be notified of any extension.

Appeal decisions are deferential to the original determination, making changes only if there is a compelling justification to do so.

The Dismissal Appeal Officer may consult with the Title IX Coordinator and/or legal counsel on questions of procedure or rationale for clarification, if needed. The Title IX Coordinator will maintain documentation of all such consultation.

Emergency Removal/Interim Suspension of a Student

The University may emergency remove a student accused of Sex Discrimination or Sex-based Harassment upon receipt of Notice/Knowledge, a Complaint, or at any time during the resolution process. Prior to an emergency removal, Carlow University will conduct an individualized risk assessment and may remove the student if that assessment determines that an imminent and serious threat to the health or safety of a Complainant or any students, employees, or other persons arising from the allegations of sex discrimination justifies such action. Students accused of other forms of discrimination (not sex) are subject to interim suspension, which can be imposed for safety reasons.

When an emergency removal or interim suspension is imposed, wholly or partially, the affected student will be notified of the action, which will include a written rationale, and the option to challenge the emergency removal or interim suspension within two (2) business days of the notification. Upon receipt of a challenge, the Title IX Coordinator will meet with the student (and their Advisor, if desired) as soon as reasonably possible thereafter to allow them to show cause why the removal/action should not be implemented or should be modified.

This meeting is not a hearing on the merits of the allegation(s), but rather is an administrative process intended to determine solely whether the emergency removal or interim suspension is appropriate, should be modified, or lifted. When this meeting is not requested within two (2) business days, objections to the emergency removal or interim suspension will be deemed waived. A student can later request a meeting to show why they are no longer an imminent and serious threat because conditions related to imminence or seriousness have changed. 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.

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The Respondent may provide information, including expert reports, witness statements, communications, or other documentation for consideration prior to or during the meeting. When applicable, a Complainant may provide information to the Title IX Coordinator for review.

An emergency removal or interim suspension may be affirmed, modified, or lifted as a result of a requested review or as new information becomes available. The Title IX Coordinator will communicate the final decision in writing, typically within three (3) business days of the review meeting.

Placing an Employee on Leave

When the Respondent is an employee, or a student employee accused of misconduct in the course of their employment, existing provisions <<link>> for interim action are typically applicable instead of the above emergency removal process. Procedures for unionized employees will comply with the procedures outlined in the applicable collective bargaining agreement. If the measures in the collective bargaining agreement do not satisfy the requirements as detailed under this Policy, the determination as to the interim action will be analyzed on a fact-specific basis in consideration of this Policy, the collective bargaining agreement, and applicable state and federal laws. [Procedures for unionized employees can be found here <<link>>].

Counter-Complaints

The University is obligated to ensure that the resolution process is not abused for retaliatory purposes. Although the University permits the filing of Counter-Complaints, the Title IX Coordinator will use an initial evaluation, described above, to assess whether the allegations in the Counter-Complaint are made in good faith. When Counter-Complaints are not made in good faith, they will not be permitted. They will be considered potentially retaliatory and may constitute a violation of the Policy.

Counter-Complaints determined to have been reported in good faith will be processed using the Resolution Process below. At the Title IX Coordinator's discretion, investigation of such claims may take place concurrently or after resolution of the underlying initial Complaint.

Advisors in the Resolution Process

Who Can Serve as an Advisor?

The Parties may each have an Advisor (friend, mentor, family member, attorney, or any other individual a party chooses) present with them for all meetings, interviews, and hearings within the Resolution Process, including intake. The Parties may select whomever they wish to serve as their Advisor as long as the Advisor is eligible and available.¹⁷

¹⁷ "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 an administrator who has an active role in the matter, or a supervisor who must monitor and implement sanctions. Additionally,

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The Title IX Coordinator will offer to assign a trained Advisor to any party if the party chooses. If the Parties choose an Advisor from the pool available from the University, the University will have trained the Advisor and familiarized them with the University's Resolution Process.

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

A party may elect to change Advisors during the process and is not obligated to use the same Advisor throughout. Parties are expected to provide the Title IX Coordinator with timely notification if they change Advisors. If a party changes Advisors, consent to share information with the previous Advisor is assumed to be terminated, and a release for the new Advisor must be submitted.

The University may permit Parties to have more than one Advisor, or an Advisor and a support person, upon special request to the Title IX Coordinator. The decision to grant this request is at the Title IX Coordinator's sole discretion and will be granted equitably to all Parties.

If a party requests that all communication be made through their attorney Advisor instead of to the party, the Carlow University will refuse that request **OR** agree to copy both the party and their Advisor on all communications.

Advisors appointed by the institution cannot be confidential employees, and although they will not be asked to disclose details of their interactions with their advisees to institutional officials or Decision-makers absent an emergency, they are still reminded of their Mandated Reporter responsibilities.

Carlow University fully respects and accords the Weingarten rights of employees, meaning that for Parties who are entitled to union representation, the University will allow the unionized employee to have their union representative (if requested by the party) as well as an Advisor of their choice present for all resolution-related meetings and interviews. To uphold the principles of equity, the other party (regardless of union membership) will also be permitted to have two Advisors.

Witnesses may be permitted to have union representation or Advisors in Resolution Process interviews or meetings depending on the circumstances including the equitable effect on each party, and at the discretion of the Title IX Coordinator.]

Advisor's Role in the Resolution Process

choosing an Advisor who is also a witness in the process creates potential for bias and conflicts 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 Decision-maker(s).

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Advisors should help the Parties to prepare for each meeting and are expected to advise ethically, with integrity, and in good faith. Advisors may not provide testimony or speak on behalf of their advisee unless given specific permission to do so.

The Parties are expected to ask and respond to questions on their own behalf throughout 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.

, Unless otherwise prohibited, Advisors or attorneys are permitted to fully represent their advisees or clients in the Resolution Process, including all meetings, interviews, and hearings. Although Carlow University prefers to hear from Parties directly, in these cases, Parties are entitled to have their chosen representatives provide evidence.]

Records Shared with Advisors

Advisors are entitled to the same opportunity as their advisee to access relevant evidence, and/or the same written investigation report that accurately summarizes this evidence.

Advisors are expected to maintain the confidentiality of the records the University shares with them, [Section 14](#) in accordance with the “Reports/Complaints of Discrimination, Harassment, and/or Retaliation” section of the Policy addressing Confidentiality. Advisors may not disclose any University work product or evidence the University obtained solely through the Resolution Process for any purpose not explicitly authorized by Carlow University.

Accordingly, Advisors will be asked to sign Non-Disclosure Agreements (NDAs). The University may decline to share materials with any Advisor who has not executed the NDA. Carlow University may restrict the role of any Advisor who does not respect the sensitive nature of the process or who fails to abide by the University’s confidentiality expectations.

Advisor Expectations

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

The University may also make reasonable provisions to allow an Advisor who cannot be present in person to attend a meeting/interview/[hearing] by telephone, video conferencing, or other similar technologies.

All Advisors are subject to the same University policies and procedures, whether they are attorneys or not, and whether they are selected by a party or appointed by the University. Advisors are expected to advise their advisees without disrupting proceedings.

Advisor Policy Violations

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

Resolution Option Overview

This Resolution Process, consisting of Informal Resolution and Administrative Resolution, or Hearing Resolution, is the University's chosen approach to addressing all forms of discrimination on the basis of protected characteristics, harassment, and retaliation. The process considers the Parties' preferences but is ultimately determined at the Title IX Coordinator's discretion.

Resolution proceedings are confidential. All individuals present at any time during the Resolution Process are expected to maintain the confidentiality of the proceedings in accordance with University Policy.

Informal Resolution

To initiate Informal Resolution, a Complainant or Respondent may make such a request to the Title IX Coordinator at any time prior to a final determination, or the Title IX Coordinator may offer the option to the Parties, in writing. The 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.

Before initiation of an Informal Resolution process, Carlow University will provide the Parties with a NOIA that explains:

- The allegations;
- The requirements of the Informal Resolution process;
- That, prior to agreeing to a resolution, any party has the right to withdraw from the Informal Resolution process and to initiate or resume the University's Resolution Process;
- That the Parties' agreement to a resolution at the conclusion of the Informal Resolution process will preclude the Parties from initiating or resuming the resolution process arising from the same allegations;
- The potential terms that may be requested or offered in an Informal Resolution agreement, including notification that an Informal Resolution agreement is binding only on the Parties; and
- What information the University will maintain, and whether and how it could disclose such information for use in its Resolution Process.

Carlow University offers four categories of Informal Resolution:

- 1) **Supportive Resolution.** When the Title IX Coordinator can resolve the matter informally by providing supportive measures (only) designed to remedy the situation.
- 2) **Educational Conversation.** When the Title IX Coordinator can resolve the matter informally by having a conversation with the Respondent to discuss the Complainant's concerns and institutional expectations or can accompany the Complainant in their desire to confront the conduct.
- 3) **Accepted Responsibility.** When the Respondent is willing to accept responsibility for violating Policy and is willing to agree to actions that will be enforced similarly to sanctions, the Complainant(s) and University are agreeable to the resolution terms.
- 4) **Alternative Resolution.** When the Parties agree to resolve the matter through an alternative resolution mechanism (which could include, but is not limited to, mediation, shuttle negotiation, restorative practices, facilitated dialogue, etc.), as described below.

The individual facilitating an Informal Resolution must be trained and cannot be the Investigator, Decision-maker, or Appeal Decision-maker.

It is not necessary to pursue Informal Resolution first in order to pursue an Administrative **OR** Hearing Resolution Process. Any party participating in Informal Resolution can withdraw from the Informal Resolution Process at any time prior to agreeing to a resolution and initiate or resume the Administrative **OR** Hearing Resolution Process.

The Parties may agree, as a condition of engaging in Informal Resolution, on what statements made or evidence shared during the Informal Resolution process will not be considered in the Administrative Resolution **OR** Hearing Process, should Informal Resolution not be successful, unless agreed to by all Parties.

If an investigation is already underway, the Title IX Coordinator has discretion to determine if an investigation will be paused, if it will be limited, or if it will continue during the Informal Resolution process.

Categories of Informal Resolution

Supportive Resolution

The Title IX Coordinator will meet with the Complainant to determine reasonable supportive measures that are designed to restore or preserve the Complainant's access to the Carlow University's education program and activity. Such measures can be modified as the

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Complainant's needs evolve over time or circumstances change. If the Respondent has received the NOIA, the Title IX Coordinator may also provide reasonable supportive measures for the Respondent as deemed appropriate. This option is available when the Complainant does not want to engage the other resolution options, and the Title IX Coordinator does not initiate a Complaint.

Educational Conversation

The Complainant(s) may request that the Title IX Coordinator address their allegations by meeting (with or without the Complainant) with the Respondent(s) to discuss concerning behavior and institutional policies and expectations. Such a conversation is non-disciplinary and non-punitive. Respondent(s) are not required to attend such meetings, nor are they compelled to provide any information if they attend. The conversation will be documented as the Informal Resolution for the matter, if it takes place. In light of this conversation, or the Respondent's decision not to attend, the Title IX Coordinator may also implement remedial actions to ensure that policies and expectations are clear and to minimize the risk of recurrence of any behaviors that may not align with this Policy.

Accepted Responsibility¹⁸

The Respondent may accept responsibility for any or all of the alleged Policy violations at any point during the Resolution Process. If the Respondent indicates an intent to accept responsibility for **all** alleged Policy violations, the ongoing process will be paused, and the Title IX Coordinator will determine whether Informal Resolution is an option.

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

This resolution is not subject to appeal once all Parties indicate their written agreement to all resolution terms. When the Parties cannot agree on all terms of resolution, the Resolution Process will either continue or resume.

¹⁸ [Section 20](#) In the "Respondent Admits Responsibility" section of this policy below, there is a description of a process to waive the decision-making step of the Resolution Process if a Respondent decides to admit to violating the charged Policies. That section and this one are similar, but there are meaningful differences. In this section, the Parties must agree to the resolution, and the Respondent in essence self-sanctions as part of the Informal Resolution by agreeing to voluntarily comply with whatever the terms are to which the Parties agree. When the Respondent admits responsibility during the Resolution Process, in contrast, it is unilateral. Neither the Complainant nor the Title IX Coordinator determine eligibility. It is simply a waiver of steps in the process by the Respondent, who can admit violations and accept sanctions assigned by the Decision-maker, if they choose to. No Complainant approval is sought or needed. When the Respondent admits responsibility during the Resolution Process the outcome involves sanctioning imposed by the University, rather than an agreement to self-sanction, as outlined in this section.

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

Alternative Resolution

The institution offers a variety of Alternative Resolution mechanisms to best meet the specific needs of the Parties and the nature of the allegations. Alternative Resolution may involve agreement to pursue individual or community remedies, including targeted or broad-based educational programming or training; supported direct conversation or interaction with the Respondent(s); indirect action by the Title IX Coordinator or other appropriate University officials; and other forms of resolution that can be tailored to the needs of the Parties. Some Alternative Resolution mechanisms will result in an agreed-upon outcome, while others are resolved through dialogue. All Parties must consent to the use of an Alternative Resolution approach, and the Parties may, but are not required to, have direct or indirect contact during an Alternative Resolution process.

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

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

The Title IX Coordinator has the authority to determine whether Alternative Resolution is available or successful, to facilitate a resolution that is acceptable to all Parties, and/or to accept the Parties' proposed resolution, usually through their Advisors, often including terms of confidentiality, release, and non-disparagement.

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Parties do not have the authority to stipulate restrictions or obligations for individuals or groups that are not involved in the Alternative Resolution process. The Title IX Coordinator will determine whether additional individual or community remedies are necessary to meet the institution's compliance obligations in addition to the Alternative Resolution.

The Title IX Coordinator maintains records of any resolution that is reached and will provide notification to the Parties of what information is maintained. Failure to abide by the resolution agreement may result in appropriate responsive/disciplinary actions (e.g., dissolution of the Agreement and resumption of the Resolution Process, referral to the conduct process for failure to comply, application of the enforcement terms of the Agreement, etc.). The results of Complaints resolved by Alternative Resolution are not appealable.

If an Informal Resolution option is not available or selected, Carlow University will initiate or continue an investigation and subsequent Resolution Process to determine whether the Policy has been violated.

Administrative [Hearing] Resolution Process (see Section 22 below)

Resolution Process Pool

The Resolution Process relies on a pool of administrators ("the Pool") to carry out the process.¹⁹

Pool Member Roles

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

- Appropriate intake of and initial guidance pertaining to Complaints
- Advisor to Parties
- Informal Resolution Facilitator
- Perform or assist with initial evaluation
- Investigator
- Hearing Facilitator
- Decision-maker for challenges to emergency removal and supportive measures
- Decision-maker
- Appeal of Dismissal Decision-maker
- Appeal Decision-maker

Pool Member Appointment

The Title IX Coordinator, in consultation with senior administrators as necessary, appoints the Pool, which acts with independence and impartiality. Although members of the Pool are typically trained in a variety of skill sets and can rotate amongst the different roles listed above in different Complaints, Carlow University can also designate permanent roles for individuals in the Pool.

¹⁹ External, trained third-party neutral professionals may also be used to serve in Pool roles.

Notice of Investigation and Allegations

Prior to an investigation, the Title IX Coordinator will provide the Parties with a detailed written NOIA. 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. For climate/culture investigations that do not have an identifiable Respondent, the NOIA will be sent to the department/office/program head for the area/program being investigated.

The NOIA typically includes:

- A meaningful summary of all allegations
- The identity of the involved Parties (if known)
- The precise misconduct being alleged
- The date and location of the alleged incident(s) (if known)
- The specific policies/offenses implicated
- A description of, link to, or copy of the applicable resolution procedures
- A statement that the Parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence
- The name(s) of the Investigator(s), along with a process to identify to the Title IX Coordinator, in advance of the interview process, any conflict of interest that the Investigator(s) may have
- A statement that the Carlow 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 during the review and comment period to inspect and review all relevant evidence
- A statement that retaliation is prohibited
- Information about the confidentiality of the process, including that the Parties and their Advisors (if applicable) may not share Recipient work product obtained through the Resolution Process
- A statement that the Parties may have an Advisor of their choice who may accompany them through all steps of the Resolution Process, the advisor may be, but is not required to be an attorney
- A statement informing the Parties that the Carlow University's Policy prohibits knowingly making false statements, including knowingly submitting false information during the Resolution Process
- Detail on how a party may request disability accommodations during the Resolution Process
- A link to the Recipient's VAWA Brochure
- An instruction to preserve any evidence that is directly related to the allegations

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- [A statement that Parties who are members of a union are entitled to union representation throughout the process]

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(es) of the Parties as indicated in official Carlow University records, or emailed to the Parties' Carlow University-issued email or designated accounts. Once mailed, emailed, and/or received in person, the notification will be presumptively delivered.

Resolution Timeline

Carlow University will make a good faith effort to complete the Resolution Process within sixty to ninety (60-90) business days, including any appeals, which can be extended as necessary for appropriate cause by the Title IX Coordinator. The Parties will receive regular updates on the progress of the Resolution Process, as well as notification and a rationale for any extensions or delays, and an estimate of how much additional time will be needed to complete the process.

Investigations are completed expeditiously, normally within sixty (60) business days, though some investigations may take longer, depending on issues such as the nature, extent, and complexity of the allegations, witness availability, law enforcement involvement, and other factors.

If a party or witness chooses not to participate in the Resolution Process or becomes unresponsive, the Recipient reserves the right to continue it without their participation to ensure a prompt resolution. Non-participatory or unresponsive Parties retain the rights outlined in this Policy and the opportunity to participate in the Resolution Process.

Carlow 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 delay the investigation temporarily, the need for language assistance, the absence of Parties and/or witnesses, and/or health conditions. The Recipient will promptly resume its Resolution Process as soon as feasible. During such a delay, Carlow University will implement and maintain supportive measures for the Parties as deemed appropriate.

Carlow 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.

Carlow University will make a good faith effort to complete the Resolution Process as promptly as circumstances permit and will communicate regularly with the Parties to update them on the progress and timing of the process.

Ensuring Impartiality

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Carlow is committed to the equitable treatment of the Complainant and the Respondent at all stages throughout the Resolution Process. There is a presumption that the Respondent is not responsible for the reported misconduct unless and until the evidence supports a different determination.

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

The Resolution Process involves an objective evaluation of all available relevant and not otherwise impermissible evidence, 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. All Parties have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence, and to receive a written investigation report that accurately summarizes this evidence.

Investigator Appointment

Once an investigation is initiated, the Title IX Coordinator appoints an Investigator(s) to conduct it. These Investigators may be members of the Resolution Process Pool, or any other properly trained Investigator, whether internal or external to the Carlow University's community.

Witness Role and Participation in the Investigation

Employees (not including Complainant and Respondent) are required to cooperate with and participate in Carlow University's investigation and Resolution Process. Student witnesses and witnesses from outside the Carlow University community cannot be required to participate but are encouraged to cooperate with Carlow University investigations and to share what they know about a Complaint.

Interviews may be conducted in person, via online video platforms (e.g., Zoom, Microsoft Teams, FaceTime, WebEx, etc.), or, in limited circumstances, by telephone. Carlow University will take appropriate steps to ensure the security/privacy of remote interviews.

Parties and 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.

Interview Recording

It is standard practice for Investigators to create record of all interviews pertaining to the Resolution Process (other than Informal Resolution meetings). The Parties may review copies of their own interviews, upon request. No unauthorized audio or video recording of any kind is permitted during investigation meetings.

All interviews are recorded. The recording and/or transcript of those meetings will be provided to the Parties for their review, after which the Parties may pose additional questions to each other. Those subsequent meetings or interviews are also recorded and/or transcribed and shared with the Parties.

Evidentiary Considerations

The Investigator(s) and the Decision-maker(s) will only consider evidence that is deemed relevant and not otherwise impermissible.

Relevant evidence is that which may aid in determining whether the allegation occurred, or whether the behavior constitutes a violation of Policy.

The following evidence, and questions seeking the following evidence will not be considered unless an exception applies:

1. Evidence that is protected under a privilege as recognized by Federal or Pennsylvania law or evidence provided to a confidential employee, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality;
2. A party's or witness's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the party or witness, unless the Carlow University obtains that party's or witness's voluntary, written consent for use in the Carlow University's grievance procedures; and
3. Evidence that relates to the complainant's sexual interests or prior sexual conduct, unless evidence about the complainant's prior sexual conduct is offered to prove that someone other than the respondent committed the alleged conduct or is evidence about specific incidents of the complainant's prior sexual conduct with the respondent that is offered to prove consent to the alleged sex-based harassment. The fact of prior consensual sexual conduct between the complainant and respondent does not by itself demonstrate or imply the complainant's consent to the alleged sex-based harassment or preclude determination that sex-based harassment occurred
4. Previous disciplinary action of any kind involving the Respondent may not be considered unless there is an allegation of a pattern of misconduct. Such information may also be considered in determining an appropriate sanction upon a determination of responsibility. Barring a pattern allegation, this information is only considered at the sanction stage of the process and is not shared until then.

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

Respondent Admits Responsibility

At any point in the proceedings, if a Respondent elects to admit to the charged violations and waive further process, the Decision-maker is authorized to accept that admission, adopt it as their finding/final determination, and administer sanctions. This would also waive all rights to appeal for the Respondent. If the Respondent rejects the finding/final determination/sanctions, or does not admit to all conduct charged, the Resolution Process continues to its conclusion.

Investigation

All investigations are adequate, thorough, reliable, impartial, prompt, and fair. They involve interviews with all relevant Parties and witnesses, obtaining relevant evidence, and identifying sources of expert information, as necessary.

After an interview, Parties and witnesses will be asked to verify the accuracy of the recording, transcript, or summary of their interview. They may submit changes, edits, or clarifications. If the Parties or witnesses do not respond within the time period designated for verification, objections to the accuracy of the recording, transcript, or summary will be deemed to have been waived, and no changes will be permitted.

The Carlow University may consolidate Complaints against more than one Respondent, or by more than one Complainant against one or more Respondents, when the allegations arise from the same facts or circumstances or implicate a pattern, collusion, and/or other shared or similar actions.

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

- Determine the identity and contact information of the Complainant.
- Identify all policies implicated by the alleged misconduct and notify the Complainant and Respondent of all specific policies implicated.
- Assist the Title IX Coordinator, if needed, with conducting a prompt initial evaluation to determine if the allegations indicate a potential Policy violation.
- Work with the Title IX Coordinator, as necessary, to prepare the initial Notice of Investigation and Allegations (NOIA). The NOIA may be amended with any additional or dismissed allegations.
- Commence a thorough, reliable, and impartial investigation by identifying issues and developing a strategic investigation plan, including a witness list, evidence list,

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- intended investigation timeframe, and order of interviews for the Parties and witnesses.
- When participation of a party is expected, provide that party with written notification of the date, time, and location of the meeting, as well as the expected participants and purpose.
 - Make good faith efforts to notify each party of any meeting or interview involving another party, in advance when possible.
 - Interview the Complainant and the Respondent and conduct follow-up interviews with each, as necessary.
 - Interview all available, relevant witnesses and conduct follow-up interviews as necessary.
 - Provide each interviewed party and witness an opportunity to review and verify the Investigator's summary notes (or transcript or recording) of the relevant evidence/testimony from their respective interviews and meetings.
 - Allow each party the opportunity to suggest witnesses and questions they wish the Investigator(s) to ask of another party and/or witnesses. Document in the investigation report which questions were asked, with a rationale for any changes or omissions.
 - Where possible, complete the investigation promptly and without unreasonable deviation from the intended timeline.
 - Provide the Parties with regular status updates throughout the investigation.
 - Prior to the conclusion of the investigation, provide the Parties and their respective Advisors with a list of witnesses whose information will be used to render a finding.
 - Ask the Parties to provide a list of questions they would like asked of the other party or any witnesses. The Investigator will ask those questions deemed relevant, and for any question deemed not relevant, will provide a rationale for not asking the question.
 - Write a draft investigation report that gathers, assesses, and synthesizes the evidence, accurately summarizes the investigation, and party and witness interviews, and provides all relevant evidence.
 - Provide the Parties and their respective Advisors an electronic copy of the draft investigation report as well as an opportunity to inspect and review all relevant evidence obtained as part of the investigation for a review and comment period of ten (10) business days so that each party may meaningfully respond to the evidence. The Parties may elect to waive all or part of the review period.
 - The Investigator may share the investigation report with the Title IX Coordinator and/or legal counsel for their review and feedback.

Administrative Resolution Process

The Administrative Resolution Process is used for all Complaints of discrimination on the basis of protected characteristics, harassment, retaliation, and Other Prohibited Behaviors (as defined in the Policy) or when Informal Resolution is not elected, not offered, or is unsuccessful.

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The Administrative Resolution Process consists of a hand-off of the investigation report and all relevant evidence to the Decision-maker to make a finding and determine sanctions (if applicable).

At the discretion of Title IX Coordinator, the assigned Decision-maker will be an individual or a panel drawn from the Resolution Process Pool, or other trained individuals either internal or external to the institution.²⁰ Once the Decision-maker receives and reviews the file, they can recommend dismissal to the Title IX Coordinator, if they believe the grounds are met.

The Administrative Resolution Process typically takes approximately thirty (30) business days to complete, beginning with the Decision-maker's receipt of the Draft Investigation Report. The Parties will be updated regularly on the timing and any significant deviation from this typical timeline.

Investigator-led Questioning Meetings

- The Title IX Coordinator provides the Draft Investigation Report to the Decision-maker and the Parties simultaneously for review. The Decision-maker can then provide the Investigator with a list of relevant questions to ask the Parties or any witnesses.
 - To the extent credibility is in dispute and relevant to one or more of the allegations, the questions provided by the Decision-maker may also explore credibility.
- The Investigator will also ask each of the Parties to provide a proposed list of questions to ask the other Parties and any witnesses.
 - To the extent credibility is in dispute and relevant to one or more of the allegations, questions proposed by the Parties may also explore credibility.
 - All party questions must be posed during this phase of the process and cannot be posed later unless authorized by the Decision-maker.
 - The Investigator will share all party-proposed questions with the Decision-maker, who will finalize the list with the Investigator to ensure all questions are both relevant and permissible.
- The Investigator will then hold individual meetings with the Parties and witnesses to ask the questions posed by the Decision-maker, as well as the questions proposed by the Parties that have been deemed relevant and not duplicative, including questions intended to assess credibility. These meetings will be recorded and transcribed.
 - For any question deemed not relevant or duplicative, the Investigator will provide a rationale for not asking the question, either during the recorded meeting, or in writing (typically as an Appendix to the report).
- Typically, within three (3) business days of the last of these meetings, the recordings or transcripts of them will be provided to the Parties for their review. The Parties will

²⁰ The choice of a single Decision-maker or panel should generally be consistent for the same types of Complaints, and not vary Complaint-by-Complaint.

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- then have five (5) business days to review these recordings or transcripts and propose follow-up questions to be asked by the Investigator.
- The Investigator will review the proposed questions with the Decision-maker, to determine relevance and permissibility. If deemed necessary, the Investigator will then meet individually with the Parties or witnesses for whom there are relevant, and not duplicative, follow-up questions. These follow-up meetings will also be recorded, and the Parties will receive the recordings or transcripts of these meetings. This final round of questioning is the last such round permitted, unless leave is granted to extend, by the Decision-maker.
 - The Investigator will then incorporate any new, relevant evidence and information obtained through the Parties' review of the Draft Investigation Report, the questioning, and follow-up meetings into a Final Investigation Report.
 - The Investigator will also respond in writing (typically within the Final Investigation Report) to the relevant elements of the Parties' responses to the Draft Investigation Report and incorporate relevant elements of the Parties' written responses, additional relevant evidence, and any necessary revisions into the Final Investigation Report.
 - The Investigator will then share the investigation report with the Title IX Coordinator and/or legal counsel for their review and feedback.
 - The Final Investigation Report and investigation file will then be provided to the Title IX Coordinator.

The Decision-maker's Determination

- The Title IX Coordinator will provide the Decision-maker with the Final Investigation Report and investigation file, including the evidence and information obtained through the Investigator-led Questioning meetings.
- The Decision-maker will review the FIR, all appendices, and the investigation file.
- If the record is incomplete, the Decision-maker may direct a re-opening of the investigation, or may direct or conduct any additional inquiry necessary, including informally meeting with the Parties or any witnesses, if needed.
- Upon reviewing the relevant evidence, the Decision-maker may also choose to pose additional questions:
 - To the extent credibility is in dispute and relevant to one or more of the allegations, the Decision-maker may meet individually with the Parties and witnesses to question them in order to assess their credibility. These meetings will be recorded and shared with the Parties.
 - At their discretion, the Decision-maker may also meet with any party or witness to ask additional relevant questions that will aid the Decision-maker in making their findings. These meetings will be recorded and shared with the Parties.
- The Decision-maker will then apply the [preponderance of the evidence standard] to make a determination on each of the allegations and, if applicable, any attendant sanctions.

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- **Timeline.** The Decision-maker's determination process typically takes approximately ten (10) business days, but this timeframe can vary based on a number of factors and variables, The Parties will be notified of any delays.
- **Impact Statements.** Prior to a determination, the Title IX Coordinator will also provide the Parties an opportunity to submit a written impact and/or mitigation statement. The Title IX Coordinator will review these statements upon receipt to determine whether there are any immediate needs, issues, or concerns, but will otherwise hold them until after the Decision-maker has made determinations on the allegations. If there are any findings of a Policy violation, the Decision-maker will request the Impact Statements from the Title IX Coordinator and review them prior to determining sanctions. They will also be exchanged between the Parties at that time.
- If it is later determined that a party or witness intentionally provided false or misleading information, that action could be grounds for re-opening a Resolution Process at any time, and/or referring that information to another process for resolution.

Sanctions

Factors considered by the Decision-maker when determining sanctions and responsive actions 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 it is feasible once a determination is final, 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.

Student Sanctions

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

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- *Reprimand*: A formal statement that the conduct was unacceptable and a warning that further violation of any Carlow University Policy, procedure, or directive will result in more severe sanctions/responsive actions.
- *Required Counseling*: A mandate to meet with and engage in either Carlow University-sponsored or external counseling to better comprehend the misconduct and its effects.
- *Restrictions*: A student may be restricted in their activities, including, but not limited to, being restricted from locations, programs, participation in certain activities or extracurriculars, study abroad, or from holding leadership in student organizations.
- *Probation*: An official sanction for violation of institutional Policy, providing for more severe disciplinary sanctions in the event that the student is found in violation of any institutional Policy, procedure, or directive within a specified period of time. Terms of the probation will be articulated and may include denial of specified social privileges, exclusion from co-curricular activities, exclusion from designated areas of campus, no-contact orders, and/or other measures deemed appropriate.
- *Suspension*: Separation from the institution, or one or more of its facilities, for a definite period of time, typically not to exceed two years, after which the student is eligible to return. Eligibility may be contingent upon satisfaction of specific conditions noted at the time of suspension, on successfully applying for readmission, or upon a general condition that the student is eligible to return if the institution determines it is appropriate to re-enroll/readmit the student. The student is typically required to vacate institutional property within 24 hours of notification of the action, though this deadline may be extended at the discretion of the Title IX Coordinator or other appropriate official. During an institution-wide suspension, the student is banned from institutional property, functions, events, and activities unless they receive prior written approval from an appropriate institutional official. This sanction may be enforced with a trespass action, as necessary. [This sanction may be noted as a Disciplinary Suspension on the student's official academic transcript, per institutional policy and/or state law.]
- *Expulsion*: Permanent separation from the institution. The student is banned from institutional property, and the student's presence at any institution-sponsored activity or event is prohibited. This action may be enforced with a trespass action, as necessary. [This sanction may be noted as Disciplinary Expulsion on the student's official academic transcript, per institutional policy and/or state law.]
- *Withholding Diploma*: Carlow 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 violating Policy.
- *Revocation of Degree*: While very rarely employed, the Carlow University reserves the right to revoke a degree previously awarded from the Carlow University for fraud, misrepresentation, and/or other violation of Carlow University policies, procedures, or directives in obtaining the degree, or for other serious violations committed by a student prior to graduation.

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

Student Group and Organization Sanctions

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

- *Warning:* A formal statement that the conduct was unacceptable and a warning that further violation of any Carlow University Policy, procedure, or directive will result in more severe sanctions/responsive actions.
- *Probation:* An official sanction for violation of institutional Policy, providing for more severe disciplinary sanctions in the event that the group or organization is found in violation of any institutional Policy, procedure, or directive within a specified period of time. Terms of the probation will be articulated and may include denial of specified social and event privileges, denial of Carlow University funds, ineligibility for honors and awards, restrictions on new member recruitment, no-contact orders, and/or other measures deemed appropriate.
- *Suspension:* Termination of student group or organization recognition and/or institutional support for a definite period of time not to exceed two years and/or until specific criteria are met. During the suspension period, a student group or organization may not conduct any formal or informal business or participate in Carlow University-related activities, whether they occur on- or off-campus. Re-recognition is possible but not guaranteed and will only be considered after the end of the suspension period and based on meeting all re-recognition criteria and obtaining clearance from Carlow University.
- *Expulsion:* Permanent termination of student group organization recognition and revocation of the privilege to congregate and conduct business on campus as an organization for any reason.
- *Loss of Privileges:* Restricted from accessing specific Carlow University privileges for a specified period of time.
- *Other Actions:* In addition to or in place of the above sanctions, Carlow University may assign any other sanctions as deemed appropriate.

Employee Sanctions/Responsive/Corrective Actions

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

- *Verbal or Written Warning*
- *Performance Improvement Plan/Management Process*
- *Enhanced Supervision, Observation, or Review*
- *Required Counseling*
- *Required Training or Education*

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- *Probation*
- *Denial of Pay Increase/Pay Grade*
- *Loss of Oversight or Supervisory Responsibility*
- *Demotion*
- *Transfer*
- *Shift or schedule adjustments*
- *Reassignment*
- *Delay of (or referral for delay of) Tenure Track Progress*
- *Assignment to New Supervisor*
- *Restriction of Stipends, Research, and/or Professional Development Resources*
- *Suspension/Administrative Leave with Pay*
- *Suspension/Administrative Leave without Pay*
- *Termination*
- *Other Actions:* In addition to or in place of the above sanctions/responsive actions, Carlow University may assign any other responsive actions as deemed appropriate.

Notice of Outcome

Within ten (10) business days of the conclusion of the Resolution Process, the Title IX Coordinator provides the Parties with a written outcome notification. The outcome notification will specify the finding for each alleged Policy violation, any applicable sanctions that the Carlow University is permitted to share pursuant to state or federal law, and a detailed rationale, written by the Decision-maker, supporting the findings to the extent the Carlow University is permitted to share under federal or state law.

The notification will also detail the Parties' equal rights to appeal, the grounds for appeal, the steps to take to request an appeal, and when the determination is considered final if neither party appeals.

The Title IX Coordinator will provide the Parties with the outcome notification simultaneously, or without significant time delay between notifications. The written outcome notification 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 Carlow University records, or emailed to the Parties' Carlow University-issued or designated email account. Once mailed, emailed, and/or received in person, the outcome notification is presumptively delivered.

Withdrawal or Resignation Before Complaint Resolution

Students

Should a student Respondent decide not to participate in the Resolution Process, the process proceeds absent their participation to a reasonable resolution. If a student Respondent withdraws from Carlow University, the Resolution Process may continue, or Title IX Coordinator may exercise their discretion to dismiss the Complaint. If the Complaint is dismissed, Carlow

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University will still provide reasonable supportive or remedial measures as deemed necessary to address safety and/or remedy any ongoing effects of the alleged harassment, discrimination, and/or retaliation.

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

When a student withdraws or leaves while the process is pending, the student may not return to the Carlow University in any capacity until the Complaint is resolved and any sanctions imposed are satisfied. If the student indicates they will not return, the Title IX Coordinator has discretion to dismiss the Complaint. The Registrar and Office of Admissions will be notified, accordingly.

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

Employees

Should an employee Respondent decide not to participate in the Resolution Process, the process proceeds absent their participation to a reasonable resolution. If an employee Respondent withdraws from Carlow University with unresolved allegations pending, the Resolution Process may continue, or Title IX Coordinator may exercise their discretion to dismiss the Complaint. If the Complaint is dismissed, the Carlow University may still provide reasonable supportive or remedial measures as deemed necessary to address safety and/or remedy any ongoing effects of the alleged discrimination, harassment, and/or retaliation.

When an employee resigns and the Complaint is dismissed, the employee may not return to Carlow University in any capacity. Human resources, the registrar, and admissions will be notified, accordingly, and a note will be placed in the employee's file that they resigned with allegations pending and are not eligible for academic admission or rehire with Carlow University. The records retained by the Title IX Coordinator will reflect that status.

Appeal of the Determination

The Title IX Coordinator will designate a three-member Appeal Panel, or a single Appeal Decision-maker chosen from the Pool, or other trained internal or external individuals, to hear the appeal. No Appeal Decision-maker(s) will have been previously involved in the Resolution Process for the Complaint, including in any supportive measure or dismissal appeal that may have been heard earlier in the process. If a panel is used, a voting Chair of the Appeal Panel will be designated by the Title IX Coordinator.

Appeal Grounds

Appeals are limited to the following grounds:

- 1) A procedural irregularity that would change the outcome
- 2) New evidence that would change the outcome and that was not reasonably available at the time the determination regarding responsibility or dismissal was made
- 3) The Title IX Coordinator, Investigator(s), or Decision-maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent that would change the outcome
- 4) The final determination by the Decision-maker is substantially contrary to the weight of the evidence in the record (applicable to sanctions of suspension, expulsion, or termination, only)
- 5) The sanctions fall outside the range of sanctions designated for this offense, considering the cumulative conduct/disciplinary record of the Respondent (applicable to sanctions of suspension, expulsion, or termination, only)

Request for Appeal

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

The Request for Appeal will be forwarded to the Appeal Panel or Decision-maker for consideration to determine if the request meets the grounds for appeal (a Review for Standing). This is not a review of the merits of the appeal, but solely a determination as to whether the request could reasonably be construed to meet the grounds and is timely filed.

If the Request for Appeal does not provide information that meets the grounds in this Policy, the request will be denied by the Appeal Panel Chair or Decision-maker, and the Parties and their Advisors will be simultaneously 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 Panel Chair or Decision-maker will notify all Parties and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigator(s) and/or the original Decision-maker.

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

The non-appealing party (if any) may also choose to appeal at this time. If so, that Request for Appeal will be reviewed by the Appeal Panel Chair or Decision-maker to determine if it meets the grounds in this Policy and will either be approved or denied. If approved, it will be forwarded to the party who initially requested an appeal, the Title IX Coordinator, and the Investigator(s) and/or original Decision-maker, as necessary, who will submit their responses, if any, within five

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(5) business days. Any such responses will be circulated for review and comment by all Parties. If denied, the Parties will be notified accordingly, in writing.

No party may submit any new Requests for Appeal after this time period. The Appeal Panel Chair or Decision-maker will collect any additional information needed and all documentation regarding the approved appeal grounds, and the subsequent responses will be shared with the Appeal Panel or Decision-maker, who will promptly render a decision.

Appeal Determination Process

In most cases, appeals are confined to a review of the written documentation or record of the original determination and pertinent documentation regarding the specific appeal grounds. The Appeals Panel or Decision-maker will deliberate as soon as is practicable and discuss the merits of the appeal.

Appeal decisions are to be deferential to the original determination, making changes to the finding only when there is clear error and to the sanction(s)/responsive action(s) only if there is a compelling justification to do so. All decisions are made by majority vote and apply the preponderance of the evidence standard.

An appeal is not an opportunity for the Appeal Panel or Decision-makers to substitute their judgment for that of the original Decision-maker merely because they disagree with the finding and/or sanction(s).

The Appeal Panel or Decision-maker may consult with the Title IX Coordinator and/or legal counsel on questions of procedure or rationale, for clarification, if needed. The Title IX Coordinator will maintain documentation of all such consultation.

Appeal Outcome

An appeal may be granted or denied. Appeals that are granted should normally be remanded (or partially remanded) to the original Investigator(s) and/or Decision-maker with corrective instructions for reconsideration. In rare circumstances where an error cannot be cured by the original Investigator(s) and/or Decision-maker or the Title IX Coordinator (as in cases of bias), the Appeal Panel or Decision-maker may order a new investigation and/or a new determination with new Pool members serving in the Investigator and Decision-maker roles.

A Notice of Appeal Outcome letter will be sent to all Parties simultaneously, or without significant time delay between notifications. The Appeal Outcome will specify the finding on each ground for appeal, any specific instructions for remand or reconsideration, any sanction(s) that may result which the Carlow University is permitted to share according to federal or state law, and the rationale supporting the essential findings to the extent the Carlow University is permitted to share under federal or state law.

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Written notification 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' Carlow University-issued email or otherwise approved account. Once mailed, emailed, and/or received in person, the Appeal Outcome will be presumptively delivered.

Once an appeal is decided, the outcome is final and constitutes the Final Determination; further appeals are not permitted, even if a decision or sanction is changed on remand (except in the case of a new determination). When appeals result in no change to the finding or sanction, that decision is final. When an appeal results in a new finding or sanction, that finding or sanction can be appealed one final time on the grounds listed above and in accordance with these procedures.

If a remand results in a new determination that is different from the appealed determination, that new determination can be appealed, once, on any of the five available appeal grounds.

Sanction Status During the Appeal

Any sanctions imposed as a result of the determination are stayed (i.e., not implemented) during the appeal process, and supportive measures may be maintained or reinstated until the appeal determination is made.

If any of the sanctions are to be implemented immediately post-determination, but pre-appeal, then the emergency removal procedures (detailed above) for a "show cause" meeting on the justification for doing so must be permitted within two (2) business days of implementation.

Long-Term Remedies/Other Actions

Following the conclusion of the Resolution Process, and in addition to any sanctions implemented or Informal Resolution terms, the Title IX Coordinator may implement additional long-term remedies or actions with respect to the Parties and/or the Carlow University community that are intended to stop the discrimination, harassment, and/or retaliation, remedy the effects, and prevent recurrence.

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

- Referral to counseling and health services
- Referral to the Employee Assistance Program
- Course and registration adjustments, such as retroactive withdrawals
- Education to the individual and/or the community
- Permanent alteration of housing assignments
- Permanent alteration of work arrangements for employees
- Provision of campus safety escorts
- Climate surveys
- Policy modification and/or training
- Provision of transportation assistance

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- Implementation of long-term contact limitations between the Parties
- Implementation of adjustments to academic deadlines, course schedules, etc.

At the discretion of the Title IX Coordinator, certain long-term supportive 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 Carlow University owes the Respondent to ensure no effective denial of educational access.

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

Failure to Comply with Sanctions, Responsive Actions, and/or Informal Resolution Terms

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

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 Carlow University.

Supervisors are expected to enforce the completion of sanctions/responsive actions for their employees.

A suspension imposed for non-compliance with sanctions will only be lifted when compliance is achieved to the Title IX Coordinator's satisfaction.

Recordkeeping

For a period of at least seven (7) years following the conclusion of the Resolution Process, Carlow University will maintain records of:

- 1) Each discrimination, harassment, and retaliation resolution process, including any Final Determination regarding responsibility or appeal, and any audio or audiovisual recording or transcript required under federal regulation
- 2) Any disciplinary sanctions imposed on the Respondent
- 3) Any supportive measures provided to the Parties and any remedies provided to the Complainant or the community designed to restore or preserve equal access to the Carlow 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 provide training to the Title IX Coordinator, Title IX Coordinator and designees, Investigators, Decision-makers, Appeal Decision-makers, Informal

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- Resolution Facilitator, and any person who is responsible for implementing the Carlow University's Resolution Process, or who has the authority to modify or terminate supportive measures. Carlow University will make these training materials available for review upon request.
- 7) All materials used to train all employees consistent with the requirements in the Title IX Regulations.

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

Accommodations and Support During the Resolution Process

Disability Accommodations

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

Anyone needing such accommodations or support should contact the Title IX Coordinator, who will work with disability support colleagues as appropriate to review the request and, in consultation with the person requesting the accommodation, determine which accommodations are appropriate and necessary for full process participation.

Other Support

Carlow University will also address reasonable requests for support for the Parties and witnesses, including:

- Language services/Interpreters
- Access and training regarding use of technology throughout the Resolution Process
- Other support as deemed reasonable and necessary to facilitate participation in the Resolution Process

Revision of these Procedures

These procedures succeed any previous procedures addressing discrimination, harassment, and retaliation for incidents occurring on or after August 1, 2024. The Title IX Coordinator will regularly review and update these procedures. Carlow University reserves the right to make changes to this document as necessary, and once those changes are posted online, they are in effect.

If governing 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 governing laws or regulations or court holdings.

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

These procedures are effective August 1, 2024.

APPENDIX A: DEFINITIONS

The following definitions apply to the Nondiscrimination Policies and Procedures:

- **Advisor.** Any person chosen by a party, or appointed by the institution, may accompany the party to all meetings related to the Resolution Process and advise the party on that process.
- **Title IX Coordinator.** The person with primary responsibility for overseeing and enforcing the Nondiscrimination Policy and Procedures. As used in these policies and procedures, the “Title IX Coordinator” also includes their designee(s).
- **Appeal Decision-maker.** The person or panel who accepts or rejects a submitted appeal request, determines whether any of the grounds for appeal are met, and directs responsive action(s), accordingly.
- **Complainant.** A student or employee who is alleged to have been subjected to conduct that could constitute discrimination, harassment, or retaliation under the Policy; or a person other than a student or employee who is alleged to have been subjected to conduct that could constitute discrimination or harassment or under the Policy and who was participating or attempting to participate in the Carlow University’s education program or activity at the time of the alleged discrimination, harassment or retaliation.
- **Complaint.** An oral or written request to Carlow University that can objectively be understood as a request for Carlow University to investigate and make a determination about the alleged Policy violation(s).
- **Confidential Employee.**
 - An employee whose communications are privileged or confidential under federal or state law. The employee’s confidential status, for purposes of this definition, is only with respect to information received while the employee is functioning within the scope of their duties to which privilege or confidentiality applies; or
 - An employee whom Carlow University has designated as confidential under this Policy for the purpose of providing services to persons related to discrimination,

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harassment, or retaliation. If the employee also has a duty not associated with providing those services, the employee's confidential status only applies with respect to information received about discrimination, harassment, or retaliation in connection with providing those services; or

- An employee who is conducting an Institutional Review Board-approved human-subjects research study designed to gather information about discrimination, harassment, or retaliation. The employee's confidential status only applies with respect to information received while conducting the study.
- **Day.** A business day when Carlow University is in normal operation. All references in the Policy to days refer to business days unless specifically noted as calendar days.
- **Decision-maker.** The person or panel who hears evidence, determines relevance, and makes the Final Determination of whether Policy has been violated and/or assigns sanctions.
- **Education Program or Activity.** Locations, events, or circumstances where the Carlow University exercises substantial control over the context in which the discrimination, harassment, and/or retaliation occurs and also includes any building owned or controlled by a student organization that the Carlow University officially recognizes.
- **Employee.** A person employed by Carlow University either full- or part-time, including student employees when acting within the scope of their employment.
- **Final Determination.** A conclusion by the standard of proof that the alleged conduct did or did not violate Policy.
- **Finding.** A conclusion by the standard of proof that the conduct did or did not occur as alleged (as in a "finding of fact").
- **Informal Resolution.** A resolution agreed to by the Parties and approved by the Title IX Coordinator that occurs prior to a Final Determination in the Resolution Process.
- **Investigation Report.** The Investigator's summary of all relevant evidence gathered during the investigation. Variations include the Draft Investigation Report and the Final Investigation Report.
- **Investigator.** The person(s) authorized by Carlow University to gather facts about an alleged violation of this Policy, assess relevance and credibility, synthesize the evidence, and compile this information into an Investigation Report.
- **Knowledge.** When Carlow University receives Notice of conduct that reasonably may constitute harassment, discrimination, or retaliation in its Education Program or Activity.

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- **Mandated Reporter.** A Carlow University employee who is obligated by Policy to share Knowledge, Notice, and/or reports of discrimination, harassment, and/or retaliation with the Title IX Coordinator.^{21,22}
- **Nondiscrimination Team.** The Title IX Coordinator, any deputy coordinators, and any member of the [Resolution Process Pool](#).
- **Notice.** When an employee, student, or third party informs the Title IX Coordinator of the alleged occurrence of discriminatory, harassing, and/or retaliatory conduct.
- **Parties.** The Complainant(s) and Respondent(s), collectively.
- **Pregnancy or Related Conditions.** Pregnancy, childbirth, termination of pregnancy, or lactation, medical conditions related thereto, or recovery therefrom.
- **Protected Characteristic.** Any characteristic for which a person is afforded protection against discrimination and harassment by law or Carlow University Policy.
- **Relevant Evidence.** Evidence that may aid a Decision-maker in determining whether the alleged discrimination, harassment, or retaliation occurred, or in determining the credibility of the Parties or witnesses.
- **Remedies.** Typically, post-resolution actions directed to the Complainant and/or the community as mechanisms to address safety, prevent recurrence, and restore or preserve equal access to the Carlow University's Education Program and Activity.
- **Resolution Process.** The investigation and resolution of allegations of prohibited conduct under this Policy, including Informal Resolution, Administrative Resolution, and/or Hearing Resolution.
- **Respondent.** A person who is alleged to have engaged in conduct that could constitute discrimination based on a protected characteristic, harassment, or retaliation for engaging in a protected activity under this Policy.
- **Sanction.** A consequence imposed on a Respondent who is found to have violated this Policy.
- **Sex.** Sex assigned at birth, sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.
- **Student.** Any person who has gained admission.
- **Title IX Coordinator.** At least one official designated by Carlow University to ensure ultimate oversight of compliance with Title IX and the Carlow University's Title IX program. References to the Coordinator throughout the Policy may also encompass a designee of the Coordinator for specific tasks.

²¹ Not to be confused with those mandated by state law to report child abuse, elder abuse, and/or abuse of persons with disabilities to appropriate officials, though these responsibilities may overlap with those who have mandated reporting responsibility under this Policy.

²² The Title IX Coordinator designated to receive information from Mandated Reporters may vary depending upon the type of alleged discrimination, harassment, or retaliation (e.g., on the basis of sex, on the basis of race, on the basis of disability).

APPENDIX B: HEARING RESOLUTION PROCESS

The Hearing Resolution Process provided in this appendix is for post-secondary institutions that are required to use or choose to offer a live hearing resolution option. To adopt this section, replace [Procedural Section 22](#), above, with the text below.

Live Hearing Requirements

The following provisions apply to a live hearing:

- **Hearing Venue Options and Recordings.** The live hearing may occur in person or via video technology. The Decision-maker and Parties must be able to simultaneously see and hear a party or witness while that person is speaking. Both options are considered fair and equitable. Alternative arrangements may also be made at the Title IX Coordinator's discretion.
 - The Parties may make a request to the Title IX Coordinator that the hearing occur in person or via video technology, but they must do so at least three (3) business days prior to the hearing. The Title IX Coordinator retains discretion to determine whether the hearing will occur in person or via video technology.
 - All hearings will be recorded, and Parties may request a copy of the recording from the Title IX Coordinator following the live hearing.
 - No unauthorized recordings are permitted.
- **Hearing Participants.** Persons who may be present for a hearing include the Decision-maker(s), hearing facilitator, Investigator(s), the Parties and their Advisors, anyone providing authorized accommodations, interpretation, and/or assistive services, and anyone else deemed necessary by the Decision-maker. Witnesses are present only during their portion of the testimony.
- **Advisors.** The Parties may have the assistance of an Advisor of their choosing at the hearing or can request that Carlow University appoint a trained Advisor for them. Appointed Advisors are not attorneys. If a party wishes to have an attorney as their Advisor, they must locate and pay for that attorney themselves. [If a party decides not to have an Advisor, they will forfeit the option of asking questions at the hearing].
 - During the pre-hearing meeting and live hearing, Parties may only be accompanied by their Advisor. No other persons (e.g., additional support persons, advisors, friends, family) may accompany, attend, or listen in on the hearing unless explicitly authorized by the Title IX Coordinator, with each party being provided the same opportunity.
 - Parties and Advisors are permitted to have their phones and a laptop or tablet, but these should only be used during the hearing in a matter consistent with Policy.
 - [During the hearing, all questions that a party wishes to ask must be posed by the Advisor, not the Parties. **OR**
 - All questions during the hearing will be asked by the Decision-maker. Parties and Advisors may suggest questions to be posed by the Decision-maker during the pre-

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- hearing meetings or by submission of written questions during the hearing. The method of submitting questions to the Decision-maker will be specified by the Decision-maker during the pre-hearing meetings.]
- [If the party does not have an Advisor, the Title IX Coordinator will provide the party with an Advisor for the purpose of Advisor-conducted questioning.]
- **Impact Statements.** Each party may submit an impact and/or mitigation statement to the Title IX Coordinator that the Decision-maker will review during any sanction determination.
 - Upon receipt of an impact and/or mitigation statement, the Title IX Coordinator will review the impact/mitigation statement to determine whether any immediate needs exist.
 - The Title IX Coordinator will only provide the impact statements to the Decision-maker if the Decision-maker determines that the Policy has been violated. When the Title IX Coordinator shares the impact statements with the Decision-maker, they will also be shared with the Parties.
- **Disability Accommodations and Other Assistance.** Parties should contact the Title IX Coordinator at least three (3) business days prior to the hearing to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing, if possible.
- **Conflicts of Interest or Bias.** The Decision-maker must not have a bias for or against complainants or respondents generally or the individual Complainant or Respondent in particular.
 - The Decision-maker must recuse themselves if such bias or conflict of interest exists.
 - If the Decision-maker believes there is possible conflict of interest or bias, they will consult with the Title IX Coordinator about possible recusal or removal.
 - The Parties may raise challenges that the Decision-maker is biased or has a conflict of interest. The Parties must raise challenges with the Title IX Coordinator within two (2) business days of receiving the hearing notice.
 - The Title IX Coordinator will only remove and replace a Decision-maker in situations of demonstrated bias or conflicts of interest. Perceptions of bias or conflict are not sufficient to cause removal.
 - If a Decision-maker recuses themselves as the result of a conflict of interest or bias, or is removed, the Title IX Coordinator will promptly appoint a new Decision-maker who does not have a conflict of interest or bias and notify the Parties accordingly.
- **Evidence Provided to Decision-maker and Parties.**
 - The Decision-maker will be provided electronic copies of the Final Investigation Report and all relevant but not impermissible evidence, including the names of all Parties, witnesses, and Advisors, at least seven (7) business days in advance of the hearing.

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- The Parties will be provided with electronic copies of all the materials provided to the Decision-maker as part of the hearing notice, unless those materials have already been provided.²³

Hearing Notice

The Title IX Coordinator will send the Parties a Notice of Hearing with sufficient time for the Parties to prepare for the hearing, typically at least seven (7) business days prior to the hearing. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered. The hearing notice includes:

- 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.
- A description of any technology that will be used to facilitate the hearing.
- Relevant information regarding hearing logistics, pre-hearing meetings, the Final Investigation Report, the Parties and witnesses participating in the hearing, the identity of the Decision-maker, details related to questioning, the role of Advisors, impact/mitigation statements, and how to request disability accommodations or other assistance.

Witness Participation

Student witnesses are encouraged to participate in, and make themselves reasonably available for, the hearing. Employee witnesses are expected to participate in, and make themselves reasonably available for, the hearing. Witnesses may participate in-person or via video technology that allows the Decision-maker and the Parties to see and hear the witness while that person is speaking. Witnesses are not permitted to be accompanied by an advisor without express permission of the Title IX Coordinator. At the discretion of the Decision-maker, a witness may join by phone if no other reasonable alternative is available.

If any party or witness does not appear at the scheduled hearing, the hearing may be held in their absence. For compelling reasons, the Title IX Coordinator may reschedule 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, including during the summer, as needed, to meet the Carlow University's resolution timeline and ensure a prompt resolution. Employees, including Parties and witnesses, who do not have 12-month contracts are still expected to participate in Resolution Processes that occur during months between contracts.

²³ Hard-copy materials may be provided upon request to the Title IX Coordinator. The Final Investigation Report and relevant evidence may be shared using electronic means that preclude downloading, forwarding, or otherwise sharing.

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The Title IX Coordinator will notify all witnesses of their requested participation in the hearing at least five (5) business days prior to the hearing. Witnesses will be present for the hearing only during their testimony.

Any witness scheduled to participate in the hearing must have been first interviewed by the Investigator(s), unless:

- All Parties and the Decision-maker assent to the new witness's participation in the hearing without remanding the complaint back to the investigator, and
- The Decision-maker deems the evidence presented by the new witness to be relevant, not impermissible, and not information already established in the record, and
- The witness's late involvement was not the result of bad faith by the witness, the Parties, or others.

If the above criteria are not met, but the witness's evidence is deemed relevant, not impermissible, and not duplicative, the Decision-maker may, at their discretion, engage in any of the following actions:

- Delay the hearing.
- Provide the Parties at least five (5) business days to review the relevant portions of the new witness's statements, if such statements are submitted.
- Remand the Complaint back to the Investigator for further investigation or verification.
- Allow the Parties to review and comment on the testimony of the new witness.

If the evidence is deemed not relevant or impermissible, the Decision-maker may proceed with the hearing absent the new witness's participation.

Pre-Hearing Meetings

The Decision-maker will offer to convene a pre-hearing meeting(s) with the Parties and their Advisors and invite them to submit the questions or topics they wish to ask or discuss at the hearing. This allows the Decision-maker to consider their relevance ahead of time to avoid any improper evidentiary introduction in the hearing or to provide recommendations for more appropriate phrasing.

However, this advance review opportunity does not preclude the Parties from submitting a question at the hearing for the first time or asking for a reconsideration on a Decision-maker's pre-hearing decision based on any new information or testimony offered at the hearing. The Decision-maker will document and share their rationale for any evidence or question exclusion or inclusion, if any, at a pre-hearing meeting with each party.

The Decision-maker will work with the Parties to finalize a witness list for the hearing, and the Title IX Coordinator will notify any witnesses of the hearing's logistics. The Decision-maker, **only** with the agreement of all Parties, may decide in advance of the hearing that certain witnesses do

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not need to be present if their testimony can be adequately summarized by the Investigator(s) in the Final Investigation Report or during the hearing, and their presence is not essential to assess their credibility.

Pre-hearing meeting(s) will not be recorded. The pre-hearing meetings will typically be conducted as separate meetings with each party/Advisor, and can be done remotely, or as a written communication exchange. The Decision-maker will work with the Parties to establish the format and timing of the meetings and will circulate a summary of any rulings made to ensure all Parties and Advisors are aware.

Hearing Procedures

Evidentiary Considerations

The Parties must provide all evidence to the Investigator(s) prior to completing the Final Investigation Report. Evidence offered after that time will be evaluated by the Decision-maker for relevance. If deemed relevant and not impermissible, the Parties and Decision-maker must agree to admit it into the record. If the evidence is deemed not relevant or impermissible, the Decision-maker may proceed with the hearing absent the new evidence.

The new relevant evidence will be admitted to the record if:

- All Parties and the Decision-maker assent to the new evidence being included in the hearing without remanding the Complaint back to the investigator, and
- The evidence is not duplicative of evidence already in the record, and
- It is not impermissible, and
- The new evidence was either not reasonably available prior to the conclusion of the Final Investigation Report, or the failure to provide it in a timely manner was not the result of bad faith by the Parties, witnesses, or others.

If the above criteria are not met, but the evidence is deemed materially relevant and not duplicative, the Decision-maker may, at their discretion, engage in any of the following actions:

- Delay the hearing.
- Provide the Parties with at least five (5) business days to review the relevant evidence.
- Remand the Complaint back to the Investigator for further investigation or analysis.
- Allow the Parties to review and comment on the new evidence.

If the evidence is deemed not relevant or impermissible, the Decision-maker may proceed with the hearing without allowing the new evidence.

Collateral Misconduct

The Decision-maker has the authority to hear and make determinations on all allegations of discrimination, harassment, retaliation, and Other Prohibited Behavior under the Policy and may also hear and make determinations on any additional alleged collateral misconduct that occurred

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in concert with the discrimination, harassment, retaliation, or Other Prohibited Behavior, even though those collateral allegations may not specifically fall within the Policy.

Joint Hearings

In Complaints involving more than one Respondent and/or involving more than one Complainant accusing the same person of substantially similar conduct, the default procedure will be to hear the allegations jointly.

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

Introductions and Hearing Procedure Explanation

The Decision-maker will explain the hearing procedures and introduce the participants. The Decision-maker will answer any procedural questions prior to and as they arise throughout the hearing.

Investigator Presentation of Final Investigation Report

The Investigator(s) will present a summary of the Final Investigation Report, including a review of the facts that are contested and those that are not. The Investigator may be questioned first by the Decision-maker and then by the Parties. The Investigator may attend the duration of the hearing or be excused after their testimony at the Decision-maker's discretion.

Testimony and Questioning

The Parties and witnesses may provide relevant information in turn, beginning with the Complainant's opening statement, then the Respondent's, and then questioning in the order determined by the Decision-maker. The Decision-maker will facilitate questioning of the Parties and witnesses first by the Decision-maker and then by the Parties through the Decision-maker **OR** through their Advisors.

All questions must be directed toward and asked through the Decision-maker and are subject to a relevance determination before they are asked. The Decision-maker will determine the method by which the Parties will submit their questions to the Decision-maker for their review and, if approved, to be posed. Questions that the Parties wish to have posed can be questions for that party themselves, another party, or witnesses.

The Decision-maker will explain any decision to exclude a question as not relevant, or to reframe it for relevance.

The Decision-maker will limit or disallow questions they deem not appropriate on the basis that they are irrelevant, unduly repetitious (and thus irrelevant), seek or pertain to impermissible evidence, or are abusive. The Decision-maker has final say on all questions and determinations

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of relevance and appropriateness. The Decision-maker may consult with legal counsel on any questions of admissibility.

The Decision-maker then poses the questions deemed relevant, not impermissible, and appropriate to the party and/or witness.

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

The Decision-maker will allow witnesses who have relevant and not impermissible information to appear at a portion of the hearing to respond to specific questions from the Decision-maker and the Parties, and the witnesses will then be excused.

Refusal to Submit to Questioning and Inferences

Any party or student 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. Employee witnesses are required to participate in the hearing if they are reasonably available. The Decision-maker can only rely on the available relevant and not impermissible evidence in making the ultimate determination of responsibility. The Decision-maker may not draw any inference **solely** from a party's or witness's absence from the hearing or refusal to answer any or all questions.

An Advisor may not be called as a witness at a hearing to testify to what their advisee has told them during their role as an Advisor unless the party being advised consents to that information being shared.

Hearing Recordings

The Carlow University records hearings (but not deliberations) for purposes of review in the event of an appeal. No unauthorized audio or video recording of any kind is permitted during the hearing.

The Decision-maker, the Parties, their Advisors, Appeal Decision-makers, and other appropriate Carlow University officials will be permitted to review the recording or review a transcript of the recording upon request to the Title IX Coordinator. No unauthorized disclosure, including sharing, copying, or distribution of the recording or transcript, is permitted.

Deliberation and Determination

After closing statements from the Parties, the Decision-maker will deliberate in closed session to determine whether the Respondent is responsible for the alleged Policy violation(s) based on the standard of proof. If a panel is used, a simple majority vote is required to determine the finding. Deliberations are not recorded.

When there is a finding of responsibility for one or more of the allegations, the Decision-maker may then consider any previously submitted impact and/or mitigation statement(s) provided by the Parties in determining appropriate sanction(s). The Title IX Coordinator will ensure that any submitted statements are exchanged between the Parties if they are viewed by the Decision-maker. Impact/mitigation statements do not influence the finding, they only potentially influence the sanctions.

The Decision-maker will then prepare and provide the Title IX Coordinator with a written outcome letter detailing all findings and final determinations, the rationale(s) explaining the decision(s), the relevant and not impermissible evidence used in support of the determination(s), the evidence not relied upon in the determination(s), any credibility assessments, and any sanction(s) and rationales explaining the sanction(s).

This statement is usually five to fifteen (5-15) pages in length and is typically submitted to the Title IX Coordinator within ten (10) business days from the conclusion of the hearing, unless the Title IX Coordinator grants an extension. The Title IX Coordinator will notify the Parties of any extension.

APPENDIX D: STATEMENT OF THE PARTIES' RIGHTS

Under this Policy and procedures, the Parties have the right to:

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- An equitable investigation and resolution of all credible allegations of prohibited discrimination, harassment, retaliation, and Other Prohibited Behaviors, when reported in good faith to Carlow University officials.
- Timely written notice of all alleged violations, including the identity of the Parties involved (if known), the specific misconduct being alleged, the date and location of the alleged misconduct (if known), the implicated Policies and procedures, and possible sanctions.
- Timely written notice of any material adjustments to the allegations (e.g., additional incidents or allegations, additional Complainants) by updating the Notice of Investigation and Allegation(s) (NOIA) as needed to clarify potentially implicated Policy violations.
- Be informed in advance of any Carlow University public release of information regarding the allegation(s) or underlying incident(s), whenever possible.
- Have all personally identifiable information protected from Carlow University's release to the public without consent, except to the extent permitted by law.
- Be treated with respect by Carlow University officials.
- Have Carlow University Policy and these procedures followed without material deviation.
- Voluntarily agree to resolve allegations under this Policy through Informal Resolution without Carlow University pressure, if Informal Resolution is approved by the Title IX Coordinator.
- Not be discouraged by Carlow University officials from reporting discrimination, harassment, retaliation, and Other Prohibited Behavior to both on-campus and off-campus authorities.
- Be informed of options to notify proper law enforcement authorities, including on-campus and local police, and the option(s) to be assisted by Carlow University in notifying such authorities, if the party chooses. This also includes the right to not be pressured to report.
- Have allegations of violations of this Policy responded to promptly and with sensitivity by Carlow University law enforcement and/or other Carlow University officials.
- Be informed of available supportive measures, such as counseling, advocacy, health care, student financial aid, visa and immigration assistance, and/or other services, both on-campus and in the community.
- A Carlow University-implemented no-contact order or a no-trespass order against a non-affiliated third party when a person has engaged in or threatens to engage in stalking, threatening, harassing, or other improper conduct.
- Be informed of available assistance in changing academic, living, and/or employment situations after an alleged incident of discrimination, harassment, and/or retaliation, if such changes are reasonably available. No formal report, or investigation, either institutional or criminal, needs to occur for this option to be available. Such actions may include, but are not limited to:
 - Relocating an on-campus student's housing to a different on-campus location

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- Assistance from Carlow University staff in completing the relocation
 - Changing an employee's work environment (e.g., reporting structure, office/workspace relocation)
 - Transportation assistance
 - Visa/immigration assistance
 - Arranging to dissolve a housing contract and provide a pro-rated refund
 - Rescheduling or adjusting an exam, paper, and/or assignment
 - 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
-
- Have Carlow University maintain supportive measures for as long as necessary and for supportive measures to remain confidential, provided confidentiality does not impair Carlow University's ability to provide the supportive measures.
 - Receive sufficiently advanced written notice of any Carlow University meetings or interviews involving another party, when possible.
 - Identify and have the Investigator(s) and/or Decision-maker question relevant available witnesses, including expert witnesses.
 - Provide the Investigator(s)/Decision-maker with a list of questions that, if deemed relevant and permissible by the Investigator(s)/Decision-maker, may be asked of any party or witness.
 - Have Complainant's inadmissible sexual interests/prior sexual history or any Party's irrelevant character evidence excluded by the Decision-maker.
 - Access the relevant evidence obtained and respond to that evidence.
 - A fair opportunity to provide the Investigator(s) with their account of the alleged misconduct and have that account be on the record.
 - Receive a copy of all relevant and permissible evidence obtained during the investigation, subject to privacy limitations imposed by federal and state law and be given ten (10) business days to review and comment on the evidence.
 - The right to receive a copy of the Final Investigation Report, including all factual, Policy, and/or credibility analyses performed, and to have at least seven (7) business days to review the report prior to the determination.
 - Be informed of the names of all witnesses whose information will be used to make a finding, in advance of that finding, when relevant.
 - Regular status updates on the investigation and/or Resolution Process.
 - Have reports of alleged Policy violations addressed by Resolution Process Pool members who have received relevant annual training as required by law.
 - A Decision-making panel that is not single-sex in its composition, if a panel is used.
 - Preservation of confidentiality/privacy, to the extent possible and permitted by law.
 - Meetings, interviews, and/or hearings that are closed to the public.

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- Petition that any Carlow University representative in the process be recused on the basis of disqualifying bias and/or conflict of interest.
- Be able to select an Advisor of their choice to accompany and assist the party in all meetings and/or interviews associated with the Resolution Process.
- Apply the appropriate standard of proof, [preponderance of the evidence **OR** clear and convincing evidence], to make a Finding and Final Determination after an objective evaluation of all relevant and permissible evidence.
- Be present, including presence via remote technology, during all testimony given and evidence presented during any hearing.
- Have an impact and/or mitigation statement considered by the Decision-maker following a determination of responsibility for any allegation, but prior to sanctioning.
- Be promptly informed of the Resolution Process finding(s) and sanction(s) (if any) and be given a detailed rationale of the decision (including an explanation of how credibility was assessed) in a written outcome letter delivered to the Parties simultaneously (without undue delay).
- Be informed in writing of when a Carlow University decision is considered final and any changes to the Final Determination or sanction(s) that occur post outcome letter delivery.
- Be informed of the opportunity to appeal the Resolution Process finding(s) and sanction(s), and the procedures for doing so in accordance with the Carlow University's grounds for appeal.
- A fundamentally fair resolution as defined in these procedures.

APPENDIX E: PRIVACY, PRIVILEGE, AND CONFIDENTIALITY

For the purpose of this Policy, the terms privacy, confidentiality, and privilege have distinct meanings.

- **Privacy.** Means that information related to a complaint will be shared with a limited number of Carlow University employees who “need to know” in order to assist in providing supportive measures or evaluating, investigating, or resolving the Complaint. All employees who are involved in Carlow University’s response to Notice under this Policy receive specific training and guidance about sharing and safeguarding private information in accordance with federal and state law.
- **Confidentiality.** Exists in the context of laws or professional ethics (including Title IX) that protect certain relationships, including clinical care, mental health providers, and counselors. Confidentiality also applies to those designated by Carlow University as Confidential Employees for purposes of reports under this Policy, regardless of legal or ethical protections. When a Complainant shares information with a Confidential Employee, the Confidential Employee does not need to disclose that information to the Title IX Coordinator. The Confidential Resource will, however, provide the Complainant with the Title IX Coordinator’s contact information, assist the Complainant in reporting, if desired, and provide them with information on how the Title IX can assist them. With respect to Confidential Employees, information may be disclosed when: (1) the reporting person gives written consent for its disclosure; (2) there is a concern that the person will likely cause serious physical harm to self or others; or (3) the information concerns conduct involving suspected abuse or neglect of a minor under the age of 18, elders, or persons with disabilities. Non-identifiable information may be shared by Confidential Employees for statistical tracking purposes as required by the Clery Act/Violence Against Women Act (VAWA). Other information may be shared as required by law.
- **Privilege.** Exists in the context of laws that protect certain relationships, including attorneys, spouses, and clergy. Privilege is maintained by a provider unless a court order release or the holder of the privilege (e.g., a client, spouse, parishioner) waives the protections of the privilege. Carlow University treats employees who have the ability to have privileged communications as Confidential Employees.

Carlow University reserves the right to determine which Carlow University officials have a legitimate educational interest in being informed about student-related incidents that fall under this Policy, pursuant to FERPA. Only a small group of officials who need to know will typically be told about the Complaint. Information will be shared as necessary with Investigators, Decision-makers, Appeal Decision-makers, witnesses, the Parties, and the Parties’ Advisors. The circle of people with this knowledge will be kept as tight as possible to preserve the Parties’ rights and privacy, and release is governed by the institution’s unauthorized disclosure policy.