

# DeSales University

## Title IX & Non-Discrimination Policy

DeSales University is committed to providing equal opportunity in the admission of students, the administration of educational programs, and activities for employees and applicants for employment, without discrimination based on race, national or ethnic origin, religion, sex, sexual orientation, familial status, gender identity, age, pregnancy, veteran status, or disability, while reserving the right where permitted by law to take action designed to promote its Catholic, Salesian mission. Notwithstanding the University's non-discrimination policy, in making employment decisions, in some instances the University may prefer or require some candidates to be members of the Roman Catholic Church or of the Oblates of St. Francis de Sales.

The University adheres to all applicable federal, state, and local laws prohibiting discrimination in employment and education.

As a recipient of federal financial assistance, DeSales is required by Title IX of the Education Amendments of 1972 to ensure that its education programs and activities do not discriminate on the basis of sex/gender. The University also prohibits retaliation against any person who opposes discrimination or participates in an investigation or complaint process. **Part I** of this policy details the University's obligations and procedures related to Title IX.

**Part II** of this policy prohibits, and outlines the process for responding to, harassment and discrimination based on all other protected classes, including conduct based on sex/gender that falls outside statutorily defined purview of Title IX.

Any person may report discriminatory harassment, sexual harassment, or sexual violence (whether or not the person reporting is the person alleged to have experienced the conduct), in person, by mail, by telephone, to one of the contacts below, or to other DeSales University employees as outlined in Part I § IV and Part II § VI.

**Title IX Coordinator**

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# Part I: Title IX

## I. Policy Scope and Application

To ensure compliance with federal, state, and local laws and regulations, and to affirm its commitment to fairness and equity in all aspects of its educational programs and activities, DeSales University has developed these internal policies and procedures that provide a prompt, fair, and impartial process for those involved in an allegation of conduct prohibited by Title IX and for allegations of retaliation. DeSales University values and upholds the equal dignity of all members of its community and strives to balance the rights of the parties in the grievance process during what is often a difficult time for all those involved.

In 2020, the U.S. Department of Education promulgated new regulations under Title IX of the Education Amendments Act of 1972. These regulations establish definitions of conduct prohibited by Title IX and limit the scope of Title IX misconduct to, among other things, conduct that occurs within the United States and conduct that occurs within the University's education program or activities (concepts further defined below).<sup>1</sup>

Part I of this policy addresses the definitions and procedures governing misconduct as defined by Title IX. Alleged harassment and discrimination that falls outside the scope of Title IX will be addressed under the procedures required by law as outlined in Part II below.

All University proceedings under this policy are conducted in compliance with the requirements of Title IX, the Clery Act, as amended by VAWA, the Family Educational Rights and Privacy Act (FERPA), local, state, and federal law, as applicable. No information shall be released from such proceedings except as required or permitted by law and University policy.

This policy will be applied in a manner that is consistent with both law and the University's principles of academic freedom. 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. Speech or conduct legitimately protected by academic freedom will not be considered a violation of DeSales University policy, though supportive measures will be offered to those impacted.

### A. Assurances and Expectations for the Parties Under This Policy

In any report, complaint, investigation or resolution under this policy, both a Complainant and a Respondent can expect:

- a prompt and equitable response;

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<sup>1</sup> In 2024, the U.S. Department of Education promulgated additional Title IX regulations which are currently enjoined nationwide.

- to receive supportive measures that may be reasonably available and necessary for protection and support;
- information about how to access confidential resources on and off campus and other forms of support available through the University and in the community;
- written notice of the investigation into alleged conduct, potential policy violations at issue, and details about the process;
- (for Respondents in the case of a report) to receive information about the report to the extent necessary to provide and effectuate supportive measures;
- an adequate, reliable, thorough, and impartial process conducted by individuals free from conflict of interest and bias;
- a process that includes the presumption that the Respondent is not responsible for a policy violation unless and until a determination regarding responsibility is made at the conclusion of the process;
- the opportunity to be accompanied by an advisor of choice at all meetings and proceedings related to the report and/or complaint;
- timely notice of any meeting at which the party's presence is required, with sufficient time to prepare for the meeting;
- agency and autonomy to decline to participate in an investigation or resolution under the policy, although the University may choose to continue the process even if the Complainant and/or Respondent does not participate;
- to identify witnesses, submit suggested questions in writing during the investigation, and provide evidence during the investigation and resolution;
- timely and equal access to any information that is used in the investigation and resolution;
- prompt remedial action if conduct prohibited by this policy is determined to have occurred;
- regular communication about the progress of the process and of the resolution;
- timely written notice of the outcome, required remedies, and issued sanctions and rationale;
- the opportunity to appeal the outcome (determination as to responsibility) and sanction;
- to be free from retaliation;
- access to interpreters and/or translators;
- reasonable accommodations for individuals with disabilities as established by the Americans with Disabilities Act and/or Section 504 of the Rehabilitation Act; and,
- to be free from University-imposed orders restricting parties from discussing the case with others (this does not prohibit the University from issuing no-contact orders or requiring employees to abide by privacy policies or confidentiality laws).

## B. Title IX Coordinator and Deputy Coordinators

The Title IX Coordinator oversees the University's efforts to comply with Title IX and address concerns relating to discrimination and harassment on the basis of sex, gender, gender identity, pregnancy or related conditions, and sexual orientation. This includes conduct within the scope of Title IX and other sex discrimination or sexual misconduct, as well as retaliation against individuals in connection with allegations or proceedings related to this policy.

Any person (whether or not the reporting party is the person who experienced the alleged misconduct) may report conduct prohibited by this policy, including conduct within the scope of Title IX and other sexual misconduct described herein, at any time, including non-business hours, by contacting the Title IX Coordinator or the Deputy Title IX Coordinator.

### **Title IX Coordinator**

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## C. Glossary of Terms

**Actual knowledge:** Actual knowledge is notice of conduct that may constitute a violation of this policy provided to the University's Title IX or Deputy Title IX Coordinator(s). It also includes the following University officials who have authority to institute corrective measures on behalf of DeSales:

- President
- Cabinet Level Officials
- Academic Deans
- Associate Vice President for Human Resources
- Director of Athletics
- Chief of University Police
- Associate Dean of Students for Campus Life and Student Conduct
- Director of Residence Life
- Senior On Call Officials

**Complainant:** A Complainant is an individual who is alleged to be the victim of conduct that could constitute a violation Part I of this policy.

**Consent:** Consent is a voluntary agreement through words or action freely given, which could be reasonably interpreted as a willingness to participate in sexual activity. Indications that consent is not present include: when physical force is used or there is a reasonable belief of the threat of physical force; when duress is present; when one individual overcomes the physical limitations of another individual; and when an individual is incapable of making an intentional decision to participate in a sexual act, which could include instances when the individual is in a state of incapacitation (defined below). Important points regarding consent include:

- Silence or an absence of resistance does not necessarily indicate consent.
- Consent on a prior occasion does not constitute consent on a subsequent occasion, and consent cannot be inferred solely by the existence of a past sexual or dating relationship.
- Consent must exist throughout the sexual encounter and can be withdrawn or modified at any time.
- Consent to one form of sexual activity does not automatically imply consent to other forms of sexual activity.
- A person cannot obtain consent from someone who is incapacitated.

**Education program or activity:** Educational programs and activities include locations, events, or circumstances where DeSales University exercises substantial control over both the Respondent and the context in which the misconduct and/or retaliation occurs and also includes any building owned or controlled by a student organization that is officially recognized by Desales University.

**Force:** Force is the use of physical violence and/or physical imposition to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent (e.g., “Have sex with me or I’ll hit you,” which elicits the response, “Okay, don’t hit me, I’ll do what you want.”). Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Silence or the absence of resistance alone is not consent. Consent is not demonstrated by the absence of resistance. While resistance is not required or necessary, it is a clear demonstration of non-consent.

**Incapacitation:** Incapacitation (or incapacity) is the state in which an individual’s perception or judgment is so impaired that the individual lacks the cognitive capacity to make or act on conscious decisions to engage in sexual activity.

Evaluating incapacitation requires an assessment of whether a Respondent knew or should have known of the Complainant’s incapacitation based on objectively and reasonably apparent indications of impairment when viewed from the perspective of a sober, reasonable person in the Respondent’s position. Being impaired by alcohol or other drugs is not a defense to any violation of this policy.

**Party:** Party means a Complainant or Respondent.

**Prohibited Conduct:** Conduct that violates Title IX as outlined in § II below.



**Respondent:** A Respondent is defined as an individual, unit, or group that has been reported to be the perpetrator of conduct that could violate this policy.

**Responsible Employee:** A Responsible Employee is an employee of DeSales University who is obligated by policy to share knowledge, notice, and/or reports of harassment, discrimination, and/or retaliation with the Title IX Coordinator or other officials designated in this policy.

**Title IX Coordinator:** The Title IX Coordinator is the employee, or employees, designated to coordinate DeSales University's efforts to comply with Title IX and its regulations found in §106 of Title 34 of the Code of Federal Regulations.

**Title IX Dismissal:** If the conduct alleged in a Formal Complaint does not constitute misconduct as defined by Title IX, did not occur in an educational program or activity offered by the University, or did not occur against a person in the United States, the University must dismiss the Formal Complaint with regard to that conduct for purposes of sexual harassment under Title IX. When a complaint is dismissed under Title IX, it may still be subject to action under this policy (including Part II) or other University policies, such as the Code of Student Conduct, or the Employee or Faculty Handbooks. It may also be resolved through the Alternate Resolution Process as described in § VIII.

## II. Definitions of Conduct Prohibited by Title IX

The Title IX Regulations define "sexual harassment" to mean conduct on the basis of sex that satisfies the definition of one or more of the following: (1) quid pro quo; (2) unwelcome conduct that is severe, pervasive, and objectively offensive; (3) sexual assault as defined by federal law to include forcible and non-forcible sex offenses, (4) dating violence, (5) domestic violence, and (6) stalking. DeSales University has adopted the below definitions in order to address the unique environment of an academic community. Throughout this policy, conduct that meets the definitions in A through F below will be referred to as "Prohibited Conduct."

For reported behavior to qualify as Title IX misconduct, in addition to meeting the elements of the specific definitions below, it must meet all of the following threshold requirements, as determined by the Title IX Coordinator and as mandated by federal regulations:

- The conduct must have occurred against a person in the United States.
- The conduct must have occurred within the University's education program or activity. For purposes of this provision, this means that the conduct must have occurred either
  - a) in a location, event, or circumstances over which the University exercised substantial control over both the Respondent and the context in which the misconduct occurs or
  - b) in relation to a building owned or controlled by a student organization that is officially recognized by the University.

- The Complainant must be participating in or attempting to participate in the education program or activity of the University at the time the Formal Complaint is filed.<sup>2</sup>

Conduct that does not meet these threshold requirements is subject to a Title IX Dismissal.

### A. Quid Pro Quo

Quid Pro Quo discrimination occurs when an employee of or student at DeSales University conditions the provision of an aid, benefit, or service of DeSales University, on an individual's participation in unwelcome sexual conduct.

### B. Hostile Environment Sexual Harassment

Hostile Environment Harassment is unwelcome conduct, determined by a reasonable person, to be so severe, pervasive, and objectively offensive, that it effectively denies a person equal access to DeSales University's education program or activity.

### C. Sexual Assault

Sexual assault is defined as any sexual act directed against another person without the consent of the Complainant, including instances in which the Complainant is incapable of giving consent.

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

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

**c) Sexual Assault with an Object** – The use of an object or instrument to penetrate, however slightly, the genital or anal opening of the body of another person, forcibly, and/or against that

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<sup>2</sup> While a complainant's participation or attempted participation in the University's education program or activity is typically a threshold requirement, there are limited situations in which a Title IX Coordinator may be required to file a Formal Complaint for conduct prohibited by Title IX even when the complainant is not participating in or attempting to participate in an education program or activity. For example, if the University has actual knowledge of a pattern of alleged sexual harassment by a perpetrator in a position of authority, the Title IX Coordinator may be required by Title IX to sign a Formal Complaint even if the purported complainant does not wish to file a Formal Complaint or participate in a grievance process. This is because the University has a Title IX obligation to provide all students, not just the Complainant in a particular case, with an educational environment that does not discriminate based on sex.

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

**d) Forcible Fondling** – The touching of the private body parts of another person (buttocks, groin, breasts), for the purpose of sexual gratification, forcibly, and/or against that person's will (non-consensually), or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

## D. Non-Forcible Sexual Offenses

**a) Incest** – Non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by Pennsylvania law.

**b) Statutory Sexual Assault** – Non-forcible sexual intercourse with a person who is under the statutory age of consent under applicable law.

## E. Dating Violence

Dating Violence is violence, on the basis of sex, committed by a person, who is in or has been in a social relationship of a romantic or intimate nature with the Complainant. The existence of such a relationship shall be determined based on the Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition Dating Violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.

Dating violence does not include acts covered under the definition of domestic violence.

## F. Domestic Violence

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

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

## G. Stalking

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

For the purposes of this definition:

Course of conduct means two or more acts, including, but not limited to, acts in which the Respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.

Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.

Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

## III. Retaliation

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

Protected activity under this policy includes reporting an incident that may implicate Part I of this policy, participating in the grievance process, supporting a Complainant or Respondent, assisting in providing information relevant to an investigation, and/or acting in good faith to oppose conduct that constitutes a violation of this policy. A party may be found responsible for retaliation regardless of the final outcome of the resolution process.

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

Complaints alleging retaliation against one or more individuals will be resolved as follows:

- For cases involving student Respondents, the matter will be referred to the Office of Student Conduct who will work in coordination with the Title IX Office to investigate and adjudicate the matter;

- For cases involving employee Respondents, the matter will be referred to the Associate Vice President for Human Resources who will work in coordination with the Title IX Office to investigate and adjudicate the matter.

Charging an individual with a Code of Student Conduct or employment policy violation for making a materially false statement in bad faith in the course of a grievance proceeding does not constitute retaliation, as described above, provided, however, that a determination regarding responsibility alone (for example, a finding of insufficient evidence to support a finding of responsibility) is not sufficient to conclude that any party made a materially false statement in bad faith.

## IV. Reporting Options, Confidentiality, and Supportive Measures

### A. Reporting Options

Reporting parties have the following options:

- If the reported conduct constitutes a crime, the option to notify the DeSales University Police Department and/or external local law enforcement (DeSales can help facilitate contact with local law enforcement);
- The option to seek medical attention, counseling services, or other confidential resources;
- The option to file a report with the Title IX Coordinator and request appropriate supportive measures;
- The option to report to another DeSales employee, who is required to report the information with the Title IX Coordinator, except where the disclosure is made in the context of a confidential relationship (e.g., Counseling Center, Health Center, Chaplain);
- The option to pursue informal resolution or a formal investigation. For allegations of Title IX misconduct, this requires the submission of a Formal Complaint with the Title IX Coordinator. The process for filing a Formal Complaint is discussed in § V.

A Complainant may choose multiple options, and the options they choose may change over time. For example, a Complainant may choose initially to proceed with a criminal investigation, or this process, both, or neither. Regardless of those choices, the Complainant may seek a protection order through a civil protective order proceeding, confidential resources, supportive measures, and/or file a Formal Complaint.

#### *1. Reporting to the University*

DeSales strongly encourages individuals who have experienced or witnessed Prohibited Conduct to file a report with the Title IX Coordinator. Any person may report Prohibited Conduct in person, by mail, by telephone, or by email, using the contact information listed for the Title IX Coordinator or Deputy Title IX Coordinators, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. Such reports may be made at any time, including during non-business hours. Contact information for the Title IX Coordinator is found at the front of this policy. Reports can also be made using the Title IX Reporting Form on the DeSales website.

Where it is alleged that the Title IX Coordinator has engaged in Prohibited Conduct, a report may be directed to the Vice President for Administration who will designate an appropriate individual to act as the Title IX Coordinator for purposes of that report.

Making a report does not require further action on the part of the reporter.

## *2. DeSales Employees' Reporting Obligations*

All DeSales University employees (faculty, administrators, staff) are considered responsible employees except for the confidential and exempted sources listed below. DeSales employees who become aware of behavior that may constitute Prohibited Conduct must report all such information to the Title IX Coordinator or a Deputy Title IX Coordinator promptly. Some student employees are also required to report behavior that may constitute Prohibited Conduct to the Title IX Coordinator or Deputy Title IX Coordinators.

Contracted dining, custodial, bookstore, and other third party contracted staff are not DeSales employees and are therefore not considered Responsible Employees. They are not required by law to report Prohibited Conduct although the University strongly encourages them to do so.

This obligation does not require an employee to report Prohibited Conduct that they themselves experience, although the University strongly encourages any such person to do so.

The following are not Responsible employees and are not obligated to report potential Prohibited Conduct:

- Counseling Center and Student Health Center staff
- University Chaplain

## *3. Reporting to Law Enforcement*

Where an individual has been subjected to violence or other criminal acts, DeSales encourages those individuals to seek assistance from medical providers and/or law enforcement immediately after the incident, whether or not the individual intends to pursue criminal charges. This is to assist in the preservation of evidence and to begin a timely response by law enforcement. Preserving evidence may later assist in proving that an alleged criminal offense occurred, or it may be helpful in obtaining a protection order if one is desired.

The Title IX Coordinator can assist in notifying law enforcement authorities if the Complainant chooses.

## *4. Anonymous Reporting*

Anonymous reports may be made by completing the online reporting form. DeSales urges campus community members to identify themselves when they report, to enable the most complete review and investigation possible. Depending on the level of information included in an anonymous report, the University may be limited in its ability to respond. Employees who are required to make reports under this policy are not permitted to make such reports anonymously.

### *5. Making a False or Frivolous Report*

Any student or employee who knowingly or maliciously makes a false or frivolous allegation of Prohibited Conduct may be subject to the University's disciplinary policy and procedures. Where a false or frivolous allegation may constitute retaliation under this policy, it will be addressed accordingly.

### *6. Requests for the University to Take No Action*

The Title IX Coordinator will take all reasonable steps to respond to, resolve, and remedy a report of Prohibited Conduct consistent with a Complainant's preferences. Where a Complainant makes a report but requests that a name or other identifiable information not be shared with the Respondent or that no formal action be taken, the University will balance this request with its responsibility to provide a safe and nondiscriminatory environment for all University community members.

In considering a Complainant's request to take no action and evaluating whether to proceed, the Title IX Coordinator will assess and consider (this list is not all-inclusive):

- the preferences and concerns of the Complainant;
- the nature and circumstances of the allegation;
- the severity and impact of the reported conduct;
- pattern evidence or other similar conduct by Respondent;
- the respective ages of the parties, including whether the Complainant is a minor (under the age of 18);
- whether the Respondent has admitted to the conduct;
- whether the Respondent has been the subject of other complaints or reports of Prohibited Conduct under this or misconduct under other university policies;
- whether the Respondent threatened further sexual violence or other violence against the Complainant or others;
- whether the report indicates that multiple Respondents were involved;
- whether the report indicates that the conduct was perpetrated with a weapon;
- whether the Respondent is an employee; and,
- whether the University possesses independent means to obtain relevant evidence (e.g., witnesses, security cameras or personnel, or physical evidence).

Where the University acts contrary to the request of the Complainant, the Title IX Coordinator will inform the Complainant about the chosen course of action and implement necessary supportive measures.

## **B. Privacy and Confidentiality of Reports and Other Information**

Privacy and confidentiality have separate and distinct meanings under this policy.



## *1. Privacy of Information*

DeSales strives to respect the privacy of the parties and other participants in the Title IX process. Privacy generally means that information related to the report and investigation of Prohibited Conduct will only be shared with a limited selection of individuals whose knowledge is necessary to respond to the claims. Such response includes the reviewing of reports, investigating claims, participating in investigations, conducting hearings, reviewing appeals, providing support to students and employees through supportive measures, and other related issues. All DeSales employees involved in this process receive training on safeguarding private information in accordance with all applicable laws. Student education records are protected in compliance with the Family Educational Rights and Privacy Act (FERPA) and other applicable laws in Pennsylvania. Student health records maintained by the University are protected by the Health Insurance Portability and Accountability Act (HIPAA). Access to employee personnel records is restricted in accordance with DeSales University's policies and Pennsylvania and Federal law.

DeSales will not impose prior restraints on students' and employees' ability to discuss the allegations under investigation, including with a parent, friend, other source of emotional support, with an advocacy organization, or with persons who may have information regarding the underlying incident.

DeSales will not disclose the identity of any individual who has made a report or complaint of sex discrimination (including any individual who has made a report or filed a Formal Complaint), any Complainant, any individual who has been reported to be the perpetrator of sex discrimination, any Respondent, and any witness, except as may be permitted by FERPA, as required by law, or to carry out the purposes of this policy, including to conduct of any investigation, hearing, or other proceeding.

## *Use of Medical or Other Treatment Records*

Medical and other counseling records are protected by law. DeSales must obtain written consent from a party before receiving any health or other treatment records. If a party provides written consent for medical or other treatment records to become part of an investigation's case file, both parties must be able to review and comment on those records during the investigation process and possible hearing. That information may also be included in the draft and final investigation reports.

## *2. Confidentiality and Its Limitations*

There is a distinction between seeking assistance from a confidential resource and making a report to the University through designated reporting options. Confidential resources, including counselors, medical health providers, clergy, and certified rape crisis counselors, have legally protected confidentiality and will not share information about the person seeking support (including whether that individual has received services) without the person's consent, except under limited circumstances as permitted or required as described below.

Limits to confidentiality required by law that may require the disclosure of information include:



### a) Mandatory Reporting of Child Abuse

DeSales employees are mandatory reporters of known or suspected child abuse or neglect and are required to immediately report any knowledge or reasonable suspicion that a minor (someone under 18 years old) is experiencing abuse or neglect based on information shared by the minor, from any other individual including one's own observations or knowledge. Any DeSales employee suspecting abuse or neglect is required to bring all suspicions to the immediate attention of the DeSales University Police Department and the Title IX Coordinator. DeSales community members who are not employees are strongly encouraged to report any knowledge or reasonable suspicion of child abuse to DeSales University Police Department or to local law enforcement.

### b) Clery Act Reporting

Pursuant to the Clery Act, anonymous statistical information for certain offenses that have been reported at campus locations must be shared with Campus Safety. The information does not include the names or any other identifying information about the persons involved in such offenses.

## C. Reporting considerations

### 1. Timeliness

In order to maximize the University's ability to respond promptly and effectively, all those impacted by Prohibited Conduct are encouraged to report as soon as possible. There is no time limit on reporting violations of this policy, though prompt reporting by employees is required. If the Respondent is no longer a student or employee at the time of the report, the University may not be able to take disciplinary action against them. The University will still provide support and reasonably available supportive measures to a Complainant, as well as assistance in identifying appropriate external reporting options.

### 2. Amnesty for Minor Policy Violations

To encourage reporting and participation in the process, DeSales University maintains a policy of offering parties and witnesses amnesty from minor policy violations – such as underage consumption of alcohol or the use of illicit drugs – related to the incident provided that such violations did not and do not place the health or safety of any other person at risk. Amnesty does not apply to more serious allegations such as physical abuse of another or illicit drug distribution and is rarely applicable to a Respondent.

## D. Supportive Measures Available to Parties

DeSales offers supportive measures to both Complainants and Respondents. When DeSales has actual knowledge of Prohibited Conduct in which there is an identifiable Complainant, the Title IX Coordinator will promptly contact the Complainant to discuss the availability of supportive measures, consider the Complainant's wishes with respect to supportive measures, inform the Complainant of the availability of supportive measures with or without the filing of a Formal Complaint, and explain to the Complainant the process for filing a Formal Complaint. Upon

noticing a Respondent of a report raising potential Title IX violations against the Respondent, the Title IX Coordinator will discuss with the Respondent the availability of counseling and may discuss the availability of other supportive measures discussed below, where the Title IX Coordinator deems appropriate. Throughout any informal resolution, formal process, and/or appeals process, the Title IX Coordinator will continually reassess and discuss appropriate supportive measures with the parties.

### *1. Description of Available Supportive Measures*

Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent before or after the filing of a Formal Complaint or where no Formal Complaint has been filed. They are designed to restore or preserve equal access to DeSales' education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or DeSales University's educational environment, or deter Prohibited Conduct.

Supportive measures at DeSales may include, but are not limited to:

- Counseling;
- Extension of deadlines or other course-related adjustments;
- Modifications of work or class schedules;
- Campus escort services;
- Mutual restrictions on contact between the parties;
- Changes in work or housing locations;
- Leaves of absence;
- Increased security and monitoring of certain areas of the campus;
- Modifying academic and extracurricular activities;
- Providing alternative course completion options;
- Providing academic support services;
- Assisting in obtaining visa or immigration information;
- Modifying transportation, parking, dining and, working situations;
- Implementing access restriction or interim suspension of an individual while a matter is investigated and resolved;
- Imposing other protections or restrictions as necessary and appropriate.

### *2. Disclosure of Supportive Measures*

DeSales will maintain the privacy of any supportive measures provided to the Complainant or Respondent, to the extent that maintaining such privacy would not impair the ability of DeSales to provide the supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures. University employees are expected to keep supportive measures private except as may be necessary to provide the supportive measures.

As required by the Clery Act, DeSales will provide written notification to student and employee Complainants about existing counseling, health, mental health, victim advocacy, legal assistance, visa and immigration assistance, student financial aid, and other services available for Complainants who report being victims of crimes.

### E. Emergency Removal Process for Students

After receiving a report, the University can remove a Respondent on an emergency or temporary basis from educational programs and from University property. The Title IX Coordinator conducts an individualized safety and risk analysis to determine whether there exists an immediate threat to physical health or safety of any student or other individual(s) arising from the allegations. If so, the Title IX Coordinator may, in consultation with appropriate University personnel, impose interim restricted access or interim suspension of an individual before resolution of a Formal Complaint of Prohibited Conduct. Interim restricted access or emergency removal are preventative actions and will not be considered disciplinary in nature. The Title IX Coordinator will notify both parties in writing of the resulting restrictions and any changes to such restrictions.

All student Respondents are able to challenge an emergency removal imposed under this policy. If a Respondent wishes to do so, the Respondent must provide written notice of such challenge, including their reasons, to the Title IX Coordinator within two (2) business days of receiving notice of the restriction. The Title IX Coordinator, in conjunction with appropriate University personnel, will meet with the Respondent and an advisor of the Respondent's choice. The purpose of the meeting is to permit the Respondent to respond to the removal. The location of the meeting will be determined by the Title IX Coordinator and may occur via telephone or video conference. Within one (1) business day of the meeting, the Title IX Coordinator will notify the Respondent in writing of the outcome.

Any changes to the removal will be provided in writing to all parties.

### F. Administrative Leave for Non-Student Employees

The Title IX Coordinator, in conjunction with other appropriate University personnel, may impose an administrative leave on employee Respondents if the facts and circumstances surrounding the reported conduct support such leave. Administrative leave is a separate process from an Emergency Removal and is not disciplinary in nature. Employees placed on administrative leave will receive written notice of the conditions of that leave but will not be able to challenge the administrative leave.

### G. Advisors Available to Parties

Complainants and Respondents will have equal opportunities to bring an advisor of their choice with them to any meetings, proceedings, and informal resolution sessions. An advisor may be, but is not required to be, an attorney. DeSales will not limit the choice or presence of an advisor for Complainant or Respondent in any meeting, investigative interview, or grievance proceeding except

that the advisor may not be a party, witness, or an individual who would otherwise create a conflict of interest.

**Except for conducting questioning during the hearing, advisors are required to play a passive role.** They are not permitted to speak on the party's behalf in meetings, insist that communication flow through them, or communicate directly with the University about the matter. Advisors must also follow the rules of decorum during the hearing itself. These restrictions will apply equally to both parties. If a party's advisor refuses to comply with restrictions set by DeSales, the University may require the party to use a different advisor.

Should a Formal Complaint be filed and proceed to a live hearing as described in § VI, the law requires that each party be represented by an advisor who conducts cross-examination on their behalf. If a party does not have an advisor of choice to accompany them to the pre-hearing conference and the Live Hearing, the University will appoint an advisor, free of charge, to perform the cross-examination function for the party.

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

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

## I. Report Resolution

A report to the Title IX Coordinator is not the same as a Formal Complaint. In order for a report of Title IX misconduct to be officially resolved, a Formal Complaint must be filed in writing alleging sexual harassment or other sexual misconduct against a Respondent and requesting that the school officially investigate and resolve the allegation. The Formal Complaint may be resolved through either the Alternate Resolution (§ VIII) or the Formal Investigation and Live Hearing Process (§ VI).

In cases where the Respondent is a student, but the case is not eligible for a Title IX hearing and involves sexual assault, dating violence, domestic violence, or stalking allegations, the following procedural protections will be available to both parties:

- Continued access to informal resolution procedures until a determination is reached as to whether a policy violation occurred;
- Continued access to supportive measures;
- Procedures that are conducted by officials that receive annual training on issues related to dating violence, domestic violence, sexual assault, and stalking and on how to conduct an investigation and a hearing process that protects the safety of the victims and promotes accountability.

For Respondents who are faculty or staff members and the case is not eligible for a Title IX hearing, the Harassment & Discrimination Policy (Part II) will apply as administered by the Associate Vice President for Human Resources or their designee for the preliminary investigation.

## V. Filing and Investigating a Formal Complaint of Title IX Misconduct

### A. Formal Complaints – How They Are Filed and Withdrawn

A Formal Complaint is a written document filed by a Complainant, or signed by the Title IX Coordinator, that alleges Title IX Misconduct against a Respondent and requests that the University officially investigate and resolve the allegation. The Formal Complaint may be filed with the Title IX Coordinator in person, by mail, by electronic mail, by in-person delivery, or through the online reporting form and must contain the Complainant's physical or digital signature.

There are circumstances when a Title IX Coordinator may need to sign a Formal Complaint that obligates the University to initiate an investigation, regardless of the Complainant's relationship with the University or interest in participating in the Title IX grievance process. For example, if the University has actual knowledge of a pattern of alleged sexual harassment by a perpetrator in a position of authority, the Title IX Coordinator may be required by Title IX to sign a Formal Complaint even if the purported Complainant does not wish to file a Formal Complaint or participate in a grievance process. This is because the University has a Title IX obligation to provide all students, not just the Complainant in a particular case, with an educational environment that does not discriminate based on sex.

In the instances when the Title IX Coordinator signs a Formal Complaint, the Title IX Coordinator is not a Complainant or a party during any resolution and must comply with requirements for any person involved in the response and/or resolution to be free from conflicts and bias.

A Formal Complaint may be withdrawn if the Complainant informs the Title IX Coordinator in writing that they want to withdraw the complaint or the allegations. The Title IX Coordinator may choose to withdraw a Formal Complaint if a Respondent is no longer participating in or attempting to participate in the University's education or program activity, the Complainant submits a written request to withdraw the complaint, or specific circumstances prevent the University from gathering evidence sufficient to reach a determination. No matter the reason for the withdrawal of a complaint, the parties will be notified in writing of the decision, including the reasoning.

### B. Initial Review by Title IX Coordinator

#### *1. Evaluation of Title IX Applicability*

Upon receiving a Formal Complaint, the Title IX Coordinator will conduct an initial review to determine whether the allegations, if true, would constitute conduct that violates Title IX (as defined in § II). If not, the Title IX Coordinator will dismiss the Formal Complaint and notify both parties in writing of this decision. If a Title IX Formal Complaint is dismissed, it will be referred for further review as follows:

- For cases involving student Respondents the Title IX Coordinator will refer the matter to the Office of Student Conduct and work in coordination with that office to investigate and adjudicate the matter;
- For cases involving employee Respondents, the Complaint and other relevant materials will be provided to the Associate Vice President for Human Resources or their designee who will investigate and adjudicate the matter.

The parties have three (3) business days from the date of notice of Title IX Dismissal to submit a written appeal to the Title IX Coordinator. For more information about the appeal process, see § VII.

## *2. Consolidation of Formal Complaints*

The Title IX Coordinator may consolidate Formal Complaints as to allegations of Prohibited Conduct against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one party against the other party, where the allegations of Prohibited Conduct arise out of the same facts or circumstances, i.e., are so intertwined that their allegations directly relate to all parties. Where multiple Complainants or Respondents are involved in the same investigation, the parties will only be provided with the appropriate portion(s) of the investigative documents that relate to the complaint(s) in which they are a party.

## **C. Title IX Formal Investigations**

After a Formal Complaint has been filed and has, after the informal review (§ V B) been determined to constitute conduct that could violate Title IX, DeSales will initiate a formal investigation and notify the parties in writing. To the extent known, the notice of investigation will include:

- the identities of the parties involved;
- the specific section(s) of the policy allegedly violated;
- the precise conduct alleged to constitute the potential violation(s);
- the approximate date, time, and location of the alleged incident(s);
- a statement indicating that the Respondent is presumed not responsible for the alleged conduct;
- a statement that the determination of responsibility will be made at the conclusion of a Formal Resolution, or if all parties agree through the informal resolution process;
- a notice that parties have the right to an advisor of their choice;
- the result of an initial assessment to determine whether the allegations suggest a potential violation of Title IX with an indication that this decision will be reviewed again after the investigators prepare their report;
- the name of the investigators and the ability to challenge their participation for conflict of interest or actual bias;
- the appropriate policy language prohibiting a party from knowingly making false statements or knowingly submitting false information; and
- a notice that retaliation is prohibited.

The notice shall be provided reasonably in advance (at least 5 calendar days) of any interview with the investigators in order to allow sufficient time for meaningful preparation. The Title IX Coordinator, in consultation with the investigator(s), may amend the charges as part of the investigative process. The Title IX Coordinator will, if appropriate, issue written notice of amended charges to both parties.

### *1. Investigator Roles and Participants' Responsibilities*

The Title IX Coordinator will designate one or more investigators to conduct an adequate, reliable, and impartial investigation. DeSales may, at the University's sole discretion, engage an external investigator. In complex situations, the Title IX Coordinator may, at their sole discretion, engage additional trained investigators to assist in gathering the information that will be considered by the primary investigator. If a party has concerns that the investigator has a conflict of interest or bias, they should notify the Title IX Coordinator in writing immediately of these concerns. The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rests on the University and not the parties.

The parties will have an equal opportunity to suggest witnesses, including expert witnesses, and to submit evidence during the investigation. The investigator will also gather any available physical evidence including but not limited to: documents, communications between the parties, and other electronic records as appropriate and available. The parties may submit questions to be asked of parties and witnesses. They may also suggest potential witnesses to the investigator. The investigator will review submitted questions and, in their discretion, may choose which questions are necessary and appropriate to the investigation and conduct any follow-up, as they deem relevant. All parties and witnesses are expected to provide truthful information. Knowingly providing false or misleading information is a violation of DeSales University's policies and can subject a student or employee to disciplinary action. Making a good faith report to the University that is not later substantiated does not constitute false or misleading information.

### *2. Use of Treatment Records with Written Permission of the Parties*

A person's medical, counseling/psychological, and similar treatment records are privileged and confidential documents that a party will not be required to disclose. Where a party provides their written permission to share medical, counseling/psychological, and similar treatment records as part of the investigation, only the portion of the records directly related to the allegations raised in the Formal Complaint will be included in the case file for review by the other party and for use in the investigative and adjudication processes.

### *3. Use of Complainant's Prior Sexual History and Prior Conduct of the Parties*

Evidence related to the prior sexual history of the Complainant is generally not relevant to the determination of a policy violation and will only be considered in very limited circumstances. For example, to prove that someone other than the Respondent committed the alleged conduct, or where the existence of consent is at issue, the sexual history between the parties may be relevant to help understand the manner and nature of communications between the parties and the context



of the relationship. However, even in the context of a relationship, consent to one sexual act does not, by itself, constitute consent to another sexual act, and consent on one occasion does not, by itself, constitute consent on a subsequent occasion.

Information regarding other acts by a party will be permitted as relevant where the nature and means of those other acts may affect credibility of the assertions in the current case. It is not required that the party have been found responsible for policy violations related to those other acts for them to be included in the current case. Any party seeking to introduce information about prior sexual history or other acts of the other party should bring this information to the attention of the investigators at the earliest opportunity.

While the investigators may explore relevant areas of inquiry, the Title IX Coordinator has the discretion to make the final determination whether evidence of prior sexual history or other misconduct is relevant and should be included in the report.

#### *4. Anticipated Timeframe*

The University will seek to complete the formal investigation within 60 business days, which begins upon the filing of the Formal Complaint and concludes upon submittal for a hearing.

This timeframe is merely a guideline and may be extended due to a number of factors, including the complexity of the allegations, the number of witnesses involved, the availability of the parties or witnesses, any intervening school break or vacation, or other circumstances, all of which will likely extend the length of time it takes to complete the investigation. The University may also, at its sole discretion, pause the Title IX or disciplinary process if there is a pending criminal case against the Respondent rising from the same incident(s). The University will provide regular updates to all parties regarding the progress of the investigation.

In all cases DeSales will make a good faith effort to complete investigations as promptly as circumstances permit.

#### *5. Parties' Review of the Draft Report*

The evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint will be made available to the parties and their advisors in the form of a draft investigation report.

The parties will then have ten (10) calendar days to review the report and respond. The Parties may elect to waive the full ten days. The response must be written and submitted to the investigator.

To safeguard the privacy of all those involved the draft report may be shared in an electronic format that precludes printing, downloading or otherwise sharing by the parties or their advisors.

#### *6. Investigative Report Completion*

Once the parties have reviewed the draft investigative report and have submitted responses, or the time period to submit such responses has passed, the investigators will complete any follow up investigation or assessment they deem necessary and will complete the final investigative report.



The investigators will consider whether the conduct alleged, if demonstrated by a preponderance of the evidence, would constitute a violation of Title IX as defined in § II A, in light of the evidence gathered during the investigation. If the investigator(s) find that Title IX misconduct is properly alleged, the investigators will further determine whether those allegations meet all three of the following jurisdictional requirements such that it is eligible for a Hearing Process:

- The Formal Complaint was filed while the Complainant was participating in or attempting to participate in the education program or activity of the University;
- The reported Title IX misconduct occurred against a person in the United States; and
- The reported Title IX misconduct occurred in the University's education program or activity.

The investigators will then make a recommendation to the Title IX Coordinator regarding whether the conduct outlined in the investigative report meets the requirements above.

The final investigative report will not include:

- Information about the Complainant's sexual predisposition or prior sexual behavior, unless:
  - The information is to prove that someone other than the Respondent committed the alleged conduct; or
  - The information concerns specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent;
- Information that is protected by a legally recognized privilege; or
- A party's medical, counseling/psychological, and similar treatment records unless the party has given voluntary, written consent.

### *7. Final Assessment by the Title IX Coordinator*

After receiving the final investigation report, the Title IX Coordinator will conduct a final assessment of the case to determine whether it meets the definition of Title IX misconduct as defined in § II A and will notify the parties, in writing, of the assessment and whether or not the complaint will proceed to a hearing or be subject to a Title IX Dismissal.

In a case with multiple charges, if any of the charges constitute Title IX misconduct, all the charges in that case will typically be handled at the same time through the Hearing Resolution Process (§ VI), unless in the Title IX Coordinator's discretion it is appropriate to handle non-Title IX charges in a different manner.

#### *a) Appeal of a Dismissal*

Parties will have three (3) business days after receipt of a notice of a Title IX dismissal to submit an appeal in writing.

### *b) Parties' Response to the Investigative Report*

If the process is continuing to a live hearing, the parties will have ten (10) business days beginning at the notification of the Title IX Coordinator's final assessment, to submit a written response to the final investigative report. The response may include an assertion that evidence not summarized in the report, but present in the case file, should be considered as relevant. Written responses should be provided to the Title IX Coordinator, who will share them with the decision-maker(s) prior to the hearing.

## **VI. Hearing Resolution Process for Conduct Prohibited by Title IX**

A Hearing Resolution Process will be used to resolve cases that include charges of Title IX misconduct. The Hearing Resolution Process includes a pre-hearing conference, a live hearing, decisions about responsibility and sanctioning by a decision-maker or makers, and an available appeal process.

At the conclusion of the investigation, but prior to pre-hearing conferences, the Title IX Coordinator will appoint an individual or panel to serve as the decision-maker or -makers. The Title IX coordinator may not serve as a decision-maker. The decision-maker may be a single hearing officer or a hearing panel. The decision-maker(s) will oversee the hearing process, permit relevant questioning of the parties and witnesses, and issue a written determination regarding responsibility and sanctions in accordance with these procedures. The University maintains the right to use an external hearing officer or hearing panel to serve as decision-maker(s).

### **A. Pre-Hearing Conferences**

Each party will have their own pre-hearing conference. The Title IX Coordinator will communicate to the parties, their advisors, and the decision-maker, the date, time, and format for their pre-hearing conference. The Title IX Coordinator, the decision-maker, and the advisor must be in attendance. The parties are not required to attend but are strongly encouraged to do so. If the case will be heard by a hearing panel, the chair of the hearing panel will serve as the decision-maker at the pre-hearing conferences.

During the pre-hearing conference, the parties must share with the decision-maker their list of witnesses to appear at the hearing, the identity of any requested witnesses that were not questioned during the investigation, the request for any new evidence to be considered that was not submitted previously to the investigators, and the availability of the advisor and the party for hearing dates.

Evidence and witnesses may only be presented at the hearing if they were submitted to the investigator(s) and made available to the parties for review, unless they were unavailable at the time of the investigation or the relevance was unknown until the investigative report was submitted. The decision-maker will address any requests to present new evidence and new witnesses at the pre-hearing conference.

The party is strongly encouraged to discuss lines of questioning with the decision-maker at the pre-hearing conference to obtain guidance from the decision-maker on relevancy prior to the hearing. The decision-maker will discuss the expectations and guidelines for appropriate behavior and decorum during the hearing.

After reviewing each party's witness list, the decision-maker may, at their discretion, add names of other witnesses contained in the report for the purpose of appearing at the hearing and submitting to cross-examination.

After the conclusion of the pre-hearing conferences, the Title IX Coordinator will provide each party and their advisor with written notice of the date, time, and manner for the hearing, which will typically occur no less than ten (10) business days after the date the investigative report was shared with the parties.

## B. Live Hearings for Title IX Cases

The law requires that the University conduct a live hearing to address conduct prohibited by Title IX. This hearing may be conducted with all parties physically present in the same geographic location or, at the University's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually. Regardless of format, the hearing will be recorded, and the recording will be DeSales University's property and will be made available to the parties for review and inspection upon their request during the pendency of the process. The parties may not record the proceedings and no other unauthorized recordings are permitted.

Those persons present during the entirety or at designated portions of the hearing include:

- Complainant, Complainant's advisor;
- Respondent, Respondent's advisor;
- Decision-maker(s);
- the Investigator or Investigators;
- Title IX Coordinator;
- Witnesses; and
- Other appropriate individuals at the discretion of the Title IX Coordinator (for example, an interpreter).

The Decision-maker will provide an introduction detailing the purpose of the hearing, have those present identify themselves and their role, remind all parties of the expectation to be candid and honest in their response, and provide a brief overview of the procedure and the anticipated order of the hearing.

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

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

The advisors will be responsible for orally asking relevant questions, including those questions which challenge credibility, to the other party or parties and any witnesses directly, in real-time and in a manner that, in the decision-maker's sole discretion, is not inappropriate, harassing, intimidating, irrelevant, or redundant. If the case will be heard by a hearing panel, the chair of the hearing panel will serve as the decision-maker for purposes of deciding whether questions are relevant, appropriate, harassing, intimidating, and/or redundant.

Cross-examination will never be conducted by a party personally. Only relevant questions may be asked of a party or witness. Relevant questions are those tending to prove or disprove a fact at issue.

Questions that are not relevant include:

- Repetition of the same question;
- Questions related to information about the Complainant's sexual predisposition or prior sexual behavior, unless:
  - The information is to prove that someone other than the Respondent committed the alleged conduct; or
  - The information concerns specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent;
- Questions related to information that is protected by a legally recognized privilege; and
- Questions related to a party's medical, counseling/psychological, and similar treatment records unless the party has given voluntary, written consent.

The decision-maker(s) will objectively evaluate all evidence to determine its relevance, materiality, weight and reliability.

Before a Complainant, Respondent, or witness answers a question by an advisor, the decision-maker will first determine whether the question is relevant and briefly explain any decision to exclude a question as not relevant, or request rephrasing of the question. The decision-maker is not required to give a lengthy or complicated explanation of a relevancy determination during the hearing. The decision-maker may later send to the parties any revisions to the explanation of relevance that was provided during the hearing. If the case will be heard by a hearing panel, the chair of the hearing panel will serve as the decision-maker for purposes of deciding whether questions are relevant.

If a party or witness does not submit to cross-examination at the live hearing, the decision-maker(s) will weigh any relevant statements of the party or witness appropriately in reaching a determination of responsibility.

The decision-maker(s) cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.

### C. Deliberation and Written Determination on Responsibility

After the hearing the decision-maker(s) will deliberate in a closed session to determine whether the Respondent is responsible or not responsible for the policy violation(s) in question. If a panel is used, a simple majority vote is required to determine the finding. A preponderance of the evidence will be used as the standard of proof. When there is a finding of responsibility on one or more of the allegations, the decision-maker(s) will determine appropriate sanction(s) in consultation with other appropriate administrators, as required.

The decision-maker(s) will then issue a written determination on responsibility. Notice will be issued within five (5) business days of the hearing. The determination of responsibility will include:

- Identification of the allegations that potentially constitute Prohibited Conduct under Title IX;
- A description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- Findings of fact supporting the determination;
- Conclusions regarding the application of the policy to the facts;
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions DeSales imposes on the Respondent, and whether remedies will be provided by DeSales to the Complainant, and;
- DeSales' procedures and permissible bases for the Complainant and Respondent to appeal.

The determination will be provided to the parties simultaneously. The determination becomes final only after the time period for appeal has expired or, if a party does file an appeal, after the appeal decision has been sent to the parties.

### D. Available Remedies and Sanctions for Violations of the Policy

Where a determination of responsibility for Title IX misconduct, and/or other included conduct, is made, DeSales will provide remedies to the Complainant designed to restore or preserve equal access to the University's education program or activity. Such remedies may include the same individualized services provided as supportive measures; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the Respondent. The Title IX Coordinator is responsible for effective implementation of remedies. Where the final determination has indicated that remedies will be provided, the Complainant can then communicate separately with the Title IX Coordinator or their designee to discuss what remedies are appropriately designed to preserve or restore the Complainant's equal access to education. Remedies for a Complainant which do not affect the Respondent will not be disclosed to the Respondent.

The University recognizes that not every case of Prohibited Conduct is alike in severity. Therefore, the University reserves the right to consider a range of reasonable educational outcomes and sanctions. This range includes a formal warning, receiving a reprimand in the course of employment, mandatory training or other educational interventions, loss of privileges, disciplinary probation, removal from a course, restitution, facility suspension/expulsion, a ban from University property, revocation or deferral of admission and or degree, deferred suspension, disciplinary suspension, disciplinary expulsion, and/or termination of employment.

In determining the sanctions, the following factors will be considered:

- 1) the Respondent's prior conduct history;
- 2) how the University has sanctioned similar incidents in the past;
- 3) the nature and violence of the conduct at issue;
- 4) the impact of the conduct on the Complainant;
- 5) the impact of the conduct on the community, its members, or its property;
- 6) whether the Respondent has accepted responsibility for their actions;
- 7) any other mitigating or aggravating circumstances, including the University's values.

The imposition of sanctions will typically take effect immediately but may be stayed at the discretion of the decision-maker in consultation with the Title IX Coordinator. A Respondent who withdraws or separates from the University under any circumstance is not eligible for re-admission or re-employment until they have successfully completed the terms of any sanctions imposed and met any other reinstatement requirements. In all such circumstances, reinstatement is not guaranteed.

## VII. Appeals

Complainants and Respondents may appeal the decision-maker's determination regarding responsibility, or the University's dismissal of a Formal Complaint or any allegations therein to the Title IX Coordinator who will initiate the appeal process.

DeSales will notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties. Both parties will have a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome.

The Appeal Officer, who is the decision-maker for the appeal, will issue a written decision describing the result of the appeal and the rationale for the result and provide the written decision simultaneously to both parties.

A Complainant or Respondent must submit a written appeal to the Title IX Coordinator within three (3) business days of receipt of the written determination on responsibility or within three (3) business days of receipt of the Title IX Coordinator's written notice of Title IX Dismissal. The written appeal must include the specific basis for the appeal and any information or argument in support of the appeal. Upon receipt of the appeal, the Title IX Coordinator will provide the other party notice of the appeal and the opportunity to respond in writing to the appeal. Any response to the appeal

must be submitted to the Title IX Coordinator within three (3) business days from the other party's receipt of the appeal. Appeal responses are shared with the other parties, but no further reply is permitted.

Grounds for appeal are limited to:

- Procedural irregularity that affected the outcome of the matter;
- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter;
- 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 individual Complainant or Respondent that affected the outcome of the matter; and

All grounds for appeal will be available to all parties.

The Appeal Officer for all cases is determined by the classification of the Respondent:

- For students, the Appeal Officer will be the Vice President for Student Life or designee.
- For faculty, the Appeal Officer will be the Provost or designee.
- For staff, the Appeal Officer will be the Associate Vice President for Human Resources or designee.

When the Appeal Officer is unable to serve, or is not otherwise designated in this policy, the Title IX Coordinator will select a trained individual to be the Appeal Officer with notice to the parties.

The Appeal Officer must be a neutral and impartial decision maker. The parties will be informed, in writing, of the specific Appeal Officer. Within one (1) business day of receiving the notice of the designated Appeal Officer, the Complainant and the Respondent may submit a written request to the Title IX Coordinator to replace the named Appeal Officer if there are reasonable articulable grounds to establish bias, conflict of interest, or an inability to be fair and impartial.

The designated Appeal Officer will only be replaced if the Title IX Coordinator determines their bias precludes impartiality or constitutes conflict. Additionally, an Appeal Officer who has reason to believe they cannot make an objective determination must recuse themselves from the process.

The Appeal Officer will make a decision regarding the written appeal and, within ten (10) business days of receipt of all appeal documents, notify the Complainant and the Respondent of the outcome. The Appeal Officer may affirm the finding(s); alter the finding(s); alter the sanctions; or request that additional steps be taken.

Appeal decisions are final. All appeal deadlines may be extended for good cause by the Title IX Coordinator. Any extension will be communicated to the parties.

## VIII. Alternate Resolution Process

An alternate resolution process permits the parties to seek resolution of reports of Prohibited Conduct and Formal Complaints. DeSales does not require as a condition of enrollment or

continuing enrollment, or employment or continuing employment, or enjoyment of any other right, the waiver of the right to an investigation and adjudication of Prohibited Conduct under DeSales' grievance process. Similarly, DeSales will never require the parties to participate in an alternate resolution process, as described below.

After the filing of a Formal Complaint of Title IX misconduct or a report of other Prohibited Conduct, and if all parties voluntarily consent in writing, DeSales will assist the parties in an alternate resolution process. An alternate resolution process is available at any time prior to reaching a determination regarding responsibility in the grievance process, except in the cases of reports of Title IX misconduct of a student by a DeSales employee.

Before initiating an alternate resolution, DeSales will: (1) provide the parties a written notice; and (2) obtain the parties' voluntary, written consent to the alternate resolution process. The written notice that DeSales will provide to the parties will disclose the allegations, the requirements of the informal resolution process, and any consequences resulting from participating in the alternate resolution process, including the records that will be maintained or could be shared.

At any time prior to agreeing to a resolution, any party has a right to withdraw from the informal resolution process and resume the grievance process with respect to the report or Formal Complaint. Statements made during the alternate resolution process are normally limited to the purposes of that process and may not be used in any subsequent or Formal Resolution process.

The alternate resolution process is flexible, but it generally follows two paths:

- Accepted Responsibility: When the Respondent accepts responsibility for violating policy, and desires to accept a sanction and end the resolution process; or
- Negotiated Resolution: When the Title IX Coordinator negotiates a resolution that is acceptable to all parties, and/or to accept a resolution that is proposed by the parties and/or their Advisors.

### The Respondent Accepts Responsibility

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

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

When the parties cannot agree on all terms of resolution, the Formal Grievance Process will resume at the same point where it was paused.



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

Once all parties indicate their written assent to all agreed upon terms of resolution the result final and is not subject to appeal.

## Negotiated Resolution

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

Matters that are resolved informally under the alternate resolution process are not released as part of a student's University disciplinary record but will be maintained by the University for a period of seven years in accordance with § IX of this policy. The matter may also be considered internally (e.g., to inform assessments of repeated conduct or future policy violations).

## IX. Record Keeping

DeSales will retain all records of each investigation instituted under this policy for seven (7) years. Records will include all documents, recordings, or transcripts from investigations, hearings, appeals, and informal resolutions. The first date of the first record created by DeSales will be used as the start of the seven-year retention period. Records will be maintained for all investigations including investigations that have been dismissed, completed, or otherwise resolved.

DeSales will also maintain and publish on DeSales' website training materials of employees who serve as Title IX Coordinators, investigators, decision-makers, and persons who facilitate information resolutions.

Complainants, Respondents (including anyone acting on their behalf) and any other participants may not record interviews or any other proceeding during an investigation or the resolution process. Individuals found to have violated this recording prohibition may face disciplinary action up to and including expulsion or termination.

## X. Educational Programs

### A. Educational Programing Required for the University Community

All incoming students and new employees will receive training on the prevention of dating violence, domestic violence, sexual assault, and stalking. Training will include:

- Information on the University's prohibition on dating violence, domestic violence, sexual assault, and stalking, and the definitions of each;
- The definition of consent;

- A description of safe and positive options for bystander intervention;
- Information on risk reduction, and;
- Information on the University's criminal and University-based investigation process.

In addition, DeSales will conduct ongoing prevention and awareness campaigns for students and employees, including programming, initiatives, and strategies that are sustained over time and focus on increasing understanding of topics relevant to and skills for addressing dating violence, domestic violence, sexual assault, and stalking using a range of strategies with audiences throughout the institution and including information described in this section.

## B. Training for Those Who Implement This Policy

The Title IX Coordinator, investigators, decision-makers, and any person who facilitates an informal resolution process, will receive training on the definition of sexual harassment, the scope of DeSales' education programs or activities, how to conduct an investigation, and the grievance process including hearings, appeals, and informal resolution processes, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias. This includes how to apply the definitions with respect to consent (or the absence or negation of consent) consistently, impartially, and in accordance with this policy.

Investigators will receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence.

Decision-makers will receive training on issues of relevance of questions and evidence, including when questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant.

Any materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, must not rely on sex stereotypes and must promote impartial investigations and adjudications of Formal Complaints of conduct that violates Title IX.

Training under this section is required on an as-needed basis. Training materials will be made publicly available through DeSales' website. Training materials will be up-to-date and reflect current law and existing regulations.

The Title IX Coordinator, investigators, decision-makers, and any person who facilitates an informal resolution process, will receive annual training on issues related to dating violence, domestic violence, sexual assault, stalking, and how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability.

## Part II: Harassment and Discrimination Outside the Scope of Title IX

### I. Policy Statement

DeSales University adheres to all federal, state, and local laws and regulations prohibiting discrimination in private institutions of higher education including Title VI and Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act of 1973.

The University is committed to providing equal opportunity in the admission of students, the administration of educational programs, and activities for employees and applicants for employment, without discrimination based on race, national or ethnic origin, religion, sex, sexual orientation, familial status, gender identity, age, pregnancy, veteran status, or disability, while reserving the right where permitted by law to take action designed to promote its Catholic, Salesian mission. Notwithstanding the University's non-discrimination policy, in making employment decisions, in some instances the University may prefer or require some candidates to be members of the Roman Catholic Church or of the Oblates of St. Francis de Sales.

### II. Scope

Part II of this policy applies when any student, employee, or a third party (such as a vendor, independent contractor, visitor, or guest) is alleged to have committed prohibited harassment or discrimination.

Part II of this policy applies to on-campus and off-campus conduct that is work-related or may adversely affect campus life, educational experience, or a University activity or program.

In cases where the conduct constitutes potential Title IX offenses, Part I of this policy will apply.

### III. Prohibited Discrimination

Examples of discrimination that violate this policy include treating an applicant, employee, student, or other member of the University community differently in the terms and conditions of his or her employment or education or making decisions about that person's employment, compensation, or education based upon a person's membership in a category protected by University policy or applicable federal, state, or local laws.

### IV. Prohibited Harassment

Harassment based on a protected category is a form of discrimination. Such harassment is prohibited when:

- Enduring the offensive conduct becomes a term or condition of a person's academic, working, or living environment; or

- Inappropriate or unwelcome conduct based on protected status is so severe or pervasive that it alters the conditions of education, employment, or participation in a program or activity, thereby creating an environment that a reasonable person in similar circumstances would find intimidating, hostile, or abusive.

A single or isolated incident of harassment may create a hostile environment if the incident is sufficiently severe.

Because the University expects a higher standard of behavior than the law requires, inappropriate conduct that is not unlawful may be addressed through other University policies.

Harassment may include the following types of misconduct, when the misconduct involves one or more of the protected characteristics outlined in this policy:

- Verbal abuse, slurs, derogatory comments, or insults about, directed at, or made in the presence of an individual or group;
- Display or circulation of written materials or pictures that are offensive or degrading;
- Physical contact, or threatening language or behavior; or
- Other conduct that interferes with an individual's performance; limits participation in University activities; or otherwise creates an intimidating, hostile, or offensive University environment.

## V. Policy on Disability Discrimination and Accommodation

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

Under the ADA and its amendments, a person has a disability if they have a physical or mental impairment that substantially limits a major life activity. A substantial impairment is one that significantly limits or restricts a major life activity such as hearing, seeing, speaking, breathing, performing manual tasks, walking, or caring for oneself.

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

### a. Students with Disabilities

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

All accommodations(s) are made on an individualized basis. A student requesting any accommodation should contact the Director of the Office Student Accessibility, who evaluates the requests, coordinates services for students with disabilities, and oversees the implementation of accommodation(s).

### b. Employees with Disabilities

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

An employee with a disability is responsible for submitting a request for accommodation(s) to the Human Resources Office and providing necessary documentation. The Associate Vice President for Human Resources or their designee will work with the employee's supervisor to identify which essential functions of the position are affected and what reasonable accommodation(s) could enable the employee to perform those duties.

## VI. Required Reporting

Individuals subjected to any conduct that violates this policy, or who become aware of such conduct, may report violations at any time but are encouraged to report promptly in order to maximize the University's ability to obtain evidence, identify potential witnesses, and conduct a thorough, prompt, and impartial investigation. Reports should be directed to:

- A direct supervisor or, if that person is unavailable or the conduct involves the direct supervisor, then to any other supervisor, manager; or
- The Office for Civil Rights Compliance Coordinator.

Reports should be as detailed as possible, including the names and contact information of all individuals involved and any witnesses, along with any evidence such as photos, texts, or emails.

All University personnel, excluding the list of confidential resources below, who receive a report of an alleged violation of this policy must promptly advise the Office for Civil Rights Compliance Coordinator and provide all information and evidence provided with the report.

The following are not obligated to report alleged allegations that they become aware of in the context of a confidential relationship:

- Counseling Center
- Student Health Center staff
- University Chaplain

All complaints will be investigated as promptly, thoroughly, and objectively as possible in accordance with the University's accompanying Harassment and Discrimination Grievance Procedures.

## VII. Corrective and Preventive Action

The University will take prompt and appropriate corrective and preventive action, including interim relief, to stop any inappropriate behavior and to provide other support as needed to the individuals involved.

## VIII. Retaliation and Bad Faith Reporting Prohibited

It is prohibited to discharge, demote, suspend, threaten, harass, intimidate or otherwise retaliate against an individual in the terms or conditions of employment or educational opportunity based on:

- An individual's good faith report of misconduct, or the good faith report of another person made on that individual's behalf;
- An individual's cooperation with an investigation or other proceeding regarding a report of potential misconduct; or
- An individual's refusal to engage in any practice that violates laws, regulations or University policies if the individual has identified the alleged violation to the department, unit or individual responsible for compliance with that law, regulation or policy.

Retaliation is prohibited regardless of whether the underlying matter is ultimately substantiated.

Likewise, knowingly initiating or causing a false or bad faith report is strictly prohibited.

Violations of the non-retaliation and bad faith reporting provisions are subject to disciplinary action up to and including termination.

## IX. Responsible Officials

The Office for Civil Rights Compliance Coordinator [ocr@desales.edu](mailto:ocr@desales.edu), 610-282-1100, x1332 has been designated to handle matters under this policy.

If the Office for Civil Rights Compliance Coordinator is unavailable or a complaint alleges discrimination or harassment by that individual, the Associate Vice President for Human Resources will assume primary responsibility.

## X. Discrimination and Harassment Procedure

### A. Introduction

The University will conduct prompt, thorough, and objective investigations into all reported instances of discrimination or harassment prohibited by its Anti-Discrimination and Anti-Harassment Policy. Individuals who report or experience prohibited discrimination or harassment shall be informed of and encouraged to use all appropriate University, law enforcement, and community resources. Individuals accused of discrimination or harassment shall be informed of and encouraged to use all appropriate University and community resources and shall receive due process in accordance with the law and University policies and procedures.

The University's Non-Retaliation Policy prohibits actual or threatened retaliation or any act of intimidation to prevent or obstruct the reporting of discrimination or harassment or participation in proceedings related to discrimination or harassment. Reports of retaliation will be promptly investigated and may result in disciplinary action regardless of the outcome of the underlying complaint of discrimination or harassment.

## B. Scope

These procedures apply when any faculty or staff employee or a third party (such as a vendor, independent contractor, visitor, or guest) is a respondent. In all student cases, the procedures outlined in the Code of Student Conduct may also apply. In cases involving conduct that potentially violates Title IX, the procedures in Part I of this policy will apply. In cases where it is unclear which procedure should apply, the Vice President for Administration, in coordination with the Title IX Coordinator will decide.

## C. Privacy

The University is committed to protecting the privacy of all individuals involved in reported harassment or discrimination. Information related to a reported offense will only be shared with individuals on a need-to-know basis absent a mandatory disclosure obligation, such as a statutory requirement, a valid subpoena or a court/government agency order.

If reported discrimination or harassment discloses an immediate threat to the campus community, the University shall issue a timely notice of the incident in the interests of the health and safety of the campus community.

## D. Informal Resolution

In cases of discrimination or harassment, the Office for Civil Rights Compliance Coordinator may suggest informal resolution with the concurrence of the Associate Vice President for Human Resources or Provost. Participation in informal resolution is voluntary, and either party may withdraw at any time.

Informal resolution may be used during any phase of the process with the consent of both parties. Any agreements reached in an informal process must be approved by the Associate Vice President for Human Resources or the Provost.

## E. Interim Measures

While a complaint is pending, the University may take interim measures, including but not limited to no contact orders, reassignment, change in work duties, suspension with pay, or suspension without pay.

## F. Investigation Process

The Office for Civil Rights Compliance Coordinator or a designee will investigate cases of alleged discrimination or harassment. Either party may raise conflict of interest concerns. If a conflict of

interest exists, or the Office for Civil Rights Compliance Coordinator is unavailable, the Office for Civil Rights Compliance Coordinator or the Associate Vice President for Human Resources will designate an alternate investigator.

The investigator will conduct an intake meeting with the complainant and interview the respondent and relevant witnesses. The complainant and respondent will receive opportunities to meet with the investigator, identify witnesses, and provide evidence. The investigator will determine whether the alleged discrimination or harassment occurred using the preponderance of the evidence standard and whether that conduct violated the policy. The investigator will preserve all evidence and write an investigative report and submit it to the Vice President for Administration and Associate Vice President for Human Resources if the respondent is a staff member or third party, or to the Vice President for Administration and Provost if the respondent is a faculty member.

The University will coordinate its investigation when an active law enforcement investigation is ongoing, and it will not ordinarily conduct independent interviews or gather evidence while law enforcement is actively interviewing witnesses or gathering evidence.

## G. Disciplinary Action

The Vice President for Administration, the Provost, and/or the Associate Vice President for Human Resources will decide on disciplinary action for violations of Part II of this policy and may consult with other University officials as long as those officials do not have a conflict of interest.

Disciplinary actions may include but are not limited to the following:

- Reprimand or Censure – A written statement that the respondent has engaged inappropriate behavior or a violation of this policy.
- Probation – A designated period of time in which the respondent's actions will be monitored or expected to improve.
- Removal of privileges or responsibilities - A decrease in respondent's responsibilities because of a violation of the policy.
- Demotion – Movement of respondent to a lower position, often with a decrease in pay or title.
- Reduction in compensation - A temporary or permanent decrease in pay or benefits.
- Class monitoring – Monitoring of classroom teaching either by recording or the presence of a third party.
- Counseling – Required meeting with a designated individual or participation in a designated program to assist in prevention of the concerning behavior.
- Suspension – Removal of the employee from the workplace for a designated time period.
- Dismissal – Ending the employment relationship with the University.
- Dismissal with Revocation of Tenure – Removal of a faculty member and tenured status in accordance with the procedures outlined in the Faculty Handbook.



## H. Estimated Timelines

All parties have an interest in the speedy resolution of an allegation of discrimination or harassment, and the following timelines are designed to accomplish that. The University cannot control all factors that might contribute to delays such as local law enforcement activity, the completion of criminal forensic testing, University holidays, or the availability of witnesses. The University will strive to complete the investigative process within 60 business days and the entire process, including a determination, within 90 business days of the complaint. The 90-day timeframe does not include appeals. The decision of when to conclude an investigation will be case-specific; for example, it is not necessary to wait for the conclusion of a criminal investigation, but University officials must decide when there is sufficient information and evidence available that moving forward would be in the interests of justice.

These timeframes are only estimates. The University reserves the right, at its sole discretion, to extend the timeline in a specific case.

## I. Notification

The parties will be notified in writing by either the Vice President for Administration or the Provost in consultation with the Associate Vice President for Human Resources of the outcome of the investigation and any disciplinary action. If the dismissal of a faculty member for cause is justified, the procedures outlined in the Faculty Handbook will be followed in lieu of the appeals process below.

## J. Right of Appeal

Each party may appeal the finding by submitting a letter of appeal within seven calendar days of notification of the outcome to the University Chief of Staff.

The appeal must specify grounds that would justify re-consideration. General dissatisfaction with the outcome of the proceedings or an appeal for mercy are not appropriate grounds for appeal. The written appeal must specifically address either significant procedural error that changes the findings of fact of the proceeding or new evidence that significantly alters the findings of fact.

The appeal decision-maker may consult other University officials as appropriate before making their decision but shall not gather additional evidence. If the appeal decision-maker believes that the Vice President for Administration or the Provost should consider additional information, the appeal decision-maker may return the case to the investigator to gather more evidence. However, an appeal may not be returned solely for the purpose of reconsidering the original decision.

One appeal is permitted. The decision on the appeal is final and shall be conveyed in writing to both parties. The University will strive to decide appeals within 10 business days of receipt.

The imposition of sanctions may be deferred while the appeal process is pending unless, at the discretion of the Vice President for Administration or Provost, the continued presence of the

respondent on the campus poses a serious threat to self or others, or to the stability and continuity of normal University functions.

## Appendix A: Pregnancy or Related Conditions

DeSales University complies with all state, federal, and local laws regarding pregnancy and related conditions including Title IX of the Civil Rights Act of 1964, the Fair Labor Standards Act, Title VII of the Civil Rights Act of 1964, and the Pregnant Workers Fairness Act.

### I. Students' Pregnancy or Related Conditions

#### A. Non-Discrimination

DeSales University does not discriminate against any student, or exclude any student from its education program or activity, including any class or extracurricular activity, on the basis of that student's pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom.

#### B. Ensuring Equitable Access

If a student, or a person who has a legal right to act on behalf of the student, notifies the Title IX Coordinator of the student's pregnancy or related conditions, the Title IX Coordinator or their designee will provide the student with information regarding the University's obligations under Title IX and will, in coordination with the Office of Student Accessibility, offer the student reasonable modifications to DeSales University policies, practices, or procedures as necessary to prevent discrimination and ensure the student's equitable access.

The Title IX Coordinator, or their designee, will consult with the student when determining what modifications are appropriate, and each modification will be based on the student's individualized needs. Modifications that fundamentally alter the nature of the University's education program or activity are not available as they are not considered reasonable.

Possible modifications might include, but are not limited to:

- Breaks during class to express breast milk, breastfeed, or attend to health needs associated with pregnancy or related conditions, including eating, drinking, or using the restroom;
- Intermittent excused absences to attend medical appointments;
- Changes in schedule or course sequence;
- Extensions of time for coursework and rescheduling of tests and examinations;
- Allowing a student to sit or stand, or carry or keep water nearby;
- Counseling;
- Access to online education; or
- Changes in physical space or supplies (for example, access to a larger desk).

Additionally, the Title IX Coordinator, or their designee, will work with the student, as necessary, to ensure that they can access a lactation space that is not a bathroom and is clean, shielded from view, and free from intrusion from others.

Finally, the University will allow the students to voluntarily access any separate and comparable portion of DeSales University's education program or activity, if such exists.

### C. Voluntary Leaves of Absence

The University will allow the student to voluntarily take a leave of absence to cover, at minimum, the period of time deemed medically necessary by the student's licensed healthcare provider. If a student qualifies for any of the other leave or withdrawal options offered by DeSales, then the student may choose to take voluntary leave under those options. When the student returns to DeSales, they will be reinstated to the academic status and, as practicable, to the extracurricular status that the student held when the voluntary leave began.

### D. Supporting Documentation

The University will not require supporting documentation from the student unless such documentation is necessary and reasonable to determine reasonable modifications or take other action that may be required.

The University will not require a student who is pregnant or has related conditions to provide certification from a healthcare provider or any other person that the student is physically able to participate in any class, program, or extracurricular activity unless such certification is required of all students participating in the class, program, or activity.

## II. Employees' Pregnancy or Related Conditions

### A. Non-Discrimination

DeSales University does not discriminate against any employee or applicant for employment on the basis of current, potential, or past pregnancy or related condition.

### B. Comparable Treatment

The University treats pregnancy or related conditions as any other temporary medical conditions for all job-related purposes, including commencement, duration and extensions of leave; payment of disability income; accrual of seniority and any other benefit or service; and reinstatement; and under any fringe benefit offered to employees by virtue of employment.

### C. Lactation Time and Space

Human Resources, the Title IX Coordinator or their designee, and other University departments, as necessary, will ensure that an employee who needs to express breastmilk during work hours will have reasonable break time to do so and will also ensure that they can access a lactation space that is not a bathroom and is clean, shielded from view, and free from intrusion from others.

## Appendix B: Statement on Consensual Relationships

Maintaining appropriate relationships between student-teacher and supervisor-employee is central to the mission of DeSales University and its sense of community. Personal ties should not interfere with the professional integrity of these relationships.

Romantic and/or sexual relations by individuals between these groups may appear to be consensual but, in fact, are not always so. These situations often create a conflict of interest and can lead to abuse of power. In addition, such relationships carry the appearance of bias or preferential treatment. They can endanger the sense of community, the openness of communication, or the presumption of fairness. All of this seriously threatens the foundation of the University's mission.

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

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

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

Violations of this policy are a Human Resources matter. They will not be addressed as violations of Title IX unless the conduct meets the definition of Prohibited Conduct in Part I § II of this policy.