



UNIVERSITY OF GUAM
UNIBETSEDÁT GUÅHAN
Board of Regents

Resolution No. 20-26

**RELATIVE TO APPROVING THE UNIVERSITY OF GUAM POLICY
PROHIBITING SEX DISCRIMINATION**

WHEREAS, the University of Guam (UOG) is the primary U.S. Land Grant institution accredited by the Western Association of Schools and Colleges Senior College and University Commission serving the post-secondary needs of the people of Guam and the Western Pacific region;

WHEREAS, the governance and well-being of UOG is vested in the Board of Regents (BOR);

WHEREAS, UOG's Federal funding is contingent on compliance with Federal Laws and Regulations, including Title IX of the Civil Rights Act of 1964 and 34 C.F.R. Part 106;

WHEREAS, the United States Department of Education recently revised 34 C.F.R. Part 106 to require, in relevant part, recognition that sexual harassment, including sexual assault, is unlawful sex discrimination, supporting Complainants and respecting a Complainant's autonomy, a fair grievance process that includes live hearings in which the parties have the right to cross-examine with their party advisors, and an equal right to appeal for all parties;

WHEREAS, UOG had to amend its existing Sexual Misconduct Policy dated March 17, 2016 to incorporate the amendments to 34 C.F.R. Part 106;

WHEREAS, the current standard used by the University is based on the preponderance of evidence and this resolution will allow the University to move towards the clear and convincing standard, as allowed by the United States Department of Education;

WHEREAS, this updated University of Guam Policy Prohibiting Sexual Discrimination contains the amendments to 34 C.F.R. Part 106 and will supersede and replace the Sexual Misconduct Policy of March 17, 2016; and

WHEREAS, the Administrative Council and the Academic, Personnel, and Tenure Committee has reviewed the policy and recommends approval by the BOR.

NOW, THEREFORE, BE IT RESOLVED, the BOR hereby approves the enclosed UOG Policy Prohibiting Sex Discrimination and that it will supersede and replace the Sexual Misconduct Policy of March 17, 2016.

Adopted this 17th day of September, 2020.

Elvin Y. Chiang, Chairperson

ATTESTED:

Thomas W. Krise, Ph.D., Executive Secretary

Responsible University Officers
Senior Vice President
Title IX Coordinator

Responsible Offices
Equal Employment Opportunity/Americans with Disabilities & Title IX Office

UNIVERSITY OF GUAM POLICY PROHIBITING SEX DISCRIMINATION

Including Sexual Harassment, Sexual Assault, Sex Offenses, Domestic Violence,
Dating Violence, Stalking, and Inappropriate Amorous Relationships

UOG President's Message. The University of Guam is the premier learning institution in Guam and the Western Pacific. We are dedicated to the advancement and protection of island societies. In fulfilling our mission, each student and each employee must feel safe and secure in the conduct of their studies and the fulfillment of their duties. The University is committed to providing a supportive, secure and safe learning environment and employee workplace. This policy sets forth clear legal obligations wherein the University of Guam prohibits sex discrimination and wherein it will promptly respond to individuals who are alleged to be victims of sex discrimination in all its forms including, but not limited to, sexual harassment, sexual assault, sex offenses, domestic violence, dating violence, stalking, and inappropriate amorous relationships by offering supportive measures, by following a fair grievance process to resolve such allegations, and by providing remedies to victims of sex discrimination. As good University citizens, we can all do our part in helping to prevent and eliminate sex discrimination at the University. Please read, understand and comply with this policy prohibiting sex discrimination.

Policy Statement. The University of Guam does not discriminate on the basis of sex in the education programs and activities that it operates, and is required by Title IX of the Civil Rights Act of 1964 and by 34 C.F.R. Part 106 to prohibit all forms of sex discrimination, including but not limited to sexual harassment, sexual assault, sex offenses, domestic violence, dating violence, stalking, and inappropriate amorous relationships. The University of Guam's prohibition of sex discrimination extends to its admissions and employment activities. Further, this policy expressly prohibits retaliation against any person because of their good faith participation in the reporting, investigation, or adjudication of alleged violations of this policy. University students and employees who violate this policy will face discipline up to and including expulsion for

students or termination for employees. All members of the University Community must work together to prevent and eliminate sex discrimination at the University of Guam.

Audience. This policy and associated procedures apply to the conduct and protection of University students and employees, including faculty members, non-faculty employees, staff, administrators, graduate, professional and doctoral students, post-doctoral scholars, and student employees, and to the Universities contractors and other third parties under circumstances within the University's control. This policy and associated procedures provide for the prompt and equitable resolution of reports of sex discrimination.

Reason for Policy. The University is committed to providing an inclusive and welcoming environment for all members of our community. The University values safety, diversity, education, and equity and is firmly committed to maintaining a campus environment free from all forms of sexual misconduct. Federal and local laws protect the University community from any act of sex discrimination. Such acts violate the essential dignity of our community members and are contrary to our institutional values.

Related Statutes, Orders, and Policies.

Titles IV, VI, and IX of the Civil Rights Act of 1964

Title IX, Education Amendments of 1972 (Title IX)

Section 504 of the Rehabilitation Act of 1973

Family Educational Rights and Privacy Act of 1974 (FERPA)

Americans with Disabilities Act of 1990

Title VII of the Civil Rights Act (1964), as amended in 1991 (Title VII)

Executive Orders 11246 (of 1965) and 13672 (of 2014)—Equal Employment Opportunity

Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (1990), as amended in 2015 (Clery Act)

Violence Against Women Act (1994), as amended in 2015 (VAWA)

34 C.F.R. Part 106

Guam Code Annotated (GCA) Title 4, Article VII

Contacts. Anyone having any inquiries about the application of Title IX of the Civil Rights Act of 1964 and 34 C.F.R. Part 106 to the University of Guam's education programs and activities is referred to and may contact the University of Guam Title IX Coordinator at (671) 735-2244, at lgamboa@triton.uog.edu, and at the EEO/ADA/Title IX Office, UOG Station, Mangilao, Guam, 96923, or the Assistant Secretary of Civil Rights to the U.S. Department of Education at 1-800-421-3481, or at OCR@ed.gov, or at U.S. Department of Education, Office for Civil Rights, Lyndon Baines Johnson Department of Education Bldg, 400 Maryland Avenue, SW, Washington D.C., 20202-1100, or both.

Policy History.

Approved by the University of Guam's Administrative Council on August 5, 2020.

Approved by the Board of Regents on _____ through Resolution No. _____.

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I. Policy Prohibiting Sex Discrimination.

The University of Guam (UOG) does not condone or tolerate acts of sexual discrimination perpetrated by or against any members of its campus community. As a public land grant institution of higher education, the UOG is committed to maintaining a campus environment as a place of work and study for faculty, administrators, staff, and students, regardless of their background or gender identity, free from all forms of sexual discrimination, and ensuring that students have access to a quality learning experience and the opportunity to pursue their academic goals in a safe, supportive learning environment. As such, UOG is actively committed to reducing and eradicating the incidence of sexual discrimination and ameliorating the root causes that lead to it, as well as providing appropriate support to victims and survivors when an act of sexual discrimination does occur.

This policy and associated procedures apply to the conduct of, and protect, UOG students and employees, including faculty members, non-faculty employees, staff, administrators, graduate, professional and doctoral students, post-doctoral scholars, student employees, and volunteers and visitors to campus, including board members, guests, patrons, contractors, clients of the University, or other third parties. The complaint procedures herein and non-discrimination provisions apply to contractors, visitors, third parties and others regarding acts of sexual discrimination which occur on campus, within UOG's jurisdiction, or under circumstances within the UOG's control. This policy complies with the requirements of the federal Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, as amended ("Clery Act"); the Violence Against Women Act, as amended ("VAWA"); Title IX of the Education Amendments of 1972 ("Title IX"); Title VII of the Civil Rights Act of 1964, as amended ("Title VII"); Guam Code Annotated ("GCA") Title 4, Article VII; and other applicable laws and state and federal regulations.

II. Definitions. The following definitions apply to this policy:

A. **Actual Knowledge:** Means notice of sexual harassment or allegations of sexual harassment to the University's Title IX Coordinator or any University official who has authority to institute corrective measures on behalf of the University. Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge. This standard is not met when the only official of the recipient with actual knowledge is the respondent. The mere ability or obligation to report sexual harassment or to inform a student about how to report sexual harassment, or having been trained to do so, does not qualify an individual as one who has authority to institute corrective measures on behalf of the University. "Notice" as used in this paragraph includes, but is not limited to, a report of sexual discrimination, including but not limited to reports of sexual harassment, sexual assault, sex offenses, domestic

violence, dating violence, stalking, and inappropriate amorous relationships, made to the University's Title IX Coordinator.

B. Advisor: Any individual who provides the accuser or accused support, guidance, or advice. Any advisor who becomes aware of any sexual misconduct will report the misconduct directly to a Responsible Employee.

C. Awareness programs: Community-wide or audience-specific programming, initiative, and strategies that increase audience knowledge and share information and resources to prevent violence, promote safety, and reduce perpetration.

D. Bystander intervention: Safe and positive options that may be carried out by an individual or individuals to prevent harm or intervene when there is a risk of sexual harassment, sexual assault, sex offenses, domestic violence, dating violence, stalking, or an inappropriate amorous relationship. Bystander intervention includes: (1) Recognizing a situation of potential harm; and (2) Understanding institutional structure and cultural conditions that facilitate violence, overcoming barriers to intervening, identifying safe and effective intervention options, and taking actions to intervene.

E. Campus Security Authorities: Employees designated by the University who have significant administrative or supervisory responsibility for student and campus activities, including but not limited to, student housing, student discipline and campus judicial proceedings. Examples include security personnel, resident advisors, Vice Presidents and faculty advisors. Campus Security Authorities are also Responsible Employees.

F. Complainant: Means an individual who is alleged to be the victim of conduct that could constitute sex discrimination, to include but not limited to sexual harassment, sexual assault, sex offenses, domestic violence, dating violence, stalking, and inappropriate amorous relationships.

G. Confidential resources: Employees designated by the University who will keep confidential information about an individual unless expressly permitted by the individual or there is a continuing threat of serious violence to the individual or others, or there is a legal obligation to reveal such information. Confidential resources include campus crisis counselors. Confidential resources are not Campus Security Authorities or Responsible Employees, as defined herein.

H. Consent: Consent is an understandable exchange of affirmative words or actions, which indicate a willingness to participate in mutually agreed upon sexual activity. Consent must be informed, freely and actively given. It is the responsibility of the initiator to obtain clear and affirmative responses at each stage of sexual involvement. Consent to one form of sexual activity does not imply consent to other forms of sexual activity. The lack of a negative response is not consent. An individual who is incapacitated by alcohol and/or other drugs whether voluntarily or involuntarily consumed may not give consent. Past consent of sexual activity does not imply ongoing future consent.

Consent cannot be given if any of the following are present: force, coercion or incapacitation.

1. Force is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation (implied threats) and/or coercion that overcome resistance.

2. Coercion is unreasonable pressure for sexual activity. Coercion is more than an effort to persuade, entice, or attract another person to have sex. Conduct does not constitute coercion unless it wrongfully impairs an individual's freedom of will to choose whether to participate in the sexual activity.

3. Incapacitation is a state where an individual cannot make rational, reasonable decisions because of mental or physical helplessness, sleep, unconsciousness, or lack of awareness that sexual activity is taking place. A person may be incapacitated due to the consumption of alcohol or other drugs, or due to a temporary or permanent physical or mental health condition. A person who is incapacitated lacks the capacity to give consent because they cannot understand the "who, what, when, where, why, or how" of their sexual interaction.

4. The University offers the following guidance on Consent and assessing Incapacitation:

A person who wants to engage in a specific sexual activity is responsible for obtaining consent for that activity. The lack of a negative response or protest does not constitute consent. Lack of resistance does not constitute consent. Silence or passivity does not constitute consent. Relying solely on non-verbal communication before or during sexual activity can lead to misunderstanding and may result in a violation of this policy. It is important not to make assumptions about whether a potential partner is consenting. To avoid confusion or ambiguity, participants are encouraged to talk with one another before engaging in sexual activity. If confusion or ambiguity arises during sexual activity, participants are encouraged to stop and clarify a mutual willingness to continue that activity.

Consent to one form of sexual activity does not, by itself, constitute consent to another form of sexual activity. For example, one should not presume that consent to oral-genital contact constitutes consent to vaginal or anal penetration. Consent to sexual activity on a prior occasion does not, by itself, constitute consent to future sexual activity. In cases of prior relationships, the manner and nature of prior communications between the parties and the context of the relationship may have a bearing on the presence of consent.

Once consent has been given, it may be withdrawn at any time. An individual who seeks to withdraw consent must communicate, through clear words or actions, a decision to cease the sexual activity. Once consent is withdrawn, the sexual activity must cease immediately.

In evaluating consent in cases of alleged incapacitation, the University asks two questions: (1) Did the person initiating sexual activity know that the other party was incapacitated? and if not, (2) Should a sober, reasonable person in the same situation have known that the other party was incapacitated? If the answer to either of these questions is “Yes,” consent was absent and the conduct is likely a violation of this policy.

Incapacitation is a state beyond drunkenness or intoxication. A person is not necessarily incapacitated merely as a result of drinking or using drugs. A person could be incapacitated for other reasons which may include: sleep, prescribed or over the counter medication, mental or physical disability. Alcohol- related incapacity results from a level of alcohol ingestion that is more severe than impairment, being under the influence, drunkenness or intoxication. The impact of alcohol and other drugs varies from person to person.

One is not expected to be a medical expert in assessing incapacitation. One must look for the common and obvious warning signs that show that a person may be incapacitated or approaching incapacitation. Although every individual may manifest signs of incapacitation differently, evidence of incapacity may be detected from context clues, such as: (1) Slurred or incomprehensible speech; (2) Bloodshot eyes; (3) The smell of alcohol on their breath; (4) Shaky equilibrium or unsteady gait; (5) Vomiting; (6) Incontinence; (7) Combativeness or emotional volatility; (8) Unusual behavior; or (9) Unconsciousness.

Context clues are important in helping to determine incapacitation. These signs alone do not necessarily indicate incapacitation. A person who is incapacitated may not be able to understand some or all of the following questions: “Do you know where you are?” “Do you know how you got here?” “Do you know what is happening?” “Do you know who is here with you?”

One should not engage in sexual contact or sexual intercourse when either party has been drinking alcohol or using other drugs. The introduction of alcohol or other drugs may create ambiguity for either party as to whether consent has been sought or given. If one has doubt about either party’s level of intoxication, the safe thing to do is to forego all sexual activity.

Being impaired by alcohol or other drugs is no defense to any violation of this policy.

I. Dating violence: Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on the reporting party’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 as defined herein does not

include acts covered under the definition of domestic violence. Any incident meeting this definition is considered a crime for the purposes of Clery Act reporting.

J. Domestic violence: A felony or misdemeanor crime of violence committed: (1) By a current or former spouse or intimate partner of the victim; (2) By a person with whom the victim shares a child in common; (3) By a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner; (4) By a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred; or (5) By any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

K. Formal Complaint: Means a document filed by a complainant or signed by the University's Title IX Coordinator alleging sex discrimination, including but not limited to, sexual harassment, sexual assault, sex offenses, domestic violence, dating violence, stalking, and inappropriate amorous relationships, against a respondent and requesting that the University investigate the allegation of sex discrimination. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the University's education programs or activities of the with which the formal complaint is filed. A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information required to be listed by the University for the Title IX Coordinator and by any additional methods designated by the University. As used in this paragraph, the phrase "document filed by a complainant" means a document or electronic submission, such as by electronic mail or through an online portal provided for this purpose by the University, that contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint. Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or otherwise a party.

L. Interim protective accommodations: Changes to a student victim's academic or living situation where the change can be reasonably accommodated, such as a change in student campus housing or a "No Contact Order." Interim protective accommodations may also be made for victims other than students, depending on the situation.

M. Ongoing prevention and awareness campaigns: Programming, initiatives, and strategies that are sustained over time and focus on increasing understanding of topics relevant to and skills for addressing sexual harassment, sexual assault, sex offenses, domestic violence, dating violence, stalking, and inappropriate amorous relationships using a range of strategies with audiences throughout the institution.

N. Power: Refers to the authority or perceived authority that an individual has by virtue of their institutional standing as a university employee. This creates an inherently unequal relationship. Individuals, especially students, who are in our care frequently do not have the life experience to fully comprehend the extent of anyone who holds a title and may therefore feel constrained to reject or report sexual misconduct.

O. Primary prevention programs: Programming, initiatives, and strategies informed by research or assessed for value, effectiveness, or outcome that are intended to stop sexual harassment, sexual assault, sex offenses, domestic violence, dating violence, stalking, and inappropriate amorous relationships before they occur through the promotion of positive and healthy behaviors that foster healthy, mutually respectful relationships and sexuality, encourage safe bystander intervention, and seek to change behavior and social norms in a healthy and safe direction.

P. Proceeding: All activities related to a non-criminal resolution of an institutional disciplinary complaint, including, but not limited to, fact-finding investigations, formal or informal meetings, and hearings. A proceeding does not include communications and meetings between officials and victims concerning accommodations or protective measures to be provided to a victim.

Q. Programs to prevent sexual harassment, sexual assault, sex offenses, domestic violence, dating violence, stalking, and inappropriate amorous relationships: Comprehensive, intentional, and integrated programming, initiatives, strategies, and campaigns intended to end sexual harassment, sexual assault, sex offenses, domestic violence, dating violence, stalking, and inappropriate amorous relationships that: 1. Are culturally relevant, inclusive of diverse communities and identities, sustainable, responsive to community needs, and informed by research or assessed for value, effectiveness, or outcome; and 2. Consider environmental risk and protective factors as they occur on the individual, relationship, institutional, community, and societal levels.

Programs to prevent sexual harassment, sexual assault, sex offenses, domestic violence, dating violence, stalking, and inappropriate amorous relationships include both primary prevention and awareness programs directed at incoming students, new employees, and new contractors and ongoing prevention and awareness campaigns directed at students, employees and contractors.

R. Prompt, fair, and impartial proceeding: A proceeding that is completed within reasonably prompt timeframes designated by an institution's policy, including a process that allows for the extension of timeframes for good cause and with written notice to the accuser and the accused of the delay and the reason for the delay, and is conducted in a manner that: (1) Is consistent with the institution's policies and transparent to the accuser and accused; (2) Includes timely notice of meeting at which the accuser or accused, or both, may be present; (3) Provides timely and equal access to the accuser, the accused, and appropriate officials to any information that will be used during informal and formal disciplinary meetings and hearings; and (4) Is conducted by officials who do not have a conflict of interest or bias for or against the accuser or the accused.

S. Reporting options: University officials to whom a complaint may be made. These include the Title IX Coordinator, Safety Officer, the Dean of Enrollment Management

and Student Success, and others. Reporting options can maintain partial confidentiality, but must report the complaint to the Title IX Coordinator.

T. Respondent: Means an individual who has been reported to be the perpetrator of conduct that could constitute sex discrimination, including but not limited to, sexual harassment, sexual assault, sex offenses, domestic violence, dating violence, stalking, and inappropriate amorous relationships.

U. Responsible Employees: Employees, including all full-time faculty, designated by the University who have administrative or supervisory responsibility for student and campus activities, including but not limited to, student housing, student discipline and campus judicial proceedings. Examples include security personnel, resident advisors, Vice-Presidents and faculty advisors. Responsible Employees may also be Campus Security Authorities.

V. Result: Any initial, interim, and final decision by any official or entity authorized to resolve disciplinary matters with the University. The result must include any sanctions imposed by the University. The result does not include any interim protective accommodations.

W. Retaliation: An action taken by the University Administration or supervisor which subjects a university individual to interference, coercion or reprisal for seeking advice under this policy, reasonably filing a complaint, or otherwise in good faith participating in the internal complaint process or in a complaint process external to the University. The University prohibits retaliation under this policy, the Clery Act, and Titles VII and IX.

X. Risk reduction: Options designed to decrease perpetration and bystander inaction, and to increase empowerment for victims to promote safety and to help individuals and communities address conditions that facilitate violence.

Y. Sexual assault: An offense that meets the definition of rape, fondling, incest, or statutory rape as used in the Federal Bureau of Investigation's Uniform Crime Reporting (UCR) Program and/or Guam statutes.

Z. Sexual harassment: Means conduct on the basis of sex that satisfies one or more of the following: (1) An employee of the recipient conditioning the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct; (2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's education programs or activities; or (3) "Sexual assault" as defined in 20 U.S.C. §1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. §12291(a)(10), "domestic violence" as defined in 34 U.S.C. §12291(a)(8), or "stalking" as defined in 34 U.S.C. §12291(a)(30).

AA. Sex Discrimination: For the purpose of this policy, sex discrimination is a broad term that encompasses sexual harassment, sexual assault, and sex offenses, and may also include domestic violence, dating violence, stalking, and inappropriate amorous relationships. Sex Discrimination can occur between strangers or acquaintances, including people involved in an intimate or sexual relationship. Sex Discrimination can be committed by men or women, and can occur between people of the same or different gender.

BB. Sex offenses: Any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity, or a disparity in “power” within the relationship. Sex Offenses include but are not limited to the following: (1) Rape: The 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 victim; (2) Fondling: The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim; (3) Incest: Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law; and (4) Statutory rape which is sexual intercourse with a person who is under the statutory age of consent.

CC. Stalking & Cyberstalking: Engaging in a course of conduct directed at a specific person that would cause a reasonable person to: (1) Fear for the person’s safety or the safety of others; or (2) Suffer substantial emotional distress. For the purposes of this definition: (1) Course of conduct means two or more acts, including but not limited to acts in which the stalker 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; (2) Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim; (3) Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling, and (4) Any incident meeting this definition is considered a crime for the purposes of Clery Act reporting.

DD. Supportive Measures: Means 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. Such measures are designed to restore or preserve equal access to the University’s education programs or activities without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the University’s educational environment, or deter sexual harassment. Supportive measures may include counseling, extensions 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 University's campus, and other similar measures. The University must maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the recipient to provide the supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

III. Scope & Applicability

A. Individuals Covered by this Policy. This policy prohibits sex discrimination, including but not limited to sexual harassment, sexual assault, sex offenses, domestic violence, dating violence, stalking, and inappropriate amorous relationships in any University workplace, educational program, activity, or service, which includes all academic, extracurricular, student housing, athletics, and other programs.

The policy applies to all students, faculty, staff, administrators, supervisors, employees, volunteers, and visitors to campus. This includes guests, patrons, independent contractors, or clients of the University.

B. Jurisdiction. This policy applies to all sex discrimination that occurs on campus. It also applies to sex discrimination that occurs off campus, including on-line or electronic conduct, where the conduct occurred in the context of an employment or education program or activity of the University, had continuing adverse effects on campus, or had continuing adverse effects in an off-campus employment or education program or activity, or that otherwise threatens the health or safety of a member of the University community. Examples of covered off-campus conduct include University-sponsored study abroad, research, or internship programs.

C. Students. All students are expected to adhere to the University's Student Code of Conduct based on adherence to UOG policies, respect for their fellow students and due regard for the personal dignity and rights of each student. Accordingly, students are expected to adhere to affirmative consent rules and definitions in the initiation of any sexual activity with another student.

D. Reports Involving Minors. Individuals who suspect that a child is being harmed, or observe a child being harmed, should contact the Guam Police Department by dialing 911 or (671) 472-8911.

In addition, under Guam law, 19 GCA § 13201 *et seq.*, certain professionals who reasonably suspect that a child has been abused or neglected have an obligation to report that suspicion to Child Protective Services at (671) 475-2672 or the Guam Police Department by dialing 911 or (671) 472-8911.

IV. Resources for Information & Assistance.

A. Equal Employment Opportunity, Americans with Disabilities Act and Title IX Office (EEO/ADA & Title IX Office). This office has primary responsibility for administering this policy and oversees the investigation, response to, and resolution of all reports of sex discrimination. However, questions, concerns, or reports may be addressed to any other individuals or offices identified as reporting options in this policy.

B. Title IX Coordinator. The University has a designated Title IX Coordinator (Coordinator) within the EEO/ADA & Title IX Office. The Coordinator oversees the University's investigation, response to, and resolution of reports of sex complaints involving students, faculty, and staff. The Coordinator is:

1. Knowledgeable and trained in University policies and procedures and relevant state and federal laws;
2. Available to advise any individual, including a complainant, victim, a respondent, accused, or a third party, about University and community resources and reporting options;
3. Available to provide assistance to any University employee regarding how to respond appropriately to a report of Title IX-related sexual misconduct;
4. Participates in ensuring the effective implementation of this policy, including monitoring compliance with all procedural requirements, record keeping, and timeframes; and
5. Responsible for overseeing annual training, prevention, and education efforts and annual review of the policy.

Inquiries or concerns about Title IX may be referred to the Coordinator at:

Title IX Coordinator (671) 735-2244

email: eeo-ada@uguam.uog.edu

Concerns about the University's application of Title IX under this policy may be addressed to the United States Department of Education, Office for Civil Rights:

US Office for Civil Rights: (800) 421-3481, email: OCR@ed.gov

V. University's Response to Sex Discrimination.

A. General Response to Sex Discrimination. Should the University have actual knowledge of sex discrimination in any of the University's education programs or activities against a person who is located in the United States, the University shall respond promptly in a manner that is not deliberately indifferent. The term "deliberately indifferent" as used in this section shall mean a University response to sex

discrimination that is clearly unreasonable in light of the known circumstances. The term “education programs or activities” as used in this section shall include locations, events, or circumstances over which the University exercised or exercises substantial control over both the respondent and the context in which the sex discrimination occurs, and also includes any building owned or controlled by a student organization that is officially recognized by the University. The University’s response must treat complainants and respondents equitably by offering supportive measures to a complainant and by following the grievance process specified in this policy, before the imposition of any disciplinary sanctions or other actions that are not supportive measures against a respondent. The Title IX Coordinator must promptly contact the complainant to discuss the availability of supportive measure, 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 of a formal complaint.

1. The Coordinator or any person designated by the University to facilitate an informal resolution of an allegation of sex discrimination shall not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.

2. The University shall ensure that the Coordinator or any person designated by the University to facilitate an informal resolution of an allegation of sex discrimination, receives training on the definitions of sex discrimination including but not limited to the definition of sexual harassment as set forth in 34 C.F.R. Part 106.30, the scope of the University’s education or activity from which the allegation of sex discrimination arises, how to serve impartially, including but not limited to avoiding pre-judgement of the facts at issue, conflicts of interest and bias.

3. The University shall ensure that any materials used to train the Coordinator or a person designated by the University to facilitate an informal resolution of an allegation of sex discrimination does not rely on sex stereotypes and that such materials promote impartial investigations and adjudications of complaints of sex discrimination.

B. Response to a formal complaint. In response to a formal complaint, the University must follow the grievance process set forth in this policy. With or without a formal complaint, the University must comply with the requirements set forth in Section V.A. of this policy.

C. Emergency Removal of Respondent. With or without the filing of a formal complaint, the University may remove a respondent from the University’s educational programs or activities on an emergency basis, provided that the University undertakes an individualized safety and risk analysis, determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sex discrimination justifies removal, and the University shall provide the respondent so removed with written notice of the emergency removal which shall state that the

respondent has the right to file a written opposition to the removal with the Title IX Coordinator no later than five (5) work days after the emergency removal takes place. If such opposition is filed, the University shall issue a final decision on such emergency removal no later than ten (10) work days after the day such opposition is filed. The timeline stated in this section shall be modified to accommodate any rights the complainant or respondent may have pursuant to the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act.

D. Administrative Leave. With or without the filing of a formal complaint, the University may place a non-student employee respondent on administrative leave during the pendency of the grievance process set forth in this policy. However, this provision shall not be construed to modify any rights the complainant or respondent may have pursuant to the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act.

VI. Grievance Process for Formal Complaints of Sex Discrimination.

A. General Provisions.

1. The grievance process for handling formal complaints of sex discrimination shall apply equally to both the complainant and the respondent.

2. The University shall treat complainants and respondents equitably by providing remedies to a complainant where, after following this grievance process, a determination of responsibility for sex discrimination has been made against the respondent and by following this grievance process before the University imposes any disciplinary sanctions or other actions that are not supportive measures against a respondent.

3. This grievance process requires an objective evaluation of all relevant evidence, including both inculpatory and exculpatory evidence and any of the University's credibility determinations arising from this grievance process shall not be based on a person's status as a complainant, respondent, or witness for either the complainant, the respondent, or the University.

4. The Coordinator or any person designated by the University as an investigator or a decision maker shall not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.

5. The University shall ensure that the Coordinator or any person designated by the University as an investigator or a decision maker receives training on the definitions of sex discrimination including but not limited to the definition of sexual harassment as set forth in 34 C.F.R. Part 106.30, the scope of the University's education or activity from which the allegation of sex discrimination arises, how to serve impartially, including

but not limited to avoiding pre-judgement of the facts at issue, conflicts of interest and bias.

6. The University shall ensure that any person designated by the University as a decision maker receives training on any technology to be used at a live hearing.

7. The University shall ensure that any person designated by the University as a decision maker receives 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, as set forth in 34 C.F.R. Part 106 §106.45(b)(6).

8. The University shall ensure that any person designated by the University as an investigator receives training on issue of relevance to create an investigative report that fairly summarizes relevant evidence as required by in 34 C.F.R. Part 106 §106.45(b)(5)(vii).

9. The University shall ensure that any materials used to train a person designated by the University as an investigator or decision-maker does not rely on sex stereotypes and that such materials promote impartial investigations and adjudications of complaints of sex discrimination.

10. Respondents are presumed to be non-responsible. This Grievance Process shall assume that the Respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the Grievance Process.

11. Clear and Convincing Standard of Evidence. The standard of evidence to be used to determine responsibility is the clear and convincing evidence standard and said standard of evidence shall apply to formal complaints against students, to formal complaints against employees, including the University's faculty, and to all formal complaints of sex discrimination.

12. Burden of Proof & Burden of Gathering Evidence. The University shall ensure that that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on the University and not on the parties.

13. Party Access to Evidence. The University shall provide both parties an equal opportunity to inspect and review any evidence obtained as part of the preliminary investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which the University does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to the conclusion of the investigation.

(a). The University shall make all such evidence subject to the parties' inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.

14. Privileges. This Grievance Process shall not rely upon or otherwise permit the use of questions or evidence that constitute, or seek disclosure of, information protected a legally recognized privilege applicable to Guam, unless the person holding such privilege has waived the privilege.

(a). The University shall not access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the University obtains that party's voluntary, written consent to do so for a grievance process under this section.

15. Supportive Measures. The Coordinator shall describe the range of supportive measures to the Complainant and to the Respondent.

16. Party Witnesses. The parties shall have an equal opportunity to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence during the preliminary investigation and during the hearing.

17. Discussions. The University shall not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.

18. Party Advisors. The parties shall have the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney, and the University shall not limit the choice or presence of the advisor for their the complainant or respondent in any meeting or grievance proceedings.

(a). The University may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties.

19. Notice. The University shall provide to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare and participate.

20. No Waiver. The University shall not require as a condition of enrollment or continuing enrollment, or employment, or continuing employment, or the enjoyment of any other right, waiver of the right to an investigation and adjudication of formal complaint of sex discrimination consistent with this section.

21. Confidentiality. Pursuant to 34 C.F.R. Part 106, §106.71(a), the University shall keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including 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 set forth in 20 U.S.C. §1232g, FERPA Regulations set forth in 34 C.F.R. Part 99, or as required by law, or to carry out the purposes of 34 C.F.R. Part 106, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

B. Formal Complaints of Sex Discrimination.

1. Time Limit. Complainants shall file formal complaints no later than fourteen (14) calendar days from the action or occurrence from which the Complainant's allegations of sex discrimination arise from. If the Complainant elects not to file a formal complaint or fails to file a formal complaint within the aforementioned time period, the University shall treat the complaint or allegation as untimely and shall not take any further action on it other than giving written notice to the Complainant that the complaint was untimely.

2. Filing. A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information required to be listed by the University for the Title IX Coordinator and by any additional methods designated by the University. In person and the Coordinator or his or her designee shall acknowledge receipt of each complaint and that said acknowledgement shall include the date and time the Coordinator received the complaint.

3. Format.

(a). Complaints shall:

- (i). Be made in writing.
- (ii). Be clearly marked "Formal Complaint of Sex Discrimination."
- (iii). State the name of the Complainant.
- (iv). Provide the Complainant's phone number, mailing address, and email address which the University may use to contact the Complainant.
- (v). State the name, if known by the Complainant, of the Respondent. If the Respondent's name is not known, the Complainant shall provide a description of the Respondent.
- (vi). State the Respondent's phone number, mailing address, and email address which the University may use to contact the Respondent, if known.
- (vii). Specify whether the Complainant is a University student or employee or whether the Complainant has applied to become a University student or employee.

(viii). Specify which form of sex discrimination the Complainant is alleging, i.e. whether the Complainant is alleging sexual harassment, sexual assault, sex offenses, domestic violence, dating violence, stalking, or an inappropriate amorous relationship.

(ix). State the specific allegations of sex discrimination against the Respondent including the dates, times, and locations of the events or occurrences giving rise to the allegations.

(x). Request that the University investigate the Complainant's allegations of sex discrimination against the Respondent.

(xi). Contain the Complainant's physical or digital signature, or otherwise indicate that the Complainant is the person filing the formal complaint.

(xii). Have attached as exhibits, all evidence that the Complainant has to support the allegations made in the formal complaint.

(A). The Complaint may be signed by the Coordinator at the request of the Complainant. Where the Coordinator signs a formal complaint, the Coordinator is not a complainant or otherwise a party to the formal complaint and shall comply with the requirements of 34 C.F.R. Part 106 §106.45(b)(1)(iii).

(b). If the complaint is not in the correct format, the Coordinator shall still accept the complaint and contact complainant to explain the format required and shall give the Complainant seven (7) calendar days to file an amended complaint. The University shall deem any amended complaint to have been filed on the date and time the original complaint was filed. If the Complainant fails to file an amended complaint within seven (7) calendar days after the Coordinator requests that such complaint be filed, the complaint shall be dismissed and the University shall take no further action on it.

4. Amending a Formal Complaint. The Complainant may amend a filed formal complaint without leave of the Coordinator any time prior to the University's issuance of a Notice of Allegations. After the University issues the Notice of Allegations, the Complainant may only amend a filed formal complaint with prior leave of the Coordinator and the Coordinator shall only give the Complainant leave to amend a filed formal complaint for good cause shown by the Complainant and only after giving the Respondent notice and an opportunity to respond to the Complainant's request to amend the formal complaint and only if such amendment does not cause prejudice to the Respondent.

C. Notice of Allegations. No later than seven (7) calendar days after the filing of a formal complaint, the Coordinator shall provide the following written notice of the parties who are known:

1. Notice of the University's Grievance Process including the University's informal resolution process.

2. Notice of the allegations of sex discrimination including sufficient details known at the time and with sufficient time for the parties to prepare a response before any initial interview. Sufficient details include the identifies of the parties involved in the incident, if known, the conduct allegedly constituting sex discrimination and the date and location of the alleged incident, if known.

3. The notice shall include a statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the Grievance Process.

4. The notice shall advise the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney, and may inspect and review evidence

5. The notice shall advise the parties that they may inspect and review evidence obtained by the University that is directly related to the allegations raised in the formal complaint, including the evidence upon which the University does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to the conclusion of the investigation, and the Investigator's investigation report.

6. The notice shall inform the parties of any provision in the applicable University code of conduct for students, employees, or faculty, that prohibits knowingly making false statements or knowingly submitting false information during the preliminary investigation and the grievance process.

7. The notice shall inform the parties of the name and contact information of the Investigator appointed by the University to conduct the preliminary investigation and the decision-makers appointed by the University to make a responsibility determination on the allegations of sex discrimination contained in the formal complaint.

8. If in the course of an investigation, the University decides to investigate allegations about the complainant or the respondent that are not included in the Notice of Allegations, the University shall provide notice of the additional allegations by issuing an Amended Notice of Allegations to the parties whose identifies are known.

D. Supportive Measures. No later two (2) work days after the issuance of a Notice of Allegations, the Coordinator shall contact the Complainant and the Respondent to discuss the availability of supportive measures and the Coordinator shall consider the Complainant and the Respondent's respective wishes with respect to supportive measures unless the Coordinator has previously done so prior to the Complainant's filing of the formal complaint.

E. Preliminary Investigation. The University shall appoint, in writing, an investigator to conduct a preliminary investigation as follows:

1. The primary function of the Preliminary Investigation is to impartially ascertain facts, document and preserve evidence, and then to report the facts and evidence to the decision-makers.

2. The Investigator shall gather and review all evidence provided by the parties.

3. The Investigator shall gather all evidence which may be in the University's possession, custody, or control that is relevant to the allegations contained in the formal complaint or the Respondent's answer to the formal complaint.

(a). The Investigator shall not access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the Investigator obtains that party's voluntary, written consent to do so for a grievance process under this section.

4. The Investigator shall obtain, as reasonably possible, the written statements of the Complainant, the Respondent, and any witnesses to any of the allegations in the formal complaint or the answer to the formal complaint.

(a). The Investigator will not accept any statements made "off the record," and shall treat all statements made by the witnesses as part of the evidentiary record.

(b). The parties or any witnesses may have a representative, including an attorney representative present with them when they are providing their written statements to the Investigating Officer.

(c). The parties and non-University employee witnesses may elect to not provide a written statement to the Investigator.

(d). No party or witnesses will be compelled to incriminate themselves, to answer any question the answer of which would incriminate them, or to make a statement or produce evidence that is not material to the issues being investigated or that might tend to degrade them. An answer or statement tends to incriminate a person if it would make it appear that the person is guilty of a crime and a person who refuses to provide information for this reason must specifically state that the refusal is based on their rights against self-incrimination under the Fifth Amendment of the U.S. Constitution or the Bill of Rights contained in the Organic Act of Guam.

5. Advisors. The parties shall have the same opportunities to have others present during any meeting or proceeding they have with the Investigator, including the opportunity to be accompanied to any related meeting or proceeding with the Investigator by the advisor of their choice, who may be, but is not required to be, an

attorney, and the Investigator shall not limit the choice or presence of the advisor for their the complainant or respondent in any meeting or grievance proceedings.

(a). The Investigator may establish restrictions regarding the extent to which the advisor may participate in the meeting or proceedings, as long as the restrictions apply equally to both parties.

6. Notice of Interviews & Meetings. The Investigator shall provide to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all investigative interviews and meetings, with sufficient time for the party to prepare and participate.

7. Party Access to Evidence. The Investigator shall provide both parties an equal opportunity to inspect and review any evidence obtained as part of the preliminary investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which the University does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to the conclusion of the investigation.

8. Delivery of Evidence to the Parties. Prior to the completion of the investigative report, the Investigator shall send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties must have at least ten (10) days to submit a written response, which the investigator will consider prior to the completion of the investigative report.

9. Investigative Report. No later than fourteen (14) calendar days prior to a scheduled hearing, the Investigator shall submit a report to the decision-makers that fairly summarizes the relevant evidence and the report shall contain:

- (a). The Formal Complaint.
- (b). The Notice of Allegations.
- (c). The Answer to the Formal Complaint.
- (d). All evidence gathered or documented by the Investigator.
- (e). The parties' responses to the evidence.
- (f). A summary of the relevant evidence.

(g). A recommendation as to whether a finding of responsibility or a finding of non-responsibility for the Respondent should be made concerning the allegations in the formal complaint.

4. The decision-makers may use the Preliminary Investigation Report and any evidence that it contains in making a responsibility determination concerning the allegations contained in the formal complaint or in the answer to the formal complaint.

F. Dismissal of a Formal Complaint.

1. If the Preliminary Investigation concludes that the conduct alleged in the formal complaint would not constitute sex discrimination as defined by this policy even if proved by clear and convincing evidence, or that the conduct did not occur in the University's education programs or activities, or it did not occur against a person in the United States, then the University shall dismiss the formal complaint with regard to that conduct. Such dismissal does not preclude the University from taking action under another provision of any applicable University code of conduct for students, employees, or faculty.

2. The University may dismiss the formal complaint or any allegations therein, if at any time during the investigation or hearing:

(a). A Complainant notifies the Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations therein.

(b). The Respondent is no longer enrolled with or employed by the University.

(c). Specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

3. Upon a dismissal required permitted pursuant to this section, the Coordinator shall promptly send written notice of the dismissal and the reasons therefor simultaneously to the parties.

G. Consolidation of Formal Complaints.

1. The Coordinator may consolidate formal complaints as to allegations of sex discrimination 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 sex discrimination arise out of the same facts or circumstances.

2. Where a grievance process involves more than one complainant or more than one respondent, references in this section to the singular "party," "complainant," or "respondent," include the plural, as applicable.

H. Grievance Committee Hearing.

1. Grievance Committee Members.

(a). Decision-Makers. The University shall appoint in writing three decision-makers who shall each have a yes or no vote on a determination of responsibility regarding the allegations of sex discrimination in the formal complaint.

(b). Committee President. The most senior ranking decision-maker shall serve as the Committee President. The Committee President shall be more senior ranking than any employee or faculty complainant or respondent, except in cases where the University determines in writing that such appointment is impracticable because of exigent circumstances. The Committee President has the following responsibilities and shall, during the hearing:

(i). Preserve order.

(ii). Determine the time and place of sessions of the hearing.

(iii). Recess and adjourn the hearing as necessary.

(iv). Decide routine administrative matters necessary for the efficient conduct of the hearing.

(v). Ensure that the hearing is properly conducted and that the report of proceedings is submitted to the University promptly and no later than fourteen (14) days after the hearing is concluded.

(vi). May conduct the hearing with all parties physically present in the same geographic location or, at the Committee President's discretion, any or all parties, witnesses, and other participants may appear at the hearing virtually, with technology enabling participants simultaneously to see and hear each other.

(c). Recorder. The University shall appoint a person, who is not a party, a witness, the Coordinator, the Investigator, or a decision maker, to serve as the Recorder during the hearing. The recorder is a non-voting member whose duty it is to record the hearing proceedings in audio and visual format.

(d). Legal Advisor. The University may appoint a legal advisor who shall be an attorney licensed to practice law on Guam, and who is not a party, a witness, the Coordinator, the Investigator, or a decision-maker. The legal advisor shall serve as a non-voting member and shall rule finally on challenges for cause made during the hearing, except on a challenge against the legal advisor, and on all evidentiary and procedural matters, but may not dismiss any question or issue before the decision-makers. In appropriate cases, the legal advisor may advise the members on legal matters.

(e). Members with Special Technical Knowledge. The University may appoint persons with special technical knowledge as advisory, non-voting members, and such members need participate in the hearing proceedings except as directed by the hearing president. The report of proceedings will indicate the limited participation of an advisory member.

2. Attendance of Committee Members.

(a). General. Attendance of Committee Members at the hearing is the primary duty of each voting committee member and takes precedence over all other duties. A voting member must attend scheduled sessions of the hearing, if physically able, unless excused in advance by the Committee President. The hearing may proceed, even though a committee member is absent, provided the necessary quorum is present. If the recorder is absent, the assistant recorder, if any, or the junior ranking decision-maker will assume the duties of recorder. The hearing may then proceed at the discretion of the Committee President.

(b). Quorum. A majority of the appointed voting committee members, other than nonparticipating alternate members, of a Grievance Committee constitutes a quorum and must be present at all committee sessions.

(c). Alternate Members. The University may designate alternate members to serve on the Grievance Committee, in the sequence listed, if necessary, to constitute a quorum in the absence of a regular committee member. These alternate members may be added to the Grievance Committee at the direction of the Committee President without further consultation with the University. A member added at the direction of the Committee president becomes a regular member with the same obligation to be present at all further proceedings of the committee.

(d). Member not present at prior sessions. A member who was not present at a prior session of the committee, such as an absent member, an alternate member newly authorized to serve as a member, or a newly appointed member, may participate fully in all subsequent proceedings. The member must, however, become thoroughly familiar with the prior proceedings and the evidence. The report of proceedings will reflect how the member became familiar with the proceedings. Except as directed by the University, a member who was not available because of having been excused or otherwise, for a substantial portion of the proceedings, as determined by the Committee President, will no longer be considered a member of the committee in that particular case, even if that member later becomes available to serve.

3. Duties of the Recorder.

(a). Before a Session. The Recorder is responsible for administrative preparation and support for the committee, and will perform the following duties before a session:

(i). Give timely notice of the time and place for the session to all participants, including committee members, witnesses, the legal advisor, and the complainant, the respondent, their advisors, if any, counsel, reporter, and interpreter. Only the notice to the complainant and the respondent must be in writing. It is also usually appropriate to notify the supervisor of any participant who is employed by the University.

(ii). Arrange for the presence of witnesses who are to testify in person, including the attendance of University employees ordered to appear, and of other civilians voluntarily appearing pursuant to the University's request.

(iii). Ensure that the site for the session is adequate and in good order.

(iv). Arrange for necessary personnel support, for example, a paralegal, court reporter, or interpreter, and recording equipment, stationery, and other supplies.

(v). Arrange to have available all required records, documents, and evidence.

(vi) Ensure, subject to security requirements, that all appropriate records and documents referred with the case are furnished to any party or their advisor.

(vii). Take whatever other action is necessary to ensure a prompt, full, and orderly presentation of the case.

(b). During the Session. The Recorder will perform the following duties during the session:

(i). Read the formal complaint and the appointment of the committee members at the initial session, or determine that the parties and the committee members have read them.

(ii). Note for the record at the beginning of each session the presence or absence of the committee members of the board and the parties and their advisors, if any.

(iii). Administer oaths as necessary.

(iv). Execute all orders of the committee.

(v). Conduct the presentation of evidence and examination of witnesses to elicit the facts.

(vi). Create an audio or audiovisual recording, or transcript, of the hearing.

(c). After the Proceedings.

(i). The Recorder is responsible for the prompt and accurate preparation of the report of proceedings and for the delivery of the report to the University.

(ii). The Recorder shall make the recording or transcript of the hearing available to the

parties and the parties' advisors, if any, for their inspection and review.

4. The Parties. The Parties may request that witnesses who have previously testified be recalled for cross-examination. If circumstances do not permit recalling a witness, a written statement may be obtained. In the absence of compelling justification, the proceedings will not be delayed to obtain such a statement. Subject to evidentiary limitations, any testimony given by a person as a witness may be considered, even if that witness is the Complainant or the Respondent.

5. Notice. The Recorder will, at a reasonable time in advance of the first session of the Grievance Committee concerning a formal complaint, provide the parties or their advisors, if any, a copy of all documents in the case file and a letter of notification. In the absence of special circumstances, a "reasonable time" is 10 business days. The letter of notification will include the following information:

(a). The date, hour, and place of the session.

(b). The specific allegations in the formal complaint and in the answer, in sufficient detail to enable the Complainant and the Respondent to prepare.

(c). The Complainant and Respondent's rights with regard to having their advisors present.

(d). The name and telephone number or email of each witness expected to be called.

(e). The Complainant and the Respondent's rights to be present, present evidence, and call witnesses.

(f). The procedures for examining the evidentiary materials during the hearing on request and with the assistance of the recorder.

6. Advisors.

(a). Right to have an Advisor.

(i). The parties shall have the same opportunities to have others present during the hearing, including the opportunity to be accompanied at the hearing by the advisor of their choice, who may be, but is not required to be, an attorney, and the committee shall not limit the choice or presence of the advisor for the Complainant or the Respondent.

(ii). If a party does not have an advisor present at the hearing, the University must provide without fee or charge to that party, an advisor of the University's choice, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party.

(b). Delay. Whenever practicable, the committee proceedings will be held in abeyance pending a parties' reasonable and diligent efforts to obtain an advisor. The

proceedings will not be delayed unduly to permit a party to obtain a particular advisor, or to accommodate the schedule of such advisor. The Committee President shall determine whether a delay is excessive.

(c). Independence. No advisor for a party will be censured, reprimanded, admonished, coerced, or evaluated less favorably as a result of the lawful and ethical performance of duties, or the zeal with which he or she serves as an advisor of a party. Any question concerning the propriety of a party's advisor's conduct in the performance of his or her duty will be referred to the legal advisor.

7. Challenges for Cause.

(a). Right of the Parties. The Complainant and the Respondent is entitled to have the formal complaint decided by a Grievance Committee composed of impartial members. A party may challenge for cause the legal advisor and any voting member of the committee who the respondent believes does not meet that standard. Lack of impartiality is the only basis on which a challenge for cause may be made at the committee proceedings. Any other matter affecting the qualification of a committee member may be brought to the attention of the Committee President or the University if the qualification of the Committee President is at issue.

(b). Making a Challenge. A challenge will be made as soon as a party or their advisor is aware that grounds exist. Failure to do so normally will constitute a waiver. If possible, all challenges and grounds will be communicated to the Coordinator before the Grievance Committee convenes. When the Grievance Committee convenes, the parties or their advisors may question members of the committee to determine whether to make a challenge. Such questions must relate directly to the issue of impartiality. Discretion will be used, however, to avoid revealing prejudicial matters to other members of the committee. If a challenge is made after the Grievance Committee convenes, only the name of the challenged member will be indicated in open session, not the reason for believing the member is not impartial.

(c). Deciding Challenges. The Coordinator may decide any challenges made before the Grievance Committee convenes. Otherwise, a challenge is decided by the legal advisor or, if the legal advisor is challenged, by the Committee President.

(d). Procedure. Challenges for lack of impartiality not decided by the Coordinator will be heard and decided at a session of the committee attended by the legal advisor, the Committee President, the member challenged, the parties, the parties' advisors, if any, and the recorder. The parties or that their advisors, if any, may question the challenged member and present any other evidence to support or oppose the challenge. The recorder may also present evidence on the issue. The person who is to decide the challenge may question the challenged member and any other witness, and may direct the recorder to present additional evidence. If more than one member is challenged at a time, each challenge will be decided independently in the order that such challenges were received.

(e). Sustained Challenge. If the person deciding a challenge sustains it, he or she will excuse the challenged member from the committee at once, and that person will no longer be a member of the committee. If this excusal prevents a quorum, the committee will adjourn to allow the addition of another member; otherwise, proceedings will continue.

8. Presentation of Evidence.

(a). Rights of the Parties. Except for good cause shown in the report of proceedings, a party is entitled to be present, with their advisor, if any, at all open sessions of the committee that deal with any matter concerning the formal complaint and the answer. The parties may:

(i). Examine and object to the introduction of real and documentary evidence, including written statements.

(ii). Object to the testimony of witnesses and cross-examine witnesses other than the party's own.

(A). The Committee President must permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including that challenging credibility.

(B). Such cross-examination must be conducted directly, orally, and in real time by the party's advisor of choice and never by the party personally.

(C). Only relevant cross-examination and other questions may be asked of a party or witness.

(D). Before a complainant, respondent, or witness answers a cross-examination or other question, the Committee President must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.

(iii). Call witnesses and otherwise introduce evidence.

(iv). Testify as a witness; however, no adverse inference may be drawn from the exercise of the privilege against self-incrimination. Additionally, the parties may provide written statements in lieu of live testimony.

(v). At the request of either party, the Committee President must provide the hearing to occur with the parties located in separate rooms with technology enabling the committee and the parties to simultaneously see and hear the party or the witness answering questions.

(b). Assistance.

(i). Upon receipt of a timely written request, and except as provided in subparagraph (iv), below, the Recorder will assist the parties or their advisors, if any, in obtaining documentary and real evidence in the possession of the University, and in arranging for the presence of witnesses for the parties.

(ii). Except as provided in subparagraph (iv), below, the parties are entitled to attendance, at the University's expense, of witnesses who are University employees or faculty, non-University employee witnesses must voluntarily appear in response to an invitation to appear at the hearing from the Recorder or a party, and to official cooperation in obtaining access to evidence in the University's possession, to the same extent as the Recorder on behalf of the University. If the Recorder believes any witness's testimony or other evidence requested by a party is irrelevant or unnecessarily cumulative, or that its significance is disproportionate to the delay, expense, or difficulty in obtaining it, the Recorder will submit the Respondent's request to the legal advisor or the Committee President, who will decide whether the Recorder will comply with the request. Denial of the request does not preclude the party from obtaining the evidence or witness without the Recorder's assistance, and at no expense to the University.

(iii). Nothing in this section relieves a party or a party's advisor, if any, from the obligation to exercise due diligence in preparing for and presenting his or her own case. Normally, the fact that any evidence or witness desired by a party is not reasonably available is not a basis for terminating or invalidating the proceedings.

(iv). Evidence that is privileged within the meaning of section VI.A.14 herein, will not be provided to a party or a party's advisor, if any, unless the Recorder intends to introduce such evidence to the committee and has obtained approval by the holder of the privilege to do so or the holder of such privilege has waived the privilege.

(c). Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

(d). If a party or witness is called for cross-examination by a party and does not submit to cross-examination at the hearing, the committee shall not rely on any statement of that party or witness in reaching a determination regarding responsibility.

(e). The committee shall not draw an inference about the determination of responsibility based solely on a party's or witness's absence from the hearing or refusal to answer cross-examination or other questions.

9. Argument. After all evidence has been received, the Recorder, the Complainant or the Complainant's advisor, if any, and the Respondent or the Respondent's advisor, if any, may make a final statement or argument, in the following order:

- (a). The Recorder's opening statement or argument.
- (b). The Complainant or the Complainant's advisor's, if any, final statement or argument.
- (c). The Respondent or the Respondent's advisor's, if any, final statement or argument.
- (d). The Recorder's closing argument in rebuttal.

10. Deliberation. After all the evidence has been received and any arguments heard, the committee members will consider the evidence carefully. These deliberations shall be in closed session with only voting members present. Nonvoting members of the committee do not participate in the committee's deliberations, but may be consulted. The parties and their advisors, if any, will be afforded the opportunity to be present at such consultations. The committee may request the legal advisor to assist in putting findings fact and findings of responsibility or non-responsibility in the proper form after their substance has been adopted by the committee. The parties and the parties' advisors, if any, are not entitled to be present during such assistance.

11. Voting. The committee arrives at its findings of fact and determination of responsibility or non-responsibility for each allegation in the formal complaint by voting. All voting members present must vote. After thoroughly considering and discussing all the evidence, the committee will propose and vote on findings of fact. The committee will next propose and vote on the determination of responsibility or non-responsibility for each allegation in the formal complaint, to make this determination, the committee shall apply the clear and convincing standard of evidence set forth in Section IV.A.11 in this policy. If additional findings are necessary to support a proposed determination of responsibility or non-responsibility, the committee will vote on such findings before voting on the related determination of responsibility or non-responsibility. If a finding of responsibility is made for any of the allegations, the committee will vote on the appropriate disciplinary sanctions, if any, from the range of disciplinary sanctions set forth in this policy. A majority vote of the voting members present determines questions before the committee. In case of a tie vote, the president's vote is the determination of the committee.

12. Report of Proceedings. The Report of Proceedings shall include:

- (a). Identification of the allegations potentially constituting sex discrimination as defined by this policy.
- (b). A description of the procedural steps taken from the receipt of the

formal complaint through the end of the hearing proceedings, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held.

(c). Findings of fact supporting the determinations of responsibility or non-responsibility.

(d). Conclusions regarding the application of the applicable student, employee, or faculty Code of Conduct to the facts.

(e). A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the committee imposes on the Respondent, and whether remedies designed to restore or preserve equal access to the University's education program or activity that was the subject of the formal complaint will be provided by the University to the Complainant.

(f). The University's procedures and permissible bases for the Complainant and the Respondent to appeal.

13. After the Hearing.

(a). Upon approval of the report of proceedings by the committee, the parties or the parties' advisor, if any, shall be provided a copy of the report, including all exhibits and enclosures that pertain to it, simultaneously.

(b). The determination regarding responsibility in the report of proceedings becomes final either on the date that the parties are provided with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

(c). The Coordinator is responsible for effective implementation of any remedies set forth in the report of proceedings.

I. Appeals.

1. Time to File an Appeals. The Complainant or Respondent may file an appeal from a Report of Proceeding's determination regarding responsibility or non-responsibility, or from the dismissal of a formal complaint or any allegations therein with the University President, no later than fourteen (14) calendar days after the Complainant or Respondent receives the Report of Proceeding or Notice of Dismissal of the Formal Complaint. The University shall not consider any appeal filed after the aforementioned fourteen (14) day period.

2. Contents of Appeal.

(a). Grounds for Appeal. An appeal shall state the appealing party's grounds for appeal and the University shall only consider the following grounds for an appeal:

(i). Procedural irregularity that affected the outcome of the matter.

(ii). New evidence that was not reasonably available at the time the Report of Proceedings or the Dismissal of the formal complaint was made, that could affect the outcome of the matter.

(iii). The Coordinator, Investigator, or any Grievance Committee member 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.

(b). Facts. The appealing party must provide or state the facts that support their grounds for appeal.

3. University President's Designee.

(a). The University President may designate a person, in writing, to decide the appeal who is not the same person as the Grievance Committee members that reached the determination regarding responsibility or dismissal, the Investigator, or the Coordinator.

(b). The University President shall ensure that such designee:

(i). Does not have a conflict of interest or bias for or against complainant or respondents generally or the Complainant or Respondent in the matter.

(ii). Has received training on:

(A). The definition of sex discrimination in this policy.

(B). The University's education program or activity the formal complaint arose from.

(C). How to conduct an investigation, a grievance process, and appeal.

(D). How to serve impartially, including the avoidance of pre-judgment of the facts at issue, conflicts of interest, and bias.

4. Notice of Appeal. The University President or designee shall provide a notice of the appeal, including a copy of the appeal, to the parties and said notice shall give the non-appealing party notice of their right to file a response to the appeal and that such response shall be filed with the University President or designee no later than fourteen (14) calendar days after that party receives notice of the appeal.

5. Response to Appeal.

(a). The non-appealing party may file a response to the appeal in support of or opposing the appeal within the timeline set forth in the Notice of Appeal and the facts supporting their support of or opposition to the appeal.

(b). The University President or designee shall not consider any response to an appeal that is untimely filed.

6. Decision.

(a). The University President or designee shall review the appeal, the response to the appeal, if any, and the record of the proceedings below and issue a decision in writing that either:

(i). Affirms the determination regarding responsibility or non-responsibility, or the dismissal of the formal complaint.

(ii). Vacates the determination regarding responsibility or non-responsibility, or the dismissal of the formal complaint and remands the matter back to the Coordinator, Investigator, or the Grievance Committee, as may be appropriate, to take any further action required by this policy.

(b). The decision shall describe the result of the appeal and the rationale for the result.

(c). The University President or designee shall provide the decision to the parties simultaneously.

VII. Mediation Process.

A. General Provisions.

1. The parties may voluntarily agree to engage in Mediation which is an informal resolution process at any time prior to the University reaching a determination regarding responsibility or non-responsibility, and the parties may voluntarily agree to engage in Mediation whether or not a formal complaint has been filed.

2. Mediation is voluntary and the University shall not compel or require the parties to engage in Mediation.

3. The Mediation process shall not be used to resolve allegations that a University employee or faculty member committed sex discriminating against a student.

B. Mediation.

1. Request for Mediation. Any party may request for Mediation at any time prior to the University reaching a determination regarding responsibility or non-responsibility, by submitting a request for Mediation in writing to the Coordinator. The University shall not consider any request for Mediation filed after the University has made a determination regarding responsibility or non-responsibility.

2. Notice of Request for Mediation. The Coordinator shall provide the parties a Notice of Request for Mediation no later than two (2) working days after receiving a timely filed written request for Mediation.

3. Consent to Mediation. The parties may file a Consent to Mediation with the Coordinator no later than two (2) working days after their receipt of the Notice of Request for Mediation.

(a). If either the Complainant or the Respondent does not file a Consent to Mediation, their opposition to Mediation, the University shall not proceed with Mediation.

(b). If both parties file a Consent to Mediation, the matter shall be held in abeyance until the Mediation process has been completed.

4. Appointment of Mediator.

(a). If the both parties voluntarily consent to Mediation, the University shall appoint, in writing, a Mediator.

(b). The University shall ensure that the Mediator:

(i). Does not have a conflict of interest or bias for or against complainant or respondents generally or the Complainant or Respondent in the matter.

(ii). Has received training on:

(A). The definition of sex discrimination in this policy.

(B). The University's education program or activity the formal complaint arose from.

(C). How to conduct a mediation.

(D). How to serve impartially, including the avoidance of pre-judgement of the facts at issue, conflicts of interest, and bias.

5. Notice of Mediation. The Coordinator shall issue to Notice of Mediation to the Parties and such notice shall state:

(a). The name and contact information for the Mediator.

(b). Disclosure of the allegations of sex discrimination.

(c). The requirements of the Mediation process and notice that if an agreement of resolution is reached between the parties through mediation, that such agreement will preclude the parties from resuming a formal complaint arising from the same allegations.

(d). That at any time prior to reaching a resolution of agreement, either party has the right to withdraw from the Mediation and resume the grievance process with respect to the formal complaint.

(e). Any consequences resulting from participating in Mediation including the records that will be maintained or records that could be shared.

6. Mediation Proceedings.

(a). Advisors. The parties shall have the same opportunities to have others present during Mediation, including the opportunity to be accompanied at the Mediation by the advisor of their choice, who may be, but are not required to be, an attorney, and the Mediator shall not limit the choice or presence of the advisor for the Mediation.

(b). Informal Resolution.

(i). The purpose of the Mediation shall be to achieve an informal resolution of the allegations of sex discriminations.

(ii). Mediation shall not involve an investigation or adjudication of the allegations of sex discrimination.

(c). Agreement of Resolution. If the parties are able to informally resolve the allegations of sex discrimination, the Mediator shall draft an Agreement of Resolution that accurately reflects the agreement reached between the parties.

(d). The Coordinator shall deliver the agreement to the University President who may:

(i). Approve the agreement.

(ii). Amend or deny the agreement explaining his or her rationale for doing so and return the agreement back to the Mediator for further action.

(e). Completion. Mediation is completed if the agreement of resolution is approved by the parties and the University President.

(f). Termination. Mediation is terminated and the matter resumes using the formal grievance process if:

(i). Either party does not approve an agreement of resolution.

(ii). The University President does not approve an agreement of resolution.

(iii). A party give written notice to the Mediator that it is withdrawing from Mediation.

(iv). The Mediator, in the Mediator's sole discretion, determines that a party is not acting in good faith or is not actively participating in the Mediation, and terminates the Mediation.

(g). If Mediation is terminated for any reason, the matter will be resolved through the Grievance Process set forth in the policy.

VIII. Cooperation with Law Enforcement Agencies. Conduct that violates this policy may also constitute a crime under the laws of Guam. Whether or not any specific incident of misconduct constitutes a crime is a decision made solely by law enforcement. The University shall cooperate in any criminal investigation conducting by the Guam Police Department, the Office of the Attorney General, or any other Guam or U.S. law enforcement agency conducting an investigation or criminal prosecution arising from the allegations of sex discrimination and the University may develop protocols with such law enforcement agencies for reporting complaints of sexual assault and other sex offenses, for their further investigation and determination.

IX. Retaliation.

A. Retaliation Prohibited.

1. The University or other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX of the Civil Rights Act of 1964, 34 C.F.R. Part 106, or this policy, or because the individual has made a report, complaint, testified, assisted, or participated, or refused to participate, in any manner in an investigation, proceeding, or hearing, arising from this policy.

2. Intimidation, threats, coercion, or discrimination, including charges against an individual for student, employee, or faculty code of conduct violations that do not involve sex discrimination but arise out of the same facts or circumstances as a report or complaint of sex discrimination, made for the purpose of interfering with any right or privilege secured by Title IX of the Civil Rights Act of 1964, 34 C.F.R. Part 106, or this policy, constitutes retaliation.

B. Complaints Alleging Retaliation. Complaints alleging Retaliation shall be filed according to the grievance procedure for sex discrimination set forth in Section VI., of this policy.

C. Non-Retaliatory Acts. The following acts do not constitute retaliation:

1. The exercise of rights protected under the First Amendment of the U.S. Constitution or the Bill of Rights of the Organic Act of Guam does not constitute retaliation.

2. Charging an individual with a student, employee, or faculty code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding does not constitute retaliation, provided, however, that a determination of regarding responsibility or non-responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

D. Any individual who engages in retaliation will be subject to prompt and appropriate disciplinary action.

X. Supporting Measures.

A. Contacts. The Coordinator shall advise Complainants and Respondents of their option to contact the any of the following:

1. The Guam Police Department at (671) 472-8911 or 911 for emergencies
2. The Campus Security Office at (671) 888-2456 (cell), (671) 649-9273 (G4S dispatch).
3. Violence Against Women Prevention Program at (671) 735-2890
4. Dean of Enrollment Management and Student Success at (671) 735-2292

B. Complainants and Respondents:

1. May obtain on-campus assistance at Student Counseling Services, Isa Psychological Services, and the VAWPP. These offices shall also make appropriate referrals to off-campus services.

2. In all cases in which an allegation of sex discrimination is made, the University employee becoming informed of the allegation shall report the allegation to the Coordinator.

3. May decline to notify such authorities; and, where applicable, the Coordinator shall advise a Complainant or Respondent, in writing, of their right to obtain orders of protection, no contact orders, restraining orders, or similar lawful orders issued by a criminal or civil court, or by the University.

4. Preservation of Evidence. The Coordinator shall advise Complainants and Respondents of the importance of preserving evidence for the proof of a criminal offense, such as keeping a log of violent incidents or obtaining a forensic examination at the appropriate health care facility, and that they may have the alleged offender prosecuted either through the criminal process, the University disciplinary procedure or both.

5. Supporting Measures. In appropriate circumstances, upon request of the Complainant or Respondent, the University will change a student Complainant or Respondent's academic or campus living situation if the requested change can be

reasonably accommodated, regardless of whether the alleged sex discrimination is reported to campus authorities or local law enforcement. The Coordinator shall notify the Complainant and Respondent in writing of any such supporting measures. The range of supporting measures may include:

- (a). Access to counseling services and assistance in setting up initial appointments, both on and off campus;
- (b). Imposition of a campus “No-Contact Order”;
- (c). Rescheduling of exams and assignments;
- (d). Providing alternative course completion options;
- (e). Change in class schedule, including the ability to drop a course without penalty or to transfer sections;
- (f). Change in work schedule or job assignment;
- (g). Change in student’s campus housing;
- (h). Assistance from University support staff in completing housing relocation;
- (i). Limiting access to certain University facilities or activities pending resolution of the matter;
- (j). Voluntary leave of absence;
- (k). Providing an escort to assure safe movement between classes and activities;
- (l). Arranging for medical services;
- (m). Providing academic support services, such as tutoring; or
- (n). Any other measure which can be tailored to the involved individuals to achieve the goals of this policy.

6. Failure to adhere to the parameters of any supporting measures by either the Complainant or the Respondent may be considered a separate violation of this policy and may result in disciplinary or other sanctions.

C. No Supportive Measures. If the University does not provide a Complainant or Respondent with supportive measures, then the University shall document the reasons why such a response was not clearly unreasonable in light of the known circumstances and the documentation of certain bases or measures does not limit the University in the future from providing additional explanations or detailing additional measures taken.

XI. Anonymous & Confidential Reporting.

A. Confidentiality. When considering reporting options, Complainants should be aware that certain University personnel called confidential resources can maintain strict confidentiality, while others called responsible employees have mandatory reporting and response obligations. For public recordkeeping purposes, such as the Clery Act reporting and disclosures, personally identifying information about the victim is not disclosed. University personnel who receive a report of sexual misconduct may be required to share the personally identifying information with appropriate administrative authorities for investigation and follow up.

The University will protect the confidentiality of a Complainant and a Respondent by refusing to disclose the Complainant and Respondent's information to anyone outside the University to the maximum extent permitted by law. As for confidentiality of information within the University, the University must balance a Complainant or Respondent's request for confidentiality with its responsibility to provide a safe and non-discriminatory environment for the University community.

Where the University cannot take disciplinary action against a Respondent because of a Complainant's insistence of confidentiality, the University will pursue other steps to limit the effects of the alleged sexual misconduct and attempt to prevent its recurrence.

The University has on-campus personnel who can maintain strict confidentiality. Campus crisis counselors are confidential resources who can assist in a crisis situation and provide information about options including medical assistance, psychological counseling, victim advocacy resources, legal resources, University disciplinary action, and criminal prosecution. The crisis counselors can provide safe and confidential support, explain common reactions to crises, and discuss coping methods that may assist immediately following the sexual misconduct and later. Talking about concerns may help the Complainant or the Respondents and decide what to do. Complainants or Respondents need not reveal their names if calling for information. Crisis counselors will not reveal the Complainant or the Respondent's identity to anyone, except under very limited exceptions (e.g., if an immediate threat to the Complainant or the Respondent or others is present, or if the victim is a minor).

The University will maintain as confidential any supporting measures provided to the Complainant or the Respondent, to the extent that maintaining such confidentiality would not impair the ability of the University to provide the supporting measures.

The University will provide written notification to students and employees about existing counseling, health, mental health, victim advocacy, legal assistance, visa and immigration assistance, student financial aid, and other services available for Complainants and Respondents, both within the University and in the community. This

information is also regularly distributed at classroom presentations, outreach activities, and training.

B. Records. The EEO/ADA & Title IX Office will maintain for a period of seven (7) years:

1. Each sex discrimination investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required by this policy, any disciplinary sanctions imposed on the Respondent, and any remedies provided to the Complainant designed to restore or preserve equal access to the University's education program or activity which the allegations of sex discrimination arise from;

2. Any appeal and the results therefrom;

3. Any informal resolution and the result therefrom; and

4. All materials used to train Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process.

- (a). The University shall make these materials available on its website.

C. Release of Information. If a report of sex discrimination discloses a serious and immediate threat to the campus community, the University will issue a timely notification to protect the health or safety of the community as required by the Clery Act. The notification will not include identifying information about a reporting party.

Pursuant to the Clery Act and the 2013 Amendments to the Violence Against Women Act, anonymous statistical information regarding reported criminal incidents must be shared with University Safety Office for inclusion in the Daily Crime Log. This information will also be included in the University's Annual Security Report. The University may also share aggregate and not personally identifiable data about reports, outcomes, and sanctions.

All University proceedings are conducted in accordance with the requirements of Title IX, the Clery Act, the Violence Against Women Act, FERPA, Guam law, and University policy. No information, including the identity of the parties, will be released from such proceedings except as required or permitted by law or University policy.

XII. Reporting by University Employees.

A. Responsible Employees. Employees with administrative or supervisory responsibilities on campus or who have been designated as campus security authorities by the University are considered responsible employees. Campus security authorities include: members of the University Safety Office; any individual(s) who have responsibility for campus (guard, escort, etc.); individuals/departments designated as reporting options in this policy; and employees with responsibility for student and campus activities, including, but not limited to, student housing, student discipline, and

campus judicial proceedings. Campus security authorities also include members of the Board of Regents, the President, Vice Presidents, Deans, Directors, Associate Directors, Division Chairs, Student Affairs professionals (including Resident Advisors), and faculty who serve as advisors to student groups. Confidential resources are not considered to be responsible employees.

Responsible employees will safeguard an individual's privacy, but are required by the University to immediately share all details about a report of sex discrimination (including the known details of the incident (e.g., date, time, location), the names of the parties involved, a brief description of the incident and if the incident has been previously reported) with the Coordinator. Such reporting ensures timely support for all parties and enables an effective and consistent institutional response.

B. All Other Employees. All other employees (who are not designated as confidential resources) will safeguard an individual's privacy, but are strongly encouraged to share any information about such conduct with the Coordinator, in recognition of the understanding that centralized reporting is an important tool to address, end and prevent sex discrimination.

All students (who are not otherwise required to report as Responsible Employees) are strongly encouraged to report any information, including reports or partial reports, to the Coordinator. Confidential Resources

Confidential Resources will not share information about an individual (including whether that individual has received services) without the individual's express written permission, unless there is a continuing threat of serious violence to the patient/client or to others or there is a legal obligation to reveal such information (e.g., suspected abuse or neglect of a minor).

XIII. Bystander Intervention. One of the most effective methods of preventing sex discrimination is bystander intervention, which encourages people to identify situations that might lead to sex discrimination and then safely intervene to prevent misconduct from occurring.

A. Recognizing When to Intervene. Some people might be concerned that they are being encouraged to place themselves in jeopardy to stop crimes in progress. This is not the case. There are many situations and events that occur prior to sex discrimination that are appropriate for intervention. Bystander intervention encourages people to watch for those behaviors and situations that appear to be inappropriate, coercive, harassing, or discriminatory.

B. Responsibility to Intervene. The University deems that it is every person's responsibility to take safe and reasonable actions to prevent sex discrimination.

C. Ways to Intervene.

1. Making up an excuse to get a person out of a potentially dangerous situation;
2. Letting an individual know that his or her actions may lead to serious consequences;
3. Not leaving a person's side who may be in trouble despite the efforts of someone else to get him or her alone or away from you;
4. Using a group of friends to remind someone behaving inappropriately that his or her behavior should be respectful;
5. Taking steps to curb someone's use of alcohol before problems occur; or
6. Calling the authorities when the situation warrants.

D. Understanding How to Safely Implement the Choice. Safety is paramount in bystander intervention. Usually, intervening in a group is safer than intervening individually. Also, choosing a method of intervention that de-escalates the situation is safer than attempting a confrontation. However, there is no single rule that can account for every situation. Please use good judgment and always put safety first.

XIV. Sanctions. If any faculty, staff or student violates the terms of this policy, disciplinary action will be taken in accordance with disciplinary procedures contained in the relevant handbooks, policies, procedures, practices, or contracts. Violations of this policy will result in disciplinary actions which may include but are not limited to written warnings, loss of privileges, mandatory training or counseling, probation, suspension, demotion, exclusion, expulsion, revocation of tenure, and termination of employment.

XV. Academic Freedom & Integrity. The University is committed to the principles of free inquiry and expression. Vigorous discussion and debate are fundamental to this commitment, and this policy is not intended to restrict teaching methods or freedom of expression, nor will it be permitted to do so. Sex discrimination is not a proper exercise of academic freedom under this policy and is not a legally protected expression. However, discussion of topics (even those which include sexuality or sexually explicit information) that a student may find unpleasant, uncomfortable, or distressing may not necessarily be considered sex discrimination.

XVI. Prevention & Risk Reduction Programs. The University conducts primary prevention and awareness programs for all incoming students and new employees through the Dean of Enrollment Management and Student Success (EMSS), in conjunction with the Student Government Association (SGA) and the Violence Against Women Prevention Program (VAWPP). These educational programs promote student awareness of sex discrimination, including rape, attempted rape, other forms of sexual

assault, sexual harassment, domestic violence, dating violence, stalking, and inappropriate amorous relationships. The VAWPP serves as a resource and victim services center for University of Guam students, staff, faculty, and members of their families. VAWPP services include education and training programs, interactive classroom presentations, prevention and community outreach, and victim services such as victim advocacy, counseling and emotional support, crisis intervention, risk assessment and safety planning, advisement on legal options, and referrals to other services.

The VAWPP provides ongoing campus-wide prevention and awareness campaigns and education outreach activities for students, faculty and employees, such as prevention exhibits, campus displays, movie nights, screening days, and other events. These outreach activities engage the broader campus community to learn more about sexual harassment, sexual assault, sex offenses, domestic violence, dating violence, stalking, and inappropriate amorous relationships, and where to access services.

The VAWPP provides information on risk reduction to recognize the warning signs of abusive behavior and how to avoid potential attacks. The different forms of sexual harassment, sexual assault, sex offenses, domestic violence, dating violence, stalking, and inappropriate amorous relationships are discussed and steps to take are outlined to ensure an individual's safety and to obtain assistance from informal resources such as family and friends, and formal resources such as the VAWPP, Campus Security, the Student Disciplinary Appeals Committee (SDAC), and the Guam Police Department (GPD).

All employees shall undergo annual training on the prevention of sexual misconduct. New employees shall certify to their understanding of the University's Sexual Misconduct Policy before beginning employment. New students shall affirm their understanding of student rights and responsibilities under the University's Sexual Misconduct Policy as part of the registration process and before class attendance.

XVII. Annual Review. This policy is maintained by the EEO/ADA & Title IX Office. The EEO/ADA & Title IX Office and Coordinator will review this policy on at least an annual basis, with the assistance of an advisory group consisting of student, faculty, staff, and may include community representatives selected by senior leadership of that office. The review will capture evolving legal requirements, evaluate the supports and resources available to the parties, and assess the effectiveness of the resolution process (including as to the fairness of the process, the time needed to complete the process, and the sanctions and remedies imposed). The review will include the opportunity for individuals affected by the policy to provide feedback and will incorporate an aggregate view of reports and resolutions. EEO/ADA & Title IX Office will prepare an annual report, publicly available, which will include recommendations and steps taken to improve the delivery of services and the effectiveness of the policy and procedures.

XVIII. Related University Policies.

A. Policy for Equal Employment Opportunity and Non-Discrimination/Non-Harassment and Policy and Procedure for Students and Applicants with a Disability, provides a formal process by which the University community can seek prompt, orderly, and fair resolution to complaints of discrimination, harassment, including sexual harassment, and a process by which persons with disabilities can make requests for reasonable accommodations.

B. UOG Student Handbook, Grievance Procedures, provides a formal process by which students can seek prompt, orderly, and fair resolution of academic disputes and other related complaints.

C. Board of Regents–Faculty Union Negotiated Agreement—Faculty Grievance Procedures and Faculty Hearings Procedures, provides a formal process by which faculty employees can seek prompt, orderly, and fair resolution of workplace disputes.

D. UOG Interim Rules and Regulations for Classified Personnel, Grievance Procedures provides a formal process by which classified employees can seek prompt, orderly, and fair resolution of workplace disputes.

E. UOG Rules, Regulations and Procedures Manual, provides a formal process by which non-classified employees can seek prompt, orderly, and fair resolution of workplace disputes.

XIX. How to get help in the event of an emergency. Anyone who has experienced sexual misconduct is urged to immediately seek help. Help includes seeking medical assistance, seeking confidential counseling or crisis response, filing a report with law enforcement, and/or making a report to the University. The University of Guam will help any individual get to a safe place, provide transportation to the hospital, contact the Guam Police Department, and offer information about the University’s resources and processes.

A. Emergency Response

1. Emergency Law Enforcement: 911 (from anywhere)
2. UOG Campus Safety (671) 888-2456
3. G4S (671) 649-9273 (Dispatch)
4. Guam Police Department (671) 472-8911

B. Medical Treatment.

1. Guam Memorial Hospital Emergency Room (671) 647-2555
2. Guam Regional Medical City (671) 649-4764

C. Urgent Care Clinics:

1. American Medical Center (671) 647-8261/2
2. Guam SDA Clinic (671) 646-8881/2
3. Hagatna MED Clinic (671) 475-6500
4. IHP Medical Group (671) 633-4447
5. FHP Urgent Care (671) 646-5825

D. Confidential Counseling & Crisis Response.

1. UOG Violence Against Women Prevention Program (VAWPP) Humanities and Social Sciences Building, 1st Floor, Room 103, (671) 735-2890
2. UOG Isa Psychological Services Center Humanities and Social Sciences Building, 2nd Floor, Room 202, (671) 735-2883
3. Victim Advocates Reaching Out (VARO) (671) 477-5552 (24-hr hotline)
4. Healing Hearts Crisis Center (671) 647-5351