

# ROSEMAN UNIVERSITY'S TITLE IX POLICY ON NONDISCRIMINATION ON THE BASIS OF SEX IN ITS EDUCATION PROGRAMS OR ACTIVITIES

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## I. Introduction

Roseman University of Health Sciences does not discriminate on the basis of sex in the educational programs or activities it operates and the university is required by Title IX not to discriminate in such a manner. The Title IX requirement not to discriminate in Roseman's educational programs and activities extends to admission and employment. The University's treatment of a complainant or a respondent in response to a formal complaint of sexual harassment may constitute discrimination on the basis of sex under title IX. Inquiries about the application of Title IX to Roseman University may be referred to the Roseman's Title IX Coordinator and to the Department of Education's Assistant Secretary for Education, or both.

The Department of Education continues to recognize, as has the Supreme Court, that sexual harassment, including peer-on-peer sexual harassment, is a form of sex discrimination prohibited under Title IX. Title IX is focused on sex discrimination that jeopardizes educational access. Title IX does not authorize the Department to regulate sex discrimination occurring *anywhere* but only to regulate sex discrimination in education programs or activities. Title IX polices apply only to sex discrimination occurring against a person in the United States. The Department of Education noted in its final regulations that the Supreme Court has cautioned that while Title VII and Title IX both prohibit sex discrimination, neither of these Federal civil rights laws is designed to become a general civility code.

Roseman's Title IX policy addresses the university's grievance procedures and grievance process, including how to report or file a complaint of sex discrimination, how to report or file a formal complaint of sexual harassment, and how the university will respond to a report and formal complaint of sex discrimination.

Roseman University's Title IX Coordinator for the all of the University's campuses (i.e., Henderson, Summerlin, and South Jordan) is:

Dr. Linwood Whitten  
Vice President for Student Services  
Office # 161  
11 Sunset Way  
Henderson, NV 89014  
(702) 968-1630  
[lwhitten@roseman.edu](mailto:lwhitten@roseman.edu)

Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. Such a report may be made at any time (including during non-business hours) by using the telephone number or electronic mail address, or by mail to the office address, listed for the Title IX Coordinator.

## II. Definitions

### *Actual knowledge*

Means notice of sexual harassment or allegations of sexual harassment to Roseman University's Title IX Coordinator and/or any employee who Roseman University designates as an individual with the authority to institute corrective measures on behalf of the university.

### *Advisor*

- Means an individual selected by a respondent, complainant, Title IX Coordinator or Title IX Decision-maker to advise and assist a respondent or complainant throughout the University's Title IX process.
- An advisor may be an attorney.
- The University does not require an advisor to satisfy any minimum requirements, complete any training, demonstrate competence in Title IX policies and procedures, and/or to be free of conflicts of interest.

### *Appeal*

The University is required to offer both parties an appeal from a determination regarding responsibility, and from a University dismissal of a formal complaint or any allegations therein, on the following bases:

- 1) Procedural irregularity that affected the outcome of the matter;
- 2) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
- 3) The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

### *Bias*

- The Department of Education does not define this term in the final regulations.
- The University adopts the following definition of bias from this link to the National Institutes of Health: <https://diversity.nih.gov/sociocultural-factors/implicit-bias#:~:text=Bias%20consists%20of%20attitudes%2C%20behaviors,or%20group%20compared%20to%20another.>

Bias consists of attitudes, behaviors and actions that are prejudiced in favor of or against one person or group compared to another. *Implicit bias* is a form of bias that occurs automatically and unintentionally that nevertheless affects judgments, decisions, and behaviors.

### *Business Day*

- For the purpose of this policy, an individual has the right to a complete business day, i.e., a day that starts at 8:00 am and ends at 5:00 pm Monday through Friday.
- For example, communication between 5:01 pm Friday and 7:59 am Monday will be designated as occurring on Friday (the previous business day) and the first business day that would be counted towards meeting a deadline would be Monday; communication initiated after 8:00 am on Monday but before 7:59 am on Tuesday, will be designated as occurring on Monday (the current business day) and the first business day that will be counted towards a meeting a deadline would be Tuesday.

### *Complainant*

Means an individual who is alleged to be the victim of conduct that could constitute sexual harassment. Where the Title IX Coordinator signs a Formal Complaint, the Title IX Coordinator is not a complainant.

### *Conflict of Interest*

The Department of Education notes in the discussion of the final regulations that the Clery Act regulations do not further elaborate on what may constitute a conflict of interest or bias and further declines to do so in its final Title IX regulations. The University defines conflict of interest as any situation that could cause a reasonable person to question the impartiality or objectivity of University Title IX personnel.

### *Consent*

Roseman University will consider the following issues to determine if a complainant gave consent:

- A person who is unconscious can't consent to sexual activity.
- Every individual has the right to say "no" at any time and to have that choice respected. A voluntary affirmative verbal response is a way to ensure that an individual has given consent to sexual activity. An individual does not have to physically resist for an activity to be considered sexual assault. Any sign of resistance eliminates consent.
- Silence is not accepted as a means to establish consent to any kind of sexual activity.
- A person who believes they were coerced, physically or mentally, is unable to give consent.
- Unless granted an exemption by the Office of Human Resources, any individual that has 'Academic or Supervisory Authority' over a Roseman student at any time during a current academic year is prohibited from initiating or continuing a sexual or romantic relationship with this student.

- An individual who is incapacitated is unable to consent to sexual activity. Roseman University will assess the following as indicators of being incapacitated:
  - Preceding and/or during the sexual activity, did the complainant know the respondent's name?
  - Did the complainant know if more than one person was engaging the complainant in sexual activity?
  - Preceding and/or during the sexual activity, did the complainant know the date and time?
  - Preceding and/or during the sexual activity, did the complainant know where the respondent was engaging the complainant in sexual activity?
  - Was the complainant aware of how the respondent was engaging the complainant in sexual activity?
  - Did the complainant show any signs of slurred speech, an inability to stand or walk without assistance, vomiting, and/or being in and out of consciousness preceding and/or during the sexual activity with the respondent?
  - Was there any other indicator that a reasonable person would conclude was a sign that the complainant was incapacitated?
  
- Prior sexual contact does not mean consent, even when individuals have been in a relationship. An individual who initially consents to sexual conduct has the right to withdraw this consent during the course of sexual activity.
  
- The University will apply the conditions defining consent consistently, including as between men and women and as between the complainant and respondent, in the University's Title IX grievance process.
  
- The burden of proof and the burden of collecting evidence sufficient to reach determination regarding consent, is the responsibility of the University's Title IX personnel. The Department of Education's final regulations do not require a respondent to prove consent and do not require a complainant to prove the absence of consent.

*Education Program or Activity*

- *For the purposes of Roseman University's Title IX policy*, this includes locations, events, or circumstances over which the university exercised substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by the university.
  
- The Department of Education noted in the discussion of the final regulations that the "education program or activity of a school includes all of the school's operations" which means "that Title IX protects students in connection with all of the academic, educational, extra-curricular, athletic, and other programs of the school, whether they take place in the facilities of the school, on a school bus, at a class or training program sponsored by the school at another location, or elsewhere."

- The Department of Education explained in the discussion of the final regulations that “operations” may certainly include computer and internet networks, digital platforms, and computer hardware or software owned or operated by, or used in the operations of, the university. A student using a personal device to perpetrate online sexual harassment during class time may constitute a circumstance over which the University exercises substantial control. The Department of Education final regulations apply to sexual harassment perpetrated through use of cell phones or the internet if sexual harassment occurred in the University’s education program or activity.
- The Department of Education noted in the discussion the final regulations that a teacher’s sexual harassment of a student is likely to constitute sexual harassment “in the program” of the school even if the harassment occurs off campus.
- The Department of Education noted in the discussion of the final regulations that official recognition of a student organization, alone, does not conclusively determine whether all the events and actions of the students in the organization become a part of a university’s education program or activity.

*Emergency removal*

- Means the removal of a respondent from a Roseman University education program or activity on an emergency basis for reasons related to a Title IX issue(s).
- An emergency removal for the purposes of a Roseman University Title IX-related reason(s) requires the University to undertake an individualized safety and risk analysis, determine that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal, and to provide the respondent with notice and an opportunity to challenge the decision immediately following the removal.
- An emergency removal may not be construed to modify any rights under the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act.

*Employee*

Includes persons in the service of the University under any appointment or contract of hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully employed. In the event of a conflict between the University’s definition and the definition required by Nevada or Utah State Law, the University will defer to the definition required by state law.

### *Formal Complaint*

- Means a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the University investigate the allegation of sexual harassment. A formal complaint is not required to provide a detailed statement of facts.
  
- At the time of filing a formal complaint a complainant must be participating in or attempting to participate in the education program or activity of Roseman University when the formal complaint is filed. The Department of Education in the discussion of the final regulations provides the following examples of a complainant considered to be “attempting to participate” in a university’s education programs or activities:
  - 1) a student offered admission into the university, or
  - 2) a graduate from one of the university’s programs intends to apply to a different program offered by the university, or
  - 3) a graduate intends to remain involved with the university’s alumni programs and activities, or
  - 4) a student is on a formally approved leave of absence, or
  - 5) a student has left the university because of sexual harassment, but expresses a desire to re-enroll
  
- A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the Title IX’s coordinator’s contact information that is published on the University’s website and in the University’s Catalog. 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.

### *Good Cause*

Incorporating examples provided by the Department of Education in the discussion of the final regulations, for the purposes of Roseman’s Title IX policy the University defines ‘Good Cause’ using a reasonable person standard which includes considerations such as the absence of a party, the absence of a party’s advisor, the absence of a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities. For example, if a concurrent law enforcement investigation uncovers evidence that the police plan to release on a specific time frame and that evidence would likely be material to a University’s Title IX Decision-maker’s determination regarding responsibility, then the University may have good cause for a temporary delay or limited extension of its grievance process in order to allow that evidence to be included as part of the Title IX investigation.

### *Investigative Report*

- Means the formal investigative report that fairly summarizes relevant evidence that is completed by the individual designated as the Title IX Investigator.
- Rape shield protections preclude the inclusion of irrelevant evidence in the investigative report.
- While a Title IX Investigator has the discretion to offer recommendations and conclusions in the investigative report, the Title IX Decision-maker is under an independent obligation to objectively evaluate relevant evidence, and thus will not simply defer to recommendations and conclusions made by the Title IX Investigator.

### *Notice of Allegations*

The Title IX Coordinator's (or designee's) written notice of allegations will:

- Provide formal notice of the University's grievance process (i.e., this policy) and that the University's policy complies with Title IX.
- State the conduct constituting sexual harassment as defined by the University.
- Provide sufficient details regarding the allegations of the sexual harassment known at the time of the notice. Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting sexual harassment under the University's Title IX definition of sexual harassment, and the date and location of the alleged incident, if known.
- Specifies the time a party has to prepare a response before any initial interview.
- State 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.
- States that the parties may have an advisor of their choice, who may be, but is not required to be, an attorney.
- States that the parties may inspect and review evidence obtained as part of the 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 conclusion of the investigation.
- Informs the parties of any provision in the party's academic program's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during a grievance process.

### *Official with Authority to Implement Corrective Measures*

Roseman University defines this term to only designate the Title IX Coordinator and administrators with the formal title of a Roseman University College ‘Dean’ or ‘Campus Dean’ as an official with authority to implement corrective measures. This term does not include lower ranking College administrators such as an Associate Dean, Assistant Dean, Director, Coordinator, any University administrators such as a President, Chancellor, Vice President, Director, Registrar, or any member of Roseman University’s Board of Trustees.

### *Preponderance of the Evidence Standard (More Likely Than Not)*

Roseman University’s Title IX policy uses the Preponderance of the Evidence (More Likely Than Not) standard for both students and employees accused of sexual harassment. This standard means that a proposition is more probably true than false meaning a probability of truth greater than 50 percent. If the Title IX Decision-maker determines that a Title IX case is in equipoise. i.e., “too close to call”, the Title IX Decision-maker will not determine that the respondent is responsible for the allegation(s) of sexual harassment. Similarly, the Title IX Appeal Decision-maker will use Preponderance of the Evidence Standard when determining an appeal.

### *Presumption of Non-Responsibility*

Roseman University’s Title IX policy requires the presumption that a respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.

### *Rape Shield Protections*

- Means that questions and evidence about the complainant’s sexual predisposition or prior sexual behavior are not relevant and are therefore prohibited, unless:
  - 1) 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
  - 2) if the questions and evidence are specifically about incidents of the complainant’s prior sexual behavior with the respondent and is offered to prove consent.
- The Department of Education clarified in the discussion of the final regulations that the rape shield language in this provision considers all questions and evidence of a complainant’s sexual *predisposition* irrelevant, with no exceptions; questions and evidence about a complainant’s prior *sexual behavior* are irrelevant unless they meet one of the two exceptions.
- The Department of Education explained in the discussion of the final regulations that rape shield language deems irrelevant *all* questions or evidence of a complainant’s sexual behavior *unless* offered to prove consent (and it concerns specific instances of sexual behavior with the respondent); thus, if “consent” is not at issue – for example, where the allegations concern solely unwelcome conduct that does not involve sexual assault, dating violence, domestic violence or stalking, then that exception does not even apply, and the rape shield protections would then bar *all* questions and evidence about a

complainant's sexual behavior, with no need to engage in a balancing test of whether the value of the evidence is outweighed by harm or prejudice.

- The Department of Education noted in discussion of the final regulation that where a respondent might wish to prove the complainant had a motive to fabricate or conceal a sexual interaction, the University is not required to allow for admission or consideration of the complainant's sexual behavior. Respondents in this scenario could probe a complainant's motive by, for example, inquiring whether a complainant had a dating or romantic relationship with a person other than the respondent, without delving into a complainant's sexual behavior; sexual behavior evidence would remain irrelevant in such circumstances.
- The Department of Education clarified in the discussion of the final regulations that questions and evidence about a *respondent's* sexual predisposition or prior sexual behavior are not subject to any special consideration but rather must be judged like any other question or evidence as relevant or irrelevant to the allegations at issue.

### *Relevance*

Roseman University's Title IX policy uses a reasonable person standard when evaluating relevance. The Department of Education did not define this term in the final regulations and stated in the discussion of the final regulations that the ordinary meaning of the word should be understood and applied.

### *Remedy*

- Must be designed to restore or preserve equal access to the University's education program or activity.
- Can only be imposed on a respondent when the respondent, after the grievance process that complies with Title IX, has resulted in the respondent being found responsible for engaging in sexual harassment. Similarly, Roseman University will provide a remedy/remedies to a complainant where a determination of responsibility for sexual harassment has been made against the respondent as a result of a grievance process that complies with Title IX.
- May include a supportive measure(s) as defined by University Title IX policy; however, a remedy need not be non-disciplinary or non-punitive and need not avoid burdening the respondent.
- A possible range of remedies includes providing supportive measures to the complainant such as allowing the complainant to be granted the right to extend a deadline for completing an assigning or assessment to disciplining the respondent by issuing a formal written 'Warning' to the respondent (a statement that clearly indicates the particular aspects of the behavior at issue and expectations for future behavior) to University expulsion (permanent severance of the student from the University with no opportunity to reapply for admission) for student-respondents to permanent termination of employment for employee-respondents. This described range is required by Federal law under Title IX

and this published range is purely for purposes of notice as to the possibility of a range of remedies and does not reflect the probability that any particular outcome will occur.

*Respondent*

Means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

*Retaliation*

- Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by title IX or this part, constitutes retaliation.
- The exercise of rights protected under the First Amendment does not constitute retaliation under Roseman's Title IX policy.
- Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this part does not constitute retaliation prohibited under Roseman's Title IX policy, provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

*Sanction*

- Can only be imposed on a respondent when the respondent, after the grievance process that complies with Title IX, has resulted in the respondent being found responsible for engaging in sexual harassment.
- A possible range of sanctions for a respondent includes issuing formal written 'Warning' to the respondent (a statement that clearly indicates the particular aspects of the behavior at issue and expectations for future behavior) to University expulsion (permanent severance of the student from the University with no opportunity to reapply for admission) for student-respondents to permanent termination of employment for employee-respondents. This described range is required by Federal law under Title IX and this published range is purely for purposes of notice as to the possibility of a range of disciplinary sanctions and does not reflect the probability that any particular outcome will occur.

### *Sexual harassment*

*For the purposes of Roseman University's Title IX policies, this term means conduct on the basis of sex that satisfies one or more of the conditions defined below that occurs in a Roseman University educational program or activity against a person in the United States:*

- (1) An employee of the University 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 program or activity; or
- (3) "Dating Violence" as defined in 34 U.S.C. 12291(a)(10), "Domestic Violence" as defined in 34 U.S.C. 12291(a)(8), "Sexual Assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), or "Stalking" as defined in 34 U.S.C. 12291(a)(30).

### Dating violence

Means violence committed by a person—

- (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and
- (B) where the existence of such a relationship shall be determined based on a consideration of the following factors:
  - (i) The length of the relationship.
  - (ii) The type of relationship.
  - (iii) The frequency of interaction between the persons involved in the relationship.

### Domestic violence

Includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or 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.

### Sexual assault

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

### Stalking

Means engaging in a course of conduct directed at a specific person that would cause a reasonable person to (a) fear for his or her safety or the safety of others; or (b) suffer substantial emotional distress.

The Department of Education's final regulations provide students, employees, and Roseman university clear direction that when incidents of *quid pro quo* harassment or Clery Act/VAWA offenses are reported to the University, the University must respond without inquiring into the severity or pervasiveness of such conduct.

The Department of Education notes in the discussion of the final regulations that even if a complainant in a *quid pro quo* situation pretended to welcome the conduct (for instance, due to fear of negative consequences for objecting to the employee's suggestions or advances in the moment), the complainant's subjective statement that the complainant found the conduct to be unwelcome suffices to meet the "unwelcome" element.

The Department of Education explains in the discussion of the final regulations that determining whether unwelcome sexual conduct is proposed, suggested, or directed at a complainant, by a university's employee, as part of the employee "conditioning" an educational benefit on participation in the unwelcome conduct, does not require the employee to expressly tell the complainant that such a bargain is being proposed, and the age and position of the complainant is relevant to this determination. In situations where an employee did not intend to commit *quid pro quo* harassment (for instance, where an employee did not realize that what the employee believed were friendly back rubs had sexual overtones and made students feel uncomfortable), the Title IX Decision-maker may take the specific factual circumstances into account in deciding what remedies are appropriate for the complainants and what disciplinary sanctions are appropriate for the respondent.

The Department of Education noted in the discussion of the final regulations that signs of enduring *unequal* educational access due to severe, pervasive, and objectively offensive sexual harassment may include, skipping class to avoid a harasser, a decline in a student's grade point average, or having difficulty concentrating in class; however, no concrete injury is required to conclude that serious harassment would deprive a reasonable person in the complainant's position of the ability to access the university's education program or activity on an equal basis with persons who are not suffering such harassment.

The Department of Education in the discussion of the final regulations also clarified and provided an example to help determine when the University would apply Title IX policy to a specific allegation. Although Title IX does not prohibit discrimination on the basis of sexual orientation, sexual harassment directed at gay or lesbian students that is sufficiently serious to limit or deny a student's ability to participate in or benefit from the school's program constitutes sexual harassment prohibited by Title IX under the circumstances described in this guidance. For example, if a male student or a group of male students target a gay student for physical sexual advances, serious enough to deny or limit the victim's ability to participate in or benefit from the school's program, the school would need to respond promptly and effectively, as described in this guidance, just as it would if the victim were heterosexual. On the other hand, if students heckle another student with comments based on the student's sexual orientation (e.g., "gay students are not welcome at this table in the cafeteria"), but their actions do not involve

conduct of a sexual nature, their actions would not be sexual harassment covered by Title IX.

The Department of Education in the discussion of the final regulations noted that disseminating “revenge porn,” or conspiring to sexually harass people, or other unwelcome conduct that harms and humiliates a person on the basis of sex may meet the elements of the Davis [a US Supreme Court Case] standard including pervasiveness, particularly where the unwelcome sex-based conduct involves widespread dissemination of offensive material or multiple people agreeing to potentially victimize others and taking steps in furtherance of the agreement.

The Department of Education noted in the discussion of the final regulations that, if a perpetrator commits misconduct that meets one or more of the three prongs, any misunderstanding due to cultural or other differences does not negate the commission of a sexual harassment violation. Similarly, a respondent’s lack of comprehension that conduct constituting sexual harassment violates the bodily or emotional autonomy and dignity of a victim does not excuse the misconduct, though genuine lack of understanding may (in a Title IX Decision-maker’s discretion) factor into the sanction decision affecting a particular respondent.

#### *Student*

The University defines this term per 34 CFR 106.2(r) *Student* means a person who has gained admission. “Admission”, as defined in 34 CFR 106.2(q), “means selection for part-time, full-time, special, associate, transfer, exchange, or any other enrollment, membership, or matriculation in or at an education program or activity operated by a recipient.”

#### *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 educational 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. This requirement does not bar all measures that place *any* burden on a respondent, but only those that “unreasonably burden” a respondent (or a complainant).
- The Department of Education’s final regulations do not restrict the availability of supportive measures to only students. Supportive measures are available to any complainant or respondent, including employee-complainants and employee-respondents.
- Supportive measures may include arranging for mental health 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 campus, opportunities to retake classes or exams, assuring that the

complainant and respondent are not “teamed up”, that they are not assigned to sit near each other, or that they are not assigned to be “partners” or team members, adjusting an academic transcript and other similar measures, supervision of the respondent, informing respondent of the University’s policy against sexual harassment.

- The Department of Education noted in the discussion of the final regulations that changing a class schedule would not necessarily constitute an “unreasonable” burden on a respondent. The Department of Education explained in the discussion of the final regulations that educational conversations or changing student seating or class assignments do not inherently constitute punitive or disciplinary actions and the final regulations therefore do not preclude school officials from taking such actions to maintain order, protect student safety, and counsel students about inappropriate behavior.
- The Department of Education noted in the discussion of the final regulations that it may be unreasonably burdensome to prevent respondents from attending extra-curricular activities that the university offers as a result of a one-way no contact order prior to being determined responsible; similarly, it may be unreasonably burdensome to restrict a complainant from accessing campus locations in order to prevent contact with the respondent. The Department of Education noted in the discussion of the final regulations that if a class in which both parties are enrolled does not have alternative sections that meet at different times, and precluding the respondent from completing that class would delay the respondent’s progression toward graduation, then the school may determine that requiring the respondent to drop that class would constitute an unreasonable burden on the respondent and would not qualify as a supportive measure.
- Supportive measures must be offered to the alleged victim, not to the third party who reported the complainant’s alleged victimization.

#### *Title IX Appeal Decisionmaker*

An individual designated by the University to determine an appeal(s) submitted by either the complainant and/or respondent after a Title IX Decision-maker has issued a written determination. The Title IX Appeals Decision-maker is not allowed to be the Title IX Investigator for the case the Appeals Decision-maker has been assigned, the Decision-maker for the case that is being appealed, or the Title IX Coordinator. The Title IX Appeals Decision-maker is not required to be a university employee.

#### *Title IX Coordinator*

The individual designated by the University to be responsible for complying with Title IX requirements. The Title IX Coordinator must be a Roseman University employee.

#### *Title IX Decision-maker*

An individual designated by the University to determine if a respondent is responsible for an allegation(s) of sexual harassment. The Title IX Decision-maker is not allowed to be the Title IX Investigator for the case the Decision-maker has been assigned or the Title IX Coordinator. The Title IX Decision-maker is not required to be a university employee.

### *Title IX Investigator*

An individual designated by the University to investigate allegation(s) of sexual harassment. The Title IX Investigator can also be the Title IX Coordinator. The Title IX Investigator is not required to be a university employee.

### *Written Determination of Responsibility*

The Title IX Decision-maker must provide a written determination of responsibility after the conclusion of a Title IX Hearing. This written determination will include:

- Identification of the allegations potentially constituting sexual harassment as defined by the University's Title IX policy;
- A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- Findings of fact supporting the determination;
- Conclusions regarding the application of the University's code of conduct to the facts;
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions imposed on the respondent, and whether the remedies designed to restore or preserve access to the University's education program or activity will be provided by the University to the complainant; and
- The University's procedures and permissible bases for the complainant and respondent to appeal

### **III. How to Report Sex Discrimination, How to Report Sexual Harassment, and How Roseman University Title IX Personnel Will Respond**

Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. Such a report may be made at any time (including during non-business hours) by using the telephone number or electronic mail address, or by mail to the office address, listed for the Title IX Coordinator.

The University's Title IX policy may apply to reports and formal complaints by employees against students and other employees, and also may apply to third-party complaints against students.

When the Title IX Coordinator receives a report of sexual discrimination, the Title IX Coordinator must promptly contact (within at least three (3) business days) the complainant to:

- discuss the availability of supportive measures as defined by Title IX policy,
- consider the complainant's wishes with respect to supportive measures,
- inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and
- explain to the complainant the process for filing a formal complaint.

Filing a formal complaint is not required for a complainant to receive supportive measures. Complainants will have the opportunity to express what they would like in the form of supportive measures, and the Title IX Coordinator will take into account the complainant's wishes in determining which supportive measures to offer. The process for offering supportive measures after considering the complainant's wishes is an interactive process that is not unlike the interactive process that the American with Disabilities Act (ADA) requires. The Title IX Coordinator retains the discretion to tailor supportive measures to a party's unique circumstances and may not foresee or anticipate all possible supportive measures.

The Title IX Coordinator will not disclose the complainant's identity to the respondent during the process of selecting and implementing supportive measures for the complainant.

The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures. The Title IX Coordinator serves as the point of contact for a complainant and/or respondent receiving supportive measures to relieve the burden on that party of navigating paperwork or other administrative requirements within the University's system.

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 Roseman University to provide the supportive measures.

Roseman University must keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

#### **IV. How to File a Formal Complaint of Sexual Harassment and How Roseman University Title IX Personnel Will Respond**

##### Introduction

A *formal complaint* is a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the University investigate the allegation of sexual harassment. 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 for the Title IX Coordinator. A formal complaint is 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.

At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in a Roseman University education program or activity.

The Department of Education's final regulations do not mandate circumstances where a Title IX Coordinator is required to sign a formal complaint; rather, the final regulations leave a Title IX Coordinator with discretion to sign a formal complaint. If the Title IX Coordinator signs a formal complaint against the wishes of the complainant, the Title IX Coordinator does so with the acknowledgement that it is likely it will be difficult to obtain evidence from the complainant that is directly related to the allegations in a formal complaint.

When a Title IX Coordinator believes that with or without the complainant's desire to participate in a grievance process, a non-deliberately indifferent response to the allegations requires an investigation, the Title IX Coordinator has the discretion to initiate a grievance process. The Department of Education and Roseman University desires to respect a complainant's autonomy as much as possible and thus, if a grievance process is initiated against the wishes of the complainant, that decision should be reached thoughtfully and intentionally by the Title IX Coordinator, not as an automatic result that occurs any time the University's Title IX Coordinator has notice that a complainant was allegedly victimized by sexual harassment. The Department of Education explained in the discussion of the final regulations that if a Title IX Coordinator were to receive multiple reports of sexual harassment against the same respondent, as part of a non-deliberately indifferent response the Title IX Coordinator may sign a formal complaint to initiate a grievance process against the respondent, even where no person who alleges to be the victim wishes to file a formal complaint. Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or otherwise a party. Even if a Title IX Coordinator has signed a formal complaint, the complainant is not obligated to participate in the ensuing grievance process and need not appear at a live hearing or be cross-examined.

Nothing in the Department of Education's final regulations precludes a Title IX Coordinator from assisting a complainant from filling out a document intended to serve as a formal complaint; however, the University's Title IX Coordinator will take care not to offer such assistance to pressure the complainant to file a formal complaint as opposed to simply

assisting the complainant administratively to carry out the complainant's desired intent to file a formal complaint. No person may intimidate, threaten, or coerce any person for the purpose of interfering with a person's rights under Title IX, which includes the right *not* to participate in a grievance process.

The 'Notice of Allegations' provides the respondent with the information required to participate in the University's Title IX grievance process.

#### Investigation of Allegations in a Formal Complaint

Where a complainant has chosen to file a formal complaint, or the Title IX Coordinator has decided to sign a formal complaint, the Title IX Investigator *must* investigate those allegations; determinations about the merits of the allegations must be reached only by following the fair, impartial grievance process designed to reach accurate outcomes. The University's policy provides for discretionary dismissals on specified grounds (see 'Dismissal of Formal Complaint' section below), but those grounds do not include a Title IX personnel's premature determination that allegations lack merit.

#### Supportive Measures and Administrative Leave for Non-Student Employees

The Title IX Coordinator is responsible for assuring that complainants and respondents receive supportive measures, when appropriate. Please see the 'Definition' section for the University's description of the range of possible supportive measures that the University's Title IX Coordinator could make available to complainants and respondents.

Title IX policy does not preclude administration from placing a non-student employee respondent on administrative leave during the pendency of a grievance process that complies with Title IX policy. This may not be construed to modify any rights under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act.

#### Dismissal of a Formal Complaint

Title IX Coordinator will dismiss the formal complaint with regard to that conduct for the purposes of sexual harassment under Title IX if:

- the conduct alleged in a formal complaint would not constitute sexual harassment as defined by the University's Title IX policy even if proved, or
- did not occur in the University's educational programs or activities, or
- did not occur against a person in the United States.

However, such a dismissal does not preclude action under another provision of a student's academic program's code of conduct or the University's employee/faculty code of conduct.

The Title IX Coordinator may dismiss the formal complaint or any allegations therein, if at any time during the investigation or hearing:

- a complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein;
- the respondent is no longer enrolled or employed by the University; or
- specific circumstances prevent the Title IX Investigator from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

The Title IX Coordinator will, upon dismissal required or permitted by the University's Title IX policy, promptly send, i.e., within five (5) business days, written notice of the dismissal and the reason(s) therefor simultaneously to the complainant and the respondent. The complainant and respondent have the right to appeal the Title IX Coordinator's decision to dismiss the formal complaint to the Title IX Appeals Decision-maker within five (5) business days after the Title IX Coordinator sent the written notice of dismissal.

Notice of the Right to Delay or Extend Time Frame for the Formal Complaint Process for Good Cause

The Title IX Coordinator has the right to call for a temporary delay of the formal complaint process or the limited extension of time frames for the formal complaint process for good cause with written notice to the complainant and the respondent of the delay or extension and the reasons for the action.

## V. Roseman University's Grievance Procedures and Process

### Introduction

Roseman University's Title IX grievance procedures and grievance process treats complainants and respondents equitably by providing remedies to a complainant where a determination of responsibility for sexual harassment has been made against the respondent, and by following a grievance process that complies with this Title IX policy before the university imposes any disciplinary sanctions or actions that are not supportive measures against a respondent. The University's grievance procedures and grievance process make the presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.

The Department of Education's final regulations require a university with actual knowledge of sexual harassment in an education program or activity of the University against a person in the United States to respond promptly in a manner that is not deliberately indifferent, irrespective of whether the complainant and respondent are students or employees.

Individuals designated by the University as the Title IX Coordinator, a Title IX Investigator, a Title IX Decision-maker, and a Title IX Appeals Decision-maker have been trained to serve in these roles. These individuals have been trained on the Title IX definition of sexual harassment, the scope of the university's education program or activity, how to conduct an investigation and grievance process, including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias. The materials used to train the Title IX Coordinator, Title IX Investigators, Title IX Decision-makers, and Title IX Appeals Decision-makers do not rely on sex stereotypes and these materials comply with the requirement that the training content must promote impartial investigations and adjudications of formal complaints of sexual harassment.

Title IX personnel will not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. The Department of Education's final regulations do not prescribe any particular administrative "chain of reporting" restrictions or declare any such administrative arrangements to be *per se* conflicts of interest.

A Title IX Investigator has also been trained on issues of relevance to create an investigative report that fairly summarizes relevant evidence and that complies with the University's Title policy.

A Title IX Decision-maker is also trained on any technology that is used at a live hearing, 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 the University's Title IX policies. The Title IX Decision-maker is required to objectively evaluate all relevant evidence – including both inculpatory and exculpatory evidence – and will not make credibility determinations based on a person's status as a complainant, respondent, or witness before making a determination of responsibility.

University Title IX personnel, a complainant and a respondent do not have the right to depose parties or witnesses, nor to invoke a court system's subpoena powers to compel parties or witnesses to appear at hearings, which are common features of procedural rules governing litigation and criminal proceedings.

The University has the right to control what Title IX Advisors are allowed to do during the University's Title IX grievance process. The University prohibits a Roseman employee or student who is serving as a complainant's or a respondent's advisor from attending a Title IX interview initiated by a complainant or respondent (but not a Title IX interview initiated by a Title IX Investigator or Title IX Decision-maker). The University also prohibits a Roseman employee or student who is serving as a complainant's or a respondent's advisor from independently conducting Title IX interviews with any party or witness, including contacting a party or witness to obtain information related to a Title IX case.

The University prohibits parties from photographing sensitive material such as photographs with nudity or disseminating such evidence to the public.

The Department of Education noted in the discussion of the final regulations that if there is a direct conflict between requirements of FERPA and requirements of Title IX, such that enforcement of FERPA would interfere with the primary purpose of Title IX to eliminate sex-based discrimination in schools, the requirements of Title IX override any conflicting FERPA provisions.

The Department of Education noted in the discussion of the final regulations regarding Title VII that:

- Title VII imposes different obligations with respect to sexual harassment, including a different definition, and employers that are subject to both Title VII and Title IX will need to comply with both sets of obligations,
- Nothing in these final regulations shall be read in derogation of an individual's rights, including an employee's rights, under Title VII,
- Nothing in these final regulations precludes an employer from complying with Title VII and that employers must fulfill both their obligations under Title VII and Title IX, and
- There is no inherent conflict between Title VII and Title IX.

#### Notice of Allegations and Initial Interview

The written notice of allegations identifying the parties to a sexual harassment incident is required only after a formal complaint has been filed by a complainant or signed by a Title IX Coordinator.

The Title IX Coordinator will provide the written 'Notice of Allegations' to the parties who are known within five (5) business days of the Title IX Coordinator's receipt of a formal complaint. Please see 'Notice of Allegations' in the 'Definitions' section for the information that will be provided to each party.

The Title IX Investigator or Title IX Coordinator will provide written notice to a complainant, respondent and witness that they have at least three (3) business days to prepare a response before the initial interview with the Title IX Investigator.

A complainant and respondent have the right to have an advisor of their choice attend Title IX interviews. However, an individual designated as having the status of ‘witness’ for the purpose of a specific Title IX Investigation, does not have the right to an advisor. An advisor is not allowed to make oral statements, ask questions, or raise objections during a Title IX interview. However, an advisor may request that the Title IX Investigator grant a reasonably brief break to provide advice to their advisee.

If, in the course of an investigation, a Title IX Investigator decides to investigate allegations about the complainant or respondent that are not included in the Title IX Coordinator’s initial Notice of Allegations, the Title IX Coordinator will provide notice of the additional allegations to the parties whose identities are known.

#### Investigation of a Formal Complaint

The Department of Education’s final regulations do not require a university to obtain evidence within a specific time frame.

When investigating a formal complaint and throughout the grievance process, the University’s Title IX personnel must:

- 1) Ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on the University’s Title IX personnel and not on the parties provided that the university cannot 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 Title IX personnel obtain that party’s voluntary, written consent to do so for a Title IX grievance process;
- 2) Provide an equal opportunity for the complainant and respondent to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence;
- 3) Not restrict the ability of either the complainant or respondent to discuss allegations under investigation or to gather and present relevant evidence;
- 4) Provide the complainant and respondent with 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 not limit the choice or presence of advisor for either the complainant or respondent in any meeting or grievance proceeding; however, the University has the right to establish restrictions regarding the extent to which the advisor

may participate in the proceedings, as long as the restrictions apply equally to both parties;

5) Provide, to a complainant, respondent, advisor and/or witness 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 to participate.

- The Title IX Coordinator or Title IX Investigator will provide a party with at least three (3) business days written notice of Title IX meetings and Title IX investigative interviews so the party has time to prepare;
- The Title IX Coordinator or Title IX Investigator will provide both parties an equal opportunity to inspect and review any evidence obtained as part of the 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. The parties will have the opportunity to argue that evidence directly related to the allegations is in fact relevant.

Roseman University holds that providing the parties this equal opportunity for review and inspection at least five (5) business days prior to a good faith estimate of the date of the conclusion of the investigation is a reasonable timeframe to allow each party to meaningfully respond to the evidence.

- At least five (5) business days prior to a good faith estimate of the date of the completion of the investigative report, the Title IX Coordinator or Title IX Investigator must send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or hard copy, and the parties will have at least ten (10) business days to submit a written response, which the Title IX Investigator will consider prior to the completion of the investigative report. The University must 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.
- The Title IX Coordinator or Title IX Investigator will send the Title IX investigative report at least ten (10) business days prior to a hearing to each party and the party's advisor, if any, in an electronic format or a hard copy, for their review and written response.
- The Title IX Coordinator reserves the right to send written notice of the hearing date, time, location participants, and purpose at the same time as the Title IX Investigative Report. Therefore, as long as the Title IX Coordinator or Title IX

Investigator has sent the Title IX Investigative Report at least ten (10) business days prior to a hearing to the complainant and respondent, the Title IX Coordinator can provide written notice of the hearing within at least five (5) of the ten (10) business days the parties have to review the investigative report.

Permissible Evidence Allowed in an Investigation and Hearing of a Formal Complaint

The Department of Education's final regulations require the University to gather and evaluate relevant evidence with the understanding that this includes both inculpatory and exculpatory evidence, and the final regulations deem questions and evidence about a complainant's prior sexual behavior to be irrelevant with two exceptions and preclude use of any information protected by a legally recognized privilege (e.g., attorney-client).

The Title IX Investigator may make police investigation files available to the complainant and respondent. If some of the evidence in the police investigation files is directly related to the allegations raised in a formal complaint, then the Title IX Investigator must provide that evidence to the complainant and respondent for their inspection and review.

Social media profiles, assuming that these social media profiles are lawfully obtained, may be included as part of the investigation.

The University's Title IX policy does not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

The Department of Education notes in the discussion of the final regulations that answers provided by a respondent in response to questioning by anyone acting on behalf of the University who questions a respondent (whether a student or employee) about a reported sexual harassment incident, in the absence of a formal complaint, may not be used as part of an investigation or grievance process if a formal complaint is later filed by the complainant or signed by the Title IX Coordinator.

The University's Title IX grievance process does not allow for the admission of evidence obtained illegally. If any Title IX personnel know that a recording is unlawfully created under State law, then the Title IX personnel must not share a copy of such unlawful recording. The Department of Education does not require a university to disseminate any evidence that was illegally or unlawfully obtained.

## Hearing

### Introduction

The Department of Education's final regulations require that the University's grievance process provides for a live hearing. Title IX hearings may be conducted with all parties physically present in the same geographic location or, at the Title IX Coordinator's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other.

Title IX hearings are not open to the public. Only individuals determined by the Title IX Coordinator as being necessary to conduct the hearing will be granted access. A person assisting a party with a disability, or a language interpreter, may accompany a party to the hearing, in addition to the party's advisor, because the presence of a person assisting a party with a disability at the hearing is required by law and/or necessary to conduct the hearing.

At the request of either party, the Title IX Coordinator must provide for the live hearing to occur with the parties located in separate rooms with technology enabling the Title IX decision-maker and parties to simultaneously see and hear the party or the witness answering questions.

The Title IX Decision-maker presides over this hearing and has the right to impose reasonable rules of conduct and decorum on all parties participating in the hearing, including reasonable time limits. The Title IX Decision-maker shall not allow the complainant, the respondent, and witnesses to be subjected to insulting treatment, including inappropriate comments, during the hearing. The Title IX Decision-maker has discretion to adopt rules governing the conduct of hearings that could, for example, include rules about the timing and length of breaks requested by parties or advisors and rules forbidding participants from disturbing the hearing by loudly conferring with each other. However, the parties have the right to reasonably consult with their advisor during a hearing.

The complainant and the respondent have the right, but are not required, to make opening and closing statements during the hearing. The Title IX Decision-maker has the right to establish and enforce rules for time limits, relevance, and civility for opening and closing remarks. Advisors are not allowed to make opening and closing statements on a complainant's or respondent's behalf.

The complainant and the respondent have the right to directly raise an objection to the relevance of evidence introduced during the hearing (i.e., they don't have to ask their advisor to raise an objection on their behalf). An advisor does not have the right to make objections on a complainant's or respondent's behalf. After a Title IX Decision-maker rules on a complainant's or respondent's objection to the relevance of evidence during the hearing, the Title IX Decision-maker's ruling shall be final. However, a complainant and/or respondent has the right to cite this decision if a party chooses to file an appeal with the Title IX Appeals Decision-maker.

A party cannot “fire” an assigned advisor during the hearing, but if the party correctly asserts that the assigned advisor is refusing to “conduct cross-examination on the party’s behalf” then the Title IX Coordinator or Title IX Decision-maker is obligated to provide the party an advisor to perform that function, whether that means counseling the assigned advisor to perform that role, or stopping the hearing to assign a different advisor.

Title IX requires the University to create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection and review. However, the Department of Education’s final regulations do not obligate the University to send the parties a copy of the recording or transcript.

### Cross Examination

- Cross-examination at the live hearing must be conducted directly, orally, and in real time by an advisor acting on the complainant’s and a respondent’s behalf and never by a complainant or respondent personally, notwithstanding the right of the Title IX Decision-maker to use discretion to otherwise restrict the extent to which advisors may participate in the proceedings. The requirement for a party’s advisor to conduct cross-examination on a party’s behalf need not be more extensive than simply relaying the party’s desired questions to be asked of other parties and witnesses.
- At the live hearing, the Title IX Decision-maker(s) must permit each party’s advisor to ask the other party, any witnesses (and a Title IX Investigator can be called as a witness), all relevant questions and relevant follow-up questions, including those challenging credibility. If a party does not have an advisor present at the live hearing, the Title IX Coordinator or the Title IX Decision-maker 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.
- A party’s advisor may appear and conduct cross-examination even when the party whom they are advising does not appear. Similarly, where one party does not appear and that party’s advisor of choice does not appear, a Title IX personnel-provided advisor must still cross-examine the other, appearing party “on behalf of” the non-appearing party, resulting in consideration of the appearing party’s statements but not the non-appearing party’s statements (without any inference being drawn based on the non-appearance). Because the statements of the appearing party were tested via cross-examination, a fair, reliable outcome can result in such a situation.
- The Title IX Decision-maker may adopt rules of order or decorum to forbid badgering a complainant, respondent or witness, and may fairly deem repetition of the same question to be irrelevant. When the manner in which an advisor attempts to ask the question is harassing, intimidating, or abusive (for example, the advisor yells, screams, or physically “leans in” to the complainant’s, respondent’s witness’s personal space), the Title IX Decision-maker may appropriately, evenhandedly enforce rules of decorum that require relevant questions to be asked in a respectful, non-abusive manner.

- If a complainant's or respondent's advisor of choice refuses to comply with a Title IX Decision-maker's rules of decorum (for example, by insisting on yelling at the other party), the Title IX Decision-maker may require that party to use a different advisor. Similarly, if an advisor that the Title IX Coordinator provides refuses to comply with a Title IX Decision-maker's rules of decorum, the Title IX Coordinator may provide that party with a different advisor to conduct cross-examination on behalf of that party.
- Only relevant cross examination and other questions may be asked of a party or witness. 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.
- Before a complainant, respondent, or witness answers a cross-examination or other question, the Title IX decision-maker must first determine whether the question is relevant and explain any decision to exclude a question as not relevant. The requirement for an explanation does not require the decision-maker to give a lengthy or complicated explanation; it is sufficient, for example, for the decision-maker to explain that a question is irrelevant because the question calls for prior sexual behavior information without meeting one of the two exceptions, or because the question asks about a detail that is not probative of any material fact concerning the allegations. No lengthy or complicated exposition is required to satisfy this provision.
- A complainant, respondent or advisor does not have the right to object to the Title IX Decision-maker's determination of the relevance of a question during the hearing. However, a complainant and/or respondent has the right to cite this decision if a party chooses to file an appeal with the Title IX Appeals Decision-maker.

*Rules and Guidance a Title IX Decision-maker Will Adhere to When Making a Determination of Responsibility*

- The Title IX Decision-maker will use the preponderance of evidence (more likely than not) standard when making a determination of responsibility. The Title IX Decision-maker will apply the preponderance of evidence standard for formal complaints against students as well as for formal complaints against employees, including faculty, and will apply the same standard of evidence to all formal complaints of sexual harassment.

**Note: the following rule for Title IX Decision-makers that was published in the August 3, 2020 policy was revised by the Department of Education on August 24, 2021:**

However, if a party refuses to answer cross-examination questions but video evidence exists showing the underlying incident, the Title IX Decision-maker may still consider the available evidence and make a determination. The Title IX Decision-maker may consider video evidence that does not constitute statements or to the extent that the video contains non-statement evidence.

*Per an email from the U.S. Department of Education <ed.gov@public.govdelivery.com>*

*Sent: Tuesday, August 24, 2021 1:44 PM*

*Subject: Update on Court Ruling about the Department of Education's Title IX Regulations*

The Department of Education noted that on July 28, 2021 a federal district court in Massachusetts issued a decision in *Victim Rights Law Center et al. v. Cardona*, No. 1:20-cv-11104, 2021 WL 3185743 (D. Mass. July 28, 2021). The Department's email explained that:

In accordance with the court's order, the Department will immediately cease enforcement of the part of § 106.45(b)(6)(i) regarding the prohibition against statements not subject to cross-examination. Postsecondary institutions are no longer subject to this portion of the provision.

In practical terms, a decision-maker at a postsecondary institution may now consider statements made by parties or witnesses that are otherwise permitted under the regulations, even if those parties or witnesses do not participate in cross-examination at the live hearing, in reaching a determination regarding responsibility in a Title IX grievance process.

For example, a decision-maker at a postsecondary institution may now consider statements made by the parties and witnesses during the investigation, emails or text exchanges between the parties leading up to the alleged sexual harassment, and statements about the alleged sexual harassment that satisfy the regulation's relevance rules, regardless of whether the parties or witnesses submit to cross-examination at the live hearing. A decision-maker at a postsecondary institution may also consider police reports, Sexual Assault Nurse Examiner documents, medical reports, and other documents even if those documents contain statements of a party or witness who is not cross-examined at the live hearing.

Any statements in an OCR document about the vacated part of § 106.45(b)(6)(i) should not be relied upon.

- The credibility of any party, as well as ultimate conclusions about responsibility for sexual harassment, must not be prejudged and must be based on objective evaluation of the relevant evidence in a particular case.
- The Department of Education's final regulations do not require that any party, including a complainant, must recall details with certain levels of specificity; rather, a party's answers to cross-examination questions can and should be evaluated by a Title IX Decision-maker in context, including taking into account that a party may experience stress while trying to answer questions.

### Hearing Outcome

- The Title IX Decision-maker will submit the formal ‘Written Determination’ of the hearing’s results to the Complainant, the Respondent and the Title IX Coordinator simultaneously within five (5) business days after the Decision-maker has adjourned the hearing. The Title IX Decision-maker has the right to extend this deadline for good cause upon written notice to the Respondent and Complainant.
- A determination of non-responsibility does not necessarily mean that the complainant’s allegations were false or unfounded but rather could mean that there was not sufficient evidence to find the respondent responsible.
- A determination of non-responsibility is only with regard to that conduct for the purposes of sexual harassment under Title IX; such a determination or dismissal does not preclude action under another provision of the student’s academic program’s code of conduct or employee/faculty code of conduct.
- The Title IX Decision-maker is responsible for determining remedies, disciplinary measures and sanctions on a respondent when the Title IX Decision-maker has determined that the respondent is responsible for violating the University’s Title IX policy. Please see the ‘Definition’ section for the University’s description of the range of possible disciplinary remedies and sanctions that could be imposed on a respondent and remedies that could be provided to complainants.
- The determination regarding responsibility becomes final either on:
  - 1) the date that the Title IX Appeals Decision-maker simultaneously provided the parties with the written decision describing the result of the appeal and the rationale for the result, if an appeal is filed,  
*or*
  - 2) if an appeal is not filed, the date on which an appeal would no longer be considered timely.
- The Clery Act requires, and FERPA permits, the University to inform the complainant of the institution’s final determination and any disciplinary sanctions imposed on the respondent in sexual violence cases (as opposed to other forms of sexual harassment covered by Title IX), not just those sanctions that directly relate to the complainant. The victim will know whether the perpetrator was expelled, or whether the perpetrator was suspended for a period of time, as such information will inevitably impact the victim.
- The Title IX Coordinator is responsible for the effective implementation of any remedies.
- The Title IX Coordinator has the right to keep supportive measures in place even after a determination that a respondent is not responsible, so complainants do not necessarily need to be left in constant contact with the respondent, regardless of the result of the University’s grievance process.

- The Department of Education noted in the discussion of the final regulations that it declines to require a university to offer remedies for respondents in situations where a complainant is found to have brought a false allegation. The Department of Education's final regulations are focused on sexual harassment allegations, including remedies for victims of sexual harassment, and not on remedies for other kinds of misconduct. A materially false statement may but does not always constitute discrimination on the basis of sex. The Title IX Coordinator would need to examine the content, purpose, and intent of the materially false statement as well as the circumstances under which the statement was made to determine whether the statement constitutes sex discrimination.

Right to Call for Temporary Delay or Extension of Time Frames for Notice of Allegation, Investigation, Grievance Process, Including Hearing and Written Determination, for Good Cause

The Title IX Coordinator, the Title IX Investigator and the Title IX Decision-maker each has the right to call for a temporary delay of the University's Title IX notice of allegations, investigation and grievance process or the limited extension of time frames for good cause with written notice to the complainant and the respondent of the delay or extension and the reason(s) for the action.

A complainant's or respondent's request to extend any deadline must be made in writing to the Title IX Coordinator (or designee). The Title IX Coordinator (or designee) will only grant a complainant's and/or respondent's request to extend a deadline for good cause and if granting the request does not unreasonably extend the total duration of the University's Title IX grievance process. In order for the Title IX Coordinator (or designee) to consider a request to extend a deadline, the complainant and/or respondent must:

- submit a written request to extend the deadline to the Title IX Coordinator (or designee) on or before the deadline,
- the written request must include the rationale for the extension, and
- the written request must propose a new date and time for the deadline.

If the Title IX Coordinator (or designee) grants a request to extend a deadline, the Title IX Coordinator will notify each party in writing that an extension will be granted to both parties and state the reason(s) why the decision was made for good cause.

Unless a deadline extension has been approved in writing by the Title IX Coordinator (or designee), a complainant, respondent or anyone acting on their behalf, is not allowed to submit information received after the deadline to the Title IX Investigator and/or Title IX Decision-maker. The Title IX Decision-maker will disregard evidence that was submitted after an approved deadline.

## Appeals Process

The Complainant and Respondent have a right to submit a written appeal of the Title IX Coordinator's decision to dismiss a formal complaint or the Title IX Decision-maker's determination of responsibility to the Title IX Appeals Decision-maker. The complainant and/or respondent must submit a written appeal to the Title IX Appeals Decision-maker within five (5) business days after the Title IX Coordinator provided the parties with written notification to dismiss the formal complaint or the Title IX Decision-maker provided each party with the Written Determination. The Title IX Appeals Decision-maker will consider a temporary delay or limited extension of time frames in the appeals process for good cause with written notice to the complainant and the respondent of the delay or extension and the reasons for the action.

The Title IX Appeals Decision-maker will only consider appeals for any of the following bases:

- 1) Procedural irregularity that affected the outcome of the matter;
- 2) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter;
- 3) The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

The severity of the sanctions shall not be subject to appeal for either party.

The Title IX Appeals Decision-maker will render a decision on any appeals within fifteen (15) business days of the Appeals Decision-maker's receipt of a party's written appeal. The Title IX Appeals Decision-maker may allow for a temporary delay or limited extension of time frames in the sharing the appeals decision with both parties for good cause with written notice to the complainant and the respondent of the delay or extension and the reason(s) for the delay or extension of the decision. The Title IX Appeals Decision-maker's decision shall be final.

A Title IX Appeals Decision-maker's decision to grant an appeal that results in a final determination that a respondent was not responsible for violating the University's Title IX policy, does not necessarily mean that the complainant's allegations were false or unfounded. Rather, the Title IX Appeals Decision-maker's decision could mean that there was a procedure irregularity, that the Appeals Decision-maker received new evidence not reasonably available at the time of the Title IX Decision-maker's determination, there was conflict of interest, and/or there was bias that had an impact on the Title IX Decision-maker's determination.

## **VI. Emergency Removal**

A respondent, including an employee-respondent, may be removed from the University's education program or activity on an emergency basis for reasons related to a Title IX issue(s). Respondents who are employees receive the same due process protections with respect to emergency removals (i.e., post-removal notice and opportunity to challenge the removal) as student-respondents.

An emergency removal of a respondent for the purposes of a Roseman University Title IX-related reason(s) requires the University to undertake an individualized safety and risk analysis, determine that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal, and to provide the respondent with notice and an opportunity to challenge the decision immediately following the removal.

A respondent who has been removed on an emergency basis, can appeal this decision by submitting a written appeal to the University's Title IX Appeals Decision-maker within three (3) business days from the time the Title IX Coordinator (or designee) informed the respondent, either orally or in writing (whichever notice was submitted first) about the emergency removal. The Department of Education noted in the discussion of the final regulations that it does not prescribe cross-examination as a necessary procedure during the post-removal opportunity to challenge the emergency removal. A Title IX Appeals Decision-maker will provide a written response to the respondent's written appeal within five (5) business days from the receipt of the written appeal. The decision of the Title IX Appeals Decision-maker shall be final.

The emergency removal of a respondent does not involve a Title IX Coordinator's or Title IX Appeals Decision-maker's determination that the respondent committed sexual harassment as alleged by the complainant, and information about the emergency removal is not necessarily directly related to the complainant. Thus, FERPA (or other privacy laws) may restrict the university's discretion to disclose information relating to the emergency removal.

An emergency removal may not be construed to modify any rights under the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act.

## **VII. Retaliation**

Please see the term 'Retaliation' in the 'Definition' section. Threatening to publicize or make a written determination public for the purpose of retaliation, however, is strictly prohibited under the University's Title IX policy per the Department of Education's final regulations. Complaints alleging retaliation may be filed and adjudicated according to the Roseman University's grievance procedures for sex discrimination, which includes sexual harassment.

## **II. Recordkeeping**

The Title IX Coordinator must maintain for a period of seven years records of:

- Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required by Title IX regulations, 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;
- Any appeal and the result therefrom;
- All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process. Roseman University must make these training materials publicly available on its website.

For each response required by Title IX policy, the University must create, and maintain for a period of seven years, records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment. In each instance, the Title IX Coordinator must document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the University's education program or activity. If the Title IX Coordinator did not provide a complainant with supportive measures, then the Title IX Coordinator must document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The documentation of certain bases or measures does not limit the Title IX Coordinator in the future from providing additional explanations or detailing additional measures taken.