

# Hope College

Equal Opportunity, Harassment and  
Nondiscrimination Policy

*Training Session #1*  
*Grievance Process Pool Members*

February 13, 2024

**Peter Lake**

Professor of Law, Charles A. Dana Chair,  
Director of the Center for Excellence in Higher Education Law & Policy  
Stetson University College of Law

Nothing presented in this training is, or should be considered, legal advice.

1

## What this training session will cover:

- Policy Definitions
- Policy Rationale/Policy Scope/Jurisdiction/Online Harassment and Misconduct
- Reporting Methods
- Supportive Measures
- Emergency Removal
- Privacy
- Promptness
- Process A vs. Process B
  - Applicable laws/regulations
  - Prohibited behavior
  - Specific procedural differences
  - Roles within the grievance processes

2

## Policy Definitions

- *Advisor* means a person chosen by a party or appointed by the institution to accompany the party to meetings related to the resolution process, to advise the party on that process, and to conduct cross-examination for the party at the hearing, if any.
- *Complainant* means an individual who is alleged to be the victim of conduct that could constitute harassment or discrimination based on a protected class; or retaliation for engaging in a protected activity.
- *Complaint* means a document filed/signed by a Complainant or signed by the Senior Director of Equity and Compliance (SDEC) alleging harassment or discrimination based on a protected class or retaliation for engaging in a protected activity against a Respondent and requesting that the Hope College investigate the allegation. The term “complaint” includes, but is not limited to, “Formal Complaints” as defined by the 2020 Title IX regulations.

[Policy and Processes | Title IX \(hope.edu\)](#)

3

## Policy Definitions Cont'd

- *Confidential Resource* means an employee who is not a Mandated Reporter of notice of harassment, discrimination, and/or retaliation (irrespective of Clery Act Campus Security Authority status).
- *Day* means a business day when the Hope College is in normal operation.
- *Decision-maker* refers to those officials who have decision-making and sanctioning authority within Hope College’s Formal Grievance process.
- *Education program or activity* means locations, events, or circumstances where Hope College exercises substantial control over both the Respondent and the context in which the sexual harassment or discrimination occurs and also includes any building owned or controlled by a student organization that is officially recognized by the Hope College.

[Policy and Processes | Title IX \(hope.edu\)](#)

4

## Policy Definitions Cont'd

- *Equity and Compliance Office* (“E&C”) is the office charged with oversight of equal opportunity, harassment, nondiscrimination and disability compliance and prevention efforts
- *Final Determination*: A conclusion by the preponderance of the evidence that the alleged conduct occurred and whether it did or did not violate policy.
- *Finding*: A conclusion by the preponderance of the evidence that the conduct did or did not occur as alleged.
- *Grievance Procedures* a method of formal or informal resolution designated by Hope College to address conduct that falls within the Policy. The Grievance Procedures include two processes: Process A and Process B. Process A will be used to address all misconduct that falls within the Policy other than that addressed by Process B. Process B, will be used address conduct that falls within the definition of “Title IX Sexual Harassment” included below in Section 15.c., and which complies with the requirements of the 2020 Title IX regulations, at 34 CFR Parts 106.30, 106.44, and 106.45.

[Policy and Processes | Title IX \(hope.edu\)](https://hope.edu/policy-and-processes/title-ix)

5

## Policy Definitions Cont'd

- *Grievance Process Pool* includes any investigators, hearing officers, appeal officers, and Advisors who may perform any or all of these roles, including outside contractors (though not at the same time or with respect to the same case).
- *Hearing Decision-maker* refers to officials who participate in a hearing and have decision-making and sanctioning authority within Hope College’s grievance procedures.
- *Investigator* means the person or persons charged by Hope College with gathering facts about an alleged violation of this Policy, assessing relevance and credibility, synthesizing the evidence, and compiling this information into an investigation report and file of directly related evidence.
- *Mandated Reporter* means an employee of the Hope College who is obligated by policy to share knowledge, notice, and/or reports of harassment, discrimination, and/or retaliation with the SDEC.

[Policy and Processes | Title IX \(hope.edu\)](https://hope.edu/policy-and-processes/title-ix)

6

## Policy Definitions Cont'd

- *Notice* means that an employee, student, or third-party informs the SDEC or other Official with Authority of the alleged occurrence of harassing, discriminatory, and/or retaliatory conduct.
- *Official with Authority (OWA)* means an employee of Hope College explicitly vested with the responsibility to implement corrective measures for harassment, discrimination, and/or retaliation on behalf of the Hope College. This term includes the Title IX Coordinator, senior University officials, and all employees in supervisory positions.
- *Party or parties* refers to the Complainant(s), the Respondent(s), or the Complainant(s) and the Respondent(s) collectively. Nothing in this Policy may be read in derogation of any legal right of a parent or guardian to act on behalf of their child.

[Policy and Processes | Title IX \(hope.edu\)](#)

7

## Policy Definitions Cont'd

- *Remedies* are post-finding actions directed to the Complainant and/or the community as mechanisms to address safety, prevent recurrence, and restore access to the Hope College's educational program.
- *Respondent* means an individual who has been reported to be the perpetrator of conduct that could constitute harassment or discrimination based on a protected class; or retaliation for engaging in a protected activity.
- *Resolution* means the result of an informal or formal resolution under Process A or Process B.
- *Sanction* means a consequence imposed by the Hope College on a Respondent who is found to have violated this policy.

[Policy and Processes | Title IX \(hope.edu\)](#)

8



## Policy Definitions Cont'd

- *Senior Director of Equity and Compliance* (“SDEC”) is at least one official designated by Hope College to ensure compliance with the applicable state and federal non-discrimination laws. The SDEC serves as the Title IX Coordinator and oversees implementation of Hope College’s policy on equal opportunity, harassment, and nondiscrimination. References to “Coordinator,” throughout this policy may also encompass a designee of the Coordinator for specific tasks.

Taylor Sinclair  
Senior Director of Equity and Compliance  
(SDEC)  
Office of Equity and Compliance  
Anderson-Werkman, Suite 251  
(616) 395-6816  
Email: [sinclair@hope.edu](mailto:sinclair@hope.edu)

Name: Jill Whitcomb  
Equal Opportunity Investigator  
Equity and Compliance Office  
Location/Address: DeWitt  
Center, Room 221  
(616) 395-6749  
Email: [whitcomb@hope.edu](mailto:whitcomb@hope.edu)

[Policy and Processes | Title IX \(hope.edu\)](#)

9

## Policy Rationale

Hope College is committed to providing a workplace and educational environment, as well as other benefits, programs, and activities, that are free from discrimination, harassment, and retaliation. To ensure compliance with federal and state civil rights laws and regulations, and to affirm its commitment to promoting the goals of fairness and equity in all aspects of the educational program or activity, Hope College has developed internal policies and procedures that provide a prompt, fair, and impartial process for those involved in an allegation of discrimination or harassment on the basis of protected class status, and for allegations of retaliation. Hope College values and upholds the equal dignity of all members of its community and strives to balance the rights of the parties in a grievance process during what is often a difficult time for all those involved.

[Policy and Processes | Title IX \(hope.edu\)](#)

10

## Policy Scope

- ▶ The core purpose of this policy is the prohibition of all forms of discrimination. Sometimes, discrimination involves exclusion from activities, such as admission, athletics, or employment. Other times, discrimination takes the form of harassment or, in the case of sex-based discrimination, can encompass sexual harassment, sexual assault, stalking, sexual exploitation, dating violence or domestic violence. When an alleged violation of this anti-discrimination policy is reported, the allegations are subject to resolution using Hope College's "Process A" or "Process B," as determined by the SDEC, and as detailed below.
- ▶ When the Respondent is a member of the Hope College community, a grievance process may be available regardless of the status of the Complainant, who may or may not be a member of the Hope College community. This community includes, but is not limited to, students, student organizations, faculty, administrators, staff, and third parties such as guests, visitors, volunteers, invitees, and campers. The procedures below may be applied to incidents, to patterns, and/or to the campus climate, all of which may be addressed and investigated in accordance with this policy.

[Policy and Processes | Title IX \(hope.edu\)](https://hope.edu/policy-and-processes-i-title-ix)

11

## Policy Jurisdiction

- ▶ This policy applies to the education program and activities of Hope College, to conduct that takes place on the campus or on property owned or controlled by Hope College, at Hope College-sponsored events, or in buildings owned or controlled by Hope College's recognized student organizations. The Respondent must be a member of Hope College's community in order for its policies to apply.
- ▶ This policy can also be applicable to the effects of off-campus misconduct that effectively deprive someone of access to Hope College's educational program. Hope College may also extend jurisdiction to off-campus and/or to online conduct when the SDEC determines that the conduct affects a substantial Hope College interest.

[Policy and Processes | Title IX \(hope.edu\)](https://hope.edu/policy-and-processes-i-title-ix)

12

## Online Harassment and Misconduct

- ▶ The policies of Hope College are written and interpreted broadly to include online and cyber manifestations of any of the behaviors prohibited below, when those behaviors occur in or have an effect on the Hope College's education program and activities or use Hope College networks, technology, or equipment.
- ▶ While Hope College may not control websites, social media, and other venues in which harassing communications are made, when such communications are reported to Hope College, it will engage in a variety of means to address and mitigate the effects.
- ▶ Members of the community are encouraged to be good digital citizens and to refrain from online misconduct, such as feeding anonymous gossip sites, sharing inappropriate content via Snaps or other social media, unwelcome sexting, revenge porn, breaches of privacy, or otherwise using the ease of transmission and/or anonymity of the Internet or other technology to harm another member of the Hope College community.

[Policy and Processes | Title IX \(hope.edu\)](https://hope.edu/policy-and-processes/title-ix)

13

## Reporting Methods

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

1. File a complaint with, or give verbal notice to, the Equity & Compliance Office. Such a report may be made at any time (including during non-business hours) by using the telephone number or email address, or by mail to the office address, listed for the SDEC or Investigator.
2. Report online, using the reporting form posted at [hope.edu/reportdiscrimination](https://hope.edu/reportdiscrimination). Anonymous reports are accepted and can give rise to a need to investigate. Hope College tries to provide supportive measures to all Complainants, which is impossible with an anonymous report. Because reporting carries no obligation to initiate a formal response, and as the Hope College respects Complainant requests to dismiss complaints unless there is a compelling threat to health and/or safety, the Complainant is largely in control and should not fear a loss of privacy by making a report that allows the Hope College to discuss and/or provide supportive measures.
3. Report by calling Campus Safety at (616) 395-7770.

[Policy and Processes | Title IX \(hope.edu\)](https://hope.edu/policy-and-processes/title-ix)

14

## Supportive Measures

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

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

[Policy and Processes | Title IX \(hope.edu\)](#)

15

## Supportive Measures Cont'd

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

[Policy and Processes | Title IX \(hope.edu\)](#)

16

## Emergency Removal Provision

Hope College can act to remove a Respondent entirely or partially from its education program or activities on an emergency basis when an individualized safety and risk analysis has determined that an immediate threat to the physical health or safety of any student or other individual justifies removal. This risk analysis is performed by the SDEC in conjunction with the Coordinated Assistance Resource and Education (CARE) team using its standard objective violence risk assessment procedures.

[Policy and Processes | Title IX \(hope.edu\)](#)

17

## Privacy

- ▶ Every effort is made by Hope College to preserve the privacy of reports. Hope College will not share the identity of any individual who has made a report or complaint of harassment, discrimination, or retaliation; any Complainant, any individual who has been reported to be the perpetrator of sex discrimination, any Respondent, or any witness, except as permitted by the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g; FERPA regulations, 34 CFR part 99; or as required by law; or to carry out the purposes of 34 CFR Part 106, including the conducting of any investigation, hearing, or grievance proceeding arising under these policies and procedures.
- ▶ Hope College reserves the right to designate which Hope College officials have a legitimate educational interest in being informed about incidents that fall within this policy, pursuant to the Family Educational Rights and Privacy Act (FERPA).
- ▶ Only a small group of officials, if they are deemed to have a need to know, will be told about the complaint, which could include, but is not limited to: Hope College Police and the Threat Assessment Team. Information will be shared as necessary with Investigators, Hearing Panel members/Decision-makers, witnesses, and the parties. The circle of people with this knowledge will be kept as tight as possible to preserve the parties' rights and privacy.

[Policy and Processes | Title IX \(hope.edu\)](#)

18

## Privacy vs. Confidentiality

For the purpose of this policy, privacy and confidentiality have distinct meanings.

**Privacy** means that information related to a complaint will be shared with a limited number of Hope College employees who “need to know” in order to assist in the assessment, investigation, and resolution of the report. All employees who are involved in the Hope College’s response to notice under this policy receive specific training and guidance about sharing and safeguarding private information in accordance with state and federal law. The privacy of student education records will be protected in accordance with the Family Educational Rights and Privacy Act (“FERPA”), as outlined in the Hope College’s FERPA policy. The privacy of employee records will be protected in accordance with Human Resources policies. **Confidentiality** exists in the context of laws that protect certain relationships, including those who provide services related to medical and clinical care, mental health providers, counselors, and ordained clergy. The law creates a privilege between certain health care providers, mental health care providers, attorneys, clergy, spouses, and others, with their patients, clients, parishioners, and spouses.

[Policy and Processes | Title IX \(hope.edu\)](#)

19

## Privacy Cont’d

Two Common Laws:

- ▶ Family Educational Rights and Privacy Act (FERPA)(education records)
- ▶ Health Insurance Information Portability and Accountability Act (HIPAA)(medical records)

HR policies (employee records)

“Sunshine Laws”

“Silos”

Campus personnel can share information in safety matters on a need-to-know basis!

You have a role to play in privacy!

20

## Promptness

- ▶ All allegations are acted upon promptly by Hope College once it has received notice or a formal complaint. Complaints can take 90 - 120 business days to resolve, typically. There are always exceptions and extenuating circumstances that can cause a resolution to take longer, but Hope College will avoid all undue delays within its control.
- ▶ Any time the general timeframes for resolution outlined in Hope College procedures will be delayed, the College will provide written notice to the parties of the delay, the cause of the delay, and an estimate of the anticipated additional time that will be needed as a result of the delay.

[Policy and Processes | Title IX \(hope.edu\)](#)

21

## Hope College's Equal Opportunity, Harassment and Nondiscrimination Policy

### PROCESS A

GRIEVANCE PROCESS FOR  
ALLEGED VIOLATIONS OF THE  
POLICY ON EQUAL  
OPPORTUNITY, HARASSMENT,  
AND NONDISCRIMINATION

(not including allegations  
of *Title IX Sexual Harassment*,  
which is addressed in Process  
B)

### PROCESS B

GRIEVANCE  
PROCESS FOR  
ALLEGED TITLE IX  
SEXUAL  
HARASSMENT  
VIOLATIONS

22



## Process A Covers

- ▶ Age Discrimination Act of 1975
  - ▶ Age discrimination
- ▶ Americans with Disabilities Act (ADA)/Section 504 of the Rehabilitation Act
  - ▶ Disabilities
- ▶ Title IV of the Higher Education Act of 1965
  - ▶ Sex-based discrimination and religion
- ▶ Title VI of the Civil Rights Act of 1964
  - ▶ Race, color and national origin
- ▶ Title VII of the Civil Rights Act of 1964
  - ▶ Employment
  - ▶ Pregnancy Discrimination Act amendments to Title VII
    - ▶ pregnancy, childbirth, or related medical conditions

23

## Process B Covers

- ▶ Title IX of the Education Amendments of 1972.
  - ▶ Sex discrimination in any education program that receives federal funding.

24

## What is Title IX? What is its mission?

- ▶ Enacted by Congress, Title IX seeks to **reduce or eliminate barriers to educational opportunity caused by sex discrimination** in institutions that receive federal funding. ***This is the mission of Title IX!***
- ▶ Other federal laws also address sex discrimination. There are complex interactions with other federal laws, such as the Clery Act, the Family Educational Rights and Privacy Act (FERPA), and the Violence Against Women Act (VAWA).
- ▶ Title IX is concerned with ***institutional response*** to discrimination.

25

## Title IX: FINAL RULE

### **34 CFR Part 106** *Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance*

*The final regulations specify how recipients of Federal financial assistance covered by Title IX, including elementary and secondary schools as well as postsecondary institutions, (hereinafter collectively referred to as “recipients” or “schools”), **must respond to allegations of sexual harassment consistent with Title IX’s prohibition against sex discrimination.** These regulations are intended to effectuate Title IX’s prohibition against sex discrimination by requiring recipients to address sexual harassment as a form of sex discrimination in education programs or activities.*

Department of Education, *Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance*, 85 Fed. Reg. 30026 (May 19, 2020) (final rule) (online at [www.govinfo.gov/content/pkg/FR-2020-05-19/pdf/2020-10512.pdf](http://www.govinfo.gov/content/pkg/FR-2020-05-19/pdf/2020-10512.pdf)) at 30026 (emphasis added).

26

## Title IX: FINAL RULE

*The final regulations obligate recipients to **respond promptly and supportively to persons alleged to be victimized by sexual harassment, resolve allegations of sexual harassment promptly and accurately under a predictable, fair grievance process that provides due process protections to alleged victims and alleged perpetrators of sexual harassment, and effectively implement remedies for victims.***

*Id.* (emphasis added).

27

## Training Mandates Specific to the 2020 Title IX Regulations

“Schools must ensure that **Title IX personnel** [Title IX Coordinator, any investigator, any decision-maker, and any person who facilitates an informal resolution (such as mediation)] receive training as follows:

- On Title IX’s definition of “sexual harassment”
- On the scope of the school’s education program or activity
- On how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable
- On how to serve impartially, including by avoiding prejudgment of the facts at issue
- On how to avoid conflicts of interest and bias
- Decision-makers must receive training on any technology to be used at a live hearing, and on issues of relevance of questions and evidence, including when questions and evidence about a complainant’s sexual predisposition or prior sexual behavior are not relevant
- Investigators must receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence”

U.S. Dept. of Educ. Office for Civil Rights, Blog (May 18, 2020),  
<https://www2.ed.gov/about/offices/list/ocr/blog/20200518.html> (emphasis added).

28

## Title IX Training Materials

“All materials used to train Title IX personnel:

- Must not rely on sex stereotypes,
- Must promote impartial investigations and adjudications of formal complaints of sexual harassment,
- Must be maintained by the school for at least 7 years,
- Must be publicly available on the school’s website; if the school does not maintain a website the school must make the training materials available upon request for inspection by members of the public.”

U.S. Dept. of Educ. Office for Civil Rights, Blog (May 18, 2020), <https://www2.ed.gov/about/offices/list/ocr/blog/20200518.html> (emphasis added).

29

## Title IX: “Victim”/“Survivor” or “Perpetrator”

*When the Department uses the term “victim” (or “survivor”) or “perpetrator” to discuss these final regulations, the Department assumes that a reliable process, namely the grievance process described in § 106.45, has resulted in a determination of responsibility, meaning the recipient has found a respondent responsible for perpetrating sexual harassment against a complainant.*

Department of Education, *Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance*, 85 Fed. Reg. 30026 (May 19, 2020) (final rule) (online at [www.govinfo.gov/content/pkg/FR-2020-05-19/pdf/2020-10512.pdf](http://www.govinfo.gov/content/pkg/FR-2020-05-19/pdf/2020-10512.pdf)) at 30031 (emphasis added).

30

## § 106.45(b)(1)(iv)

*(iv) Include a 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;*

31

## Prohibited Conduct Under Process A & B

- ▶ Students, staff, administrators, and faculty are entitled to an employment and educational environment that is free of discriminatory harassment. This policy addresses the unique environment of an academic community, which consists not only of employer and employees, but of students as well. This policy is not meant to inhibit or prohibit educational content or discussions inside or outside of the classroom that include germane but controversial or sensitive subject matters protected by academic freedom.
- ▶ The sections below describe the specific forms of legally prohibited discrimination and harassment that are also prohibited under Hope College policy. Discrimination and harassment are prohibited under this policy on the basis of age, color, disability, family status, genetic information, height, national origin, pregnancy, race, religion, sex, or weight, except in the event of a bona fide occupational qualification. When speech or conduct is protected by academic freedom, it will not be considered a violation of Hope College policy, though supportive measures will be offered to those impacted.

[Policy and Processes | Title IX \(hope.edu\)](#)

32

## Prohibited Conduct Under Process A & B

### A. DISCRIMINATION

Discrimination includes actions that deprive or limit access to education, employment, benefits, or other opportunities and/or treat an individual differently on the basis of actual or perceived membership in a class protected by policy or law (as listed in the categories noted in this policy).

[Policy and Processes | Title IX \(hope.edu\)](https://hope.edu)

33

## Process A vs. Process B Variations on Harassment Definition

34

## Process A Harassment Definition

Harassment includes the offenses of sexual harassment (except for sexual harassment as defined by Section 16.c. [TITLE IX]), racial harassment, or any other form of harassment on the basis of actual or perceived membership in a class protected by policy or law (as listed in the categories noted in this policy), and is defined as:

Conduct based on a specific protected category that satisfies one or more of the following:

1. Quid Pro Quo:
  - a. An employee of Hope College, b. conditions the provision of an aid, benefit, or service of Hope College, c. on an individual's participation in unwelcome sexual conduct and/or
2. Hostile Environment
  - a. Unwelcome conduct, b. taken against a person on the basis of a protected category, and c. determined to be so severe, or d. pervasive, or e. persistent, f. that it effectively interferes with or denies an individual's ability to participate in or benefit from Hope College's education program or activity, and/or
3. Sexual assault, domestic violence, dating violence or stalking, as defined in Section 16.c.
 

[Policy and Processes | Title IX \(hope.edu\)](#)

35

## Process A Cont'd

- ▶ Hope College does not tolerate harassment of any employee, student, visitor, or guest. Hope College will act to remedy all forms of harassment when reported, whether or not the harassment rises to the level of creating a "hostile environment." When harassment rises to the level of creating a hostile environment, Hope College may also impose sanctions on the Respondent through application of the appropriate grievance process below.
- ▶ Hope College reserves the right to address offensive conduct and/or harassment that 1) does not rise to the level of creating a hostile environment, or 2) that is of a generic nature and not based on a protected status. Addressing such conduct will not result in the imposition of discipline under Hope College policy, but may be addressed through respectful conversation, remedial actions, education, formal resolution, and/or informal resolution mechanisms.
- ▶ For assistance with Informal Resolution, employees should contact the Director of Human Resources, and students should contact the Director of Student Conduct.
 

[Policy and Processes | Title IX \(hope.edu\)](#)

36



## Process B [Title IX] Harassment Definition

Hope College has adopted the following definition of “*Title IX Sexual Harassment*” in order to comply with the requirements mandated by the 2020 Title IX Regulations, 34 CFR 106.30. Sexual harassment that that does not meet the definition set forth in this section may be addressed under [Process A].

34 CFR § 106.30 Definition:

[Policy and Processes | Title IX \(hope.edu\)](#)

*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 recipient 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 recipient’s education program or activity; 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).*

37

## Process B [Title IX] Harassment Definition Cont’d

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

Conduct on the basis of sex that satisfies one or more of the following:

### 1. Quid Pro Quo:

- a. An employee of Hope College, b. conditions the provision of an aid, benefit, or service of Hope College, c. on an individual’s participation in unwelcome sexual conduct and/or

### 2. Sexual Harassment:

- a. unwelcome conduct, b. determined by a reasonable person, c. to be so severe, d. and pervasive, and, e. objectively offensive, f. that it effectively denies a person equal access to Hope College’s education program or activity.

[Policy and Processes | Title IX \(hope.edu\)](#)

38

## Process B [Title IX] Harassment Definition Cont'd

### 3. Sexual assault, defined as:

#### a. Sex Offenses, Forcible:

i. Any sexual act directed against another person, ii. without the consent of the Complainant, iii. including instances in which the Complainant is incapable of giving consent.

#### b. Rape:

i. Penetration, ii. forcibly, iii. no matter how slight, iv. of the vagina or anus with any body part or object, or v. oral penetration by a sex organ of another person, vi. without the consent of the Complainant.

#### c. Sodomy:

i. Oral or anal sexual intercourse with another person, ii. forcibly, iii. and/or without the consent of the Complainant, or iv. not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

[Policy and Processes | Title IX \(hope.edu\)](#)

39

## Process B [Title IX] Harassment Definition Cont'd

### d. Sexual Assault with an Object:

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

### e. Fondling:

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

### f. Other Sex Offenses:

#### i. Incest:

1. Non-forcible sexual intercourse, 2. between persons who are related to each other, 3. within the degrees wherein marriage is prohibited by MI law.

#### ii. Statutory Rape:

1. Non-forcible sexual intercourse, 2. with a person who is under the statutory age of consent of 16.

[Policy and Processes | Title IX \(hope.edu\)](#)

40

## Process B [Title IX] Harassment Definition Cont'd

### 4. Dating Violence, defined as:

a. violence, b. on the basis of sex, c. committed by a person, d. who is in or has been in a social relationship of a romantic or intimate nature with the Complainant.

i. The existence of such a relationship shall be determined based on the Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition—

ii. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.

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

[Policy and Processes | Title IX \(hope.edu\)](#)

41

## Process B [Title IX] Harassment Definition Cont'd

### 5. Domestic Violence, defined as:

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

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

[Policy and Processes | Title IX \(hope.edu\)](#)

42

## Process B [Title IX] Harassment Definition Cont'd

### 6. Stalking, defined as:

a. engaging in a course of conduct, b. on the basis of sex, c. directed at a specific person, that

i. would cause a reasonable person to fear for the person's safety, or ii. the safety of others; or iii. suffer substantial emotional distress.

For the purposes of this definition—

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

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

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

[Policy and Processes | Title IX \(hope.edu\)](https://hope.edu/policy-and-processes/title-ix)

43

## Force Coercion, Consent and Incapacitation Process A & B

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

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

[Policy and Processes | Title IX \(hope.edu\)](https://hope.edu/policy-and-processes/title-ix)

44

## Force Coercion, Consent and Incapacitation Process A & B

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

[Policy and Processes | Title IX \(hope.edu\)](#)

45

## Force Coercion, Consent and Incapacitation Process A & B

**Consent is:** knowing, and voluntary, and clear permission by word or action to engage in sexual activity.

- ▶ Since individuals may experience the same interaction in different ways, it is the responsibility of each party to determine that the other has consented before engaging in the activity.
- ▶ If consent is not clearly provided prior to engaging in the activity, consent may be ratified by word or action at some point during the interaction or thereafter, but clear communication from the outset is strongly encouraged.
- ▶ For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Reasonable reciprocation can be implied. For example, if someone kisses you, you can kiss them back (if you want to) without the need to explicitly obtain their consent to being kissed back.
- ▶ Consent can also be withdrawn once given, as long as the withdrawal is reasonably and clearly communicated. If consent is withdrawn, that sexual activity should cease within a reasonable time.

[Policy and Processes | Title IX \(hope.edu\)](#)

46

## Force Coercion, Consent and Incapacitation Process A & B

### Consent Cont'd

- ▶ Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). A current or previous intimate relationship is not sufficient to constitute consent.
- ▶ Proof of consent or non-consent is not a burden placed on either party involved in an incident. Instead, the burden remains on Hope College to determine whether its policy has been violated. The existence of consent is based on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.
- ▶ Consent in relationships must also be considered in context. When parties consent to BDSM or other forms of kink, non-consent may be shown by the use of a safe word. Resistance, force, violence, or even saying “no” may be part of the kink and thus consensual, so Hope College’s evaluation of communication in kink situations should be guided by reasonableness, rather than strict adherence to policy that assumes non-kink relationships as a default.

[Policy and Processes | Title IX \(hope.edu\)](#)

47

## Force Coercion, Consent and Incapacitation Process A & B

### Consent Cont'd

- ▶ The state of Michigan does not specifically define consent, but Criminal Sexual Conduct laws explicitly state consent can be absent based on age, mental challenges or incapacitation. While we use the definition outlined in the policy to address campus policy violations, MI penal code section 750.520 should be reviewed as it is applicable to criminal prosecutions for sex offenses in Michigan.

[Policy and Processes | Title IX \(hope.edu\)](#)

48

## Force Coercion, Consent and Incapacitation Process A & B

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

- ▶ It is a defense to a sexual assault policy violation that the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated. “Should have known” is an objective, reasonable person standard which assumes that a reasonable person has the capacity to and is exercising sound judgment.
- ▶ Incapacitation occurs when someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the “who, what, when, where, why, or how” of their sexual interaction).
- ▶ Incapacitation is determined through consideration of all relevant indicators of an individual’s state and is not synonymous with intoxication, impairment, blackout, and/or being drunk.
- ▶ This policy also covers a person whose incapacity results from a temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the consumption of incapacitating drugs.

[Policy and Processes | Title IX \(hope.edu\)](#)

49

## Other Prohibited Discrimination and Harassment Process A & B

Hope College additionally prohibits the following offenses as forms of discrimination when the act is based upon the Complainant’s actual or perceived membership in a protected class.

- ▶ Sexual Exploitation, defined as: taking non-consensual or abusive sexual advantage of another for their own benefit or for the benefit of anyone other than the person being exploited, and that conduct does not otherwise constitute sexual harassment under this policy. Examples of Sexual Exploitation include, but are not limited to:
  - ▶ Sexual voyeurism (such as observing or allowing others to observe a person undressing or using the bathroom or engaging in sexual acts, without the consent of the person being observed)
  - ▶ Invasion of sexual privacy.
  - ▶ Taking pictures, video, or audio recording of another in a sexual act, or in any other sexually-related activity when there is a reasonable expectation of privacy during the activity, without the consent of all involved in the activity, or exceeding the boundaries of consent (such as allowing another person to hide in a closet and observe sexual activity, or disseminating sexual pictures without the photographed person’s consent), including the making or posting of revenge pornography
  - ▶ Prostituting another person

[Policy and Processes | Title IX \(hope.edu\)](#)

50



## Other Prohibited Discrimination and Harassment Process A & B

### ▶ Sexual Exploitation, cont'd

- ▶ Engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or a sexually-transmitted disease (STD) or infection (STI), without informing the other person of the infection
- ▶ Causing or attempting to cause the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give consent to sexual activity, or for the purpose of making that person vulnerable to non-consensual sexual activity
- ▶ Misappropriation of another person's identity on apps, websites, or other venues designed for dating or sexual connections
- ▶ Forcing a person to take an action against that person's will by threatening to show, post, or share information, video, audio, or an image that depicts the person's nudity or sexual activity
- ▶ Knowingly soliciting a minor for sexual activity
- ▶ Engaging in sex trafficking
- ▶ Creation, possession, or dissemination of child pornography

[Policy and Processes | Title IX \(hope.edu\)](#)

51

## Other Prohibited Discrimination and Harassment Process A & B

- ▶ Threatening or causing physical harm, extreme verbal, emotional, or psychological abuse, or other conduct which threatens or endangers the health or safety of any person;
- ▶ Intimidation, defined as implied threats or acts that cause an unreasonable fear of harm in another;
- ▶ Hazing, defined as acts likely to cause physical or psychological harm or social ostracism to any person within the Hope College community, when related to the admission, initiation, pledging, joining, or any other group-affiliation activity;
- ▶ Bullying, defined as:
  - ▶ Repeated and/or severe
  - ▶ Aggressive behavior
  - ▶ Likely to intimidate or intentionally hurt, control, or diminish another person, physically and/or mentally
- ▶ Violation of any other Hope College policies may constitute a Civil Rights Offense when a violation is motivated by actual or perceived membership in a protected class, and the result is a discriminatory limitation or denial of employment or educational access, benefits, or opportunities.
- ▶ Sanctions for the above-listed Civil Rights Offenses range from reprimand through expulsion/termination.

[Policy and Processes | Title IX \(hope.edu\)](#)

52

## False Allegations and Evidence Process A & B

- ▶ Deliberately false and/or malicious accusations under this policy, as opposed to allegations which, even if erroneous, are made in good faith, are a serious offense and will be subject to appropriate disciplinary action.
- ▶ Additionally, witnesses and parties knowingly providing false evidence, tampering with or destroying evidence after being directed to preserve such evidence, or deliberately misleading an official conducting an investigation can be subject to discipline under Hope College policy.

Policy and Processes | Title IX (hope.edu)

53

## Hope College Policy: Possible Roles for Members of the Grievance Process Pool Under Process A & B

- **To act as Advisors to the parties**
  - An advisor is **mandatory** under Process B for live-hearing purposes, optional under Process A.
- **To serve as a Decision-maker**
- **To serve on an Appeal Panel**
- To provide sensitive intake for and initial advice pertaining to the allegations
- To facilitate Informal Resolution
- To investigate allegations

54

## Intake of Complaints/Dismissal Process A vs. B

### Process A

- ▶ Initial assessment takes 1 to 5 days.
- ▶ Allows for supportive measures to complainant; choice of advisors.
- ▶ A Violence Risk Assessment may be conducted.
- ▶ SDEC can dismiss allegations that do not violate policy.
- ▶ Can offer support and remediation in addition to formal and informal processes. Both complainant and respondent must agree to informal resolution.

### Process B

- ▶ Initial assessment takes 1 to 5 days.
- ▶ Allows for supportive measures to complainant; choice of advisors—advisors are mandatory for live hearing purposes.
- ▶ A Violence Risk Assessment may be conducted.
- ▶ Mandatory vs. permissive dismissal per regulations
- ▶ Applies to sex discrimination occurring within the United States only.
- ▶ Can offer support and remediation in addition to formal and informal processes, but no informal if student complainant and employee respondent. Both complainant and respondent must agree to informal resolution.

[Policy and Processes | Title IX \(hope.edu\)](#)

55

## Investigation Process A vs. B

### Process A

- ▶ Provide the final report to the SDEC with a recommendation to the Decision-makers on a determination, based on a preponderance of the evidence, whether a policy violation is more likely than not to have occurred.
- ▶ Parties have 5 days to review the report.

### Process B

- ▶ The Investigator(s) will gather, assess, and synthesize evidence, but make no conclusions, engage in no policy analysis, and render no recommendations as part of their report.
- ▶ Parties have 10 days to review the report.

[Policy and Processes | Title IX \(hope.edu\)](#)

56

## Determinations/Hearings Process A vs. B

### Process A

- ▶ A three-member panel will be assembled from the Grievance Process Pool to review the investigative report and make a determination.
- ▶ No formal hearing.
- ▶ If an outside investigator is used, that investigator will also serve as a final decision-maker and make a determination based on the preponderance of the evidence standard.

### Process B

- ▶ SDEC will designate a single Decision-maker or a three-member panel from the Pool. The single Decision-maker will also Chair the hearing. With a panel, one of the three members will be appointed as Chair by the SDEC.
- ▶ No less than ten (10) business days prior to the hearing, the SDEC or the Chair will send notice of the hearing to the parties.
- ▶ Formal hearing is held with questioning/cross-examination. All witnesses who will participate in hearing must have been interviewed by the investigator.
- ▶ The Decision-maker(s) will not have had any previous involvement with the investigation.
- ▶ The investigator(s) will be a witness in the hearing and therefore may not serve as a Decision-maker. Those who are serving as Advisors for any party may not serve as Decision-makers in that matter.
- ▶ After post-hearing deliberation, the Decision-maker(s) renders a determination based on the preponderance of the evidence; whether it is more likely than not that the Respondent violated the Policy as alleged.

[Policy and Processes | Title IX \(hope.edu\)](#)

57

# Questions?

Thank you for your attention!

58