

CHATHAM UNIVERSITY

Title IX

# Policy Prohibiting Sexual Harassment



Effective August 14, 2020

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## **I. Introduction**

### **1. What is Title IX?**

Title IX of the Higher Education Act of 1972 generally states that no person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance. 20 U.S.C. 1681(a). As a recipient of federal financial assistance (*e.g.*, from federal student loan programs), Chatham University (hereinafter “Chatham”) is a Recipient or School as defined by, and is thereby subject to, Title IX.

### **2. Interplay Between Title IX, Title VII, and FERPA**

Within Title IX-related policies and procedures, recipients may not restrict any rights guaranteed against government action by the U.S. Constitution, including the First Amendment of the U.S. Constitution, the Due Process Clause of the Fifth and Fourteenth Amendments of the U.S. Constitution, and the Fourth Amendment.

Recipients must comply with the Final Rule, issued by the U.S. Department of Education in May 2020, irrespective of Family Educational Rights and Privacy Act (FERPA) provisions to the contrary.

Nothing in the Final Rule should be used to deny any individual’s rights under Title VII of the Civil Rights Act of 1964, 42 U.S.C 2000e et seq., or any regulations promulgated thereunder.

### **3. Policy Prohibiting Discrimination Based on Sex**

Chatham does not discriminate on the basis of sex in the education program or activity that it operates. Chatham is required not to discriminate in this manner by Title IX and by Sec. 106.8(b) of the Final Rule. The requirement not to discriminate in the education program or activity extends to admission and employment. In addition to violating federal law, such conduct undermines the character, purpose and values of the Chatham community and will not be tolerated.

See also Chatham’s Non-Discrimination Policy immediately below.

Inquiries about the application of Title IX and the Final Rule’s requirement that a Recipient disseminate its policy prohibiting discrimination based on sex may be referred to Chatham University’s Title IX Coordinator (see contact information in Section III), to the Assistant Secretary for Civil Rights, U.S. Department of Education, or both.

### **4. Non-Discrimination Policy**

Equal opportunity and affirmative action are integral to employment and education at Chatham University because we recognize that the University’s present and future strength is based primarily on people and their skills, experience, and potential to develop, no matter what their race, color, religion, gender, sexual orientation, gender identity or expression, national origin, age, disability, veteran status, marital status, or any other legally protected status. The

University will not tolerate any form of discrimination on these bases (i.e., race, national origin, disability) including different treatment, and prohibits retaliation against those who file complaints about discrimination or who participate in the investigation of such complaints.

The University has a policy of equal opportunity employment and educational opportunities and affirmative action that is broad in scope and supported at all levels of the University.

The University will make good faith efforts (through responsible managers and officials) in accordance with the law, to recruit, hire, train, and promote persons in all job titles, without regard to race, color, religion, gender, sexual orientation, gender identity or expression, marital status, familial status, pregnancy, national origin, age, disability, or status as a disabled veteran or veteran of the Vietnam era, except when age or sex are bona fide occupational requirements or when a specific disability constitutes a bona fide occupational disqualification.

University managers and officials shall support affirmative action principles to ensure that members of protected categories are introduced into the work force, the student body, and University community. Students and employees in protected categories are encouraged to apply for and participate in all University-provided opportunities including promotional, educational, and training opportunities.

University officials shall make continual efforts to ensure that hiring and promotion decisions are in accordance with equal opportunity principles by imposing only legitimate business requirements for hiring and promotional opportunities. Likewise, student admission and retention decisions will be made with equal opportunity at the forefront of decision making.

All personnel actions, such as compensation, benefits, transfers, layoff, return from layoff, as well as University-sponsored training, education, tuition assistance, and social and recreational programs, will be administered without regard to race, color, religion, gender identity or expression, sexual orientation, national origin, age, marital status, familial status, disability, status as a disabled veteran or veteran of the Vietnam era, or any other legally protected status. University managers and officials shall base all employment and student admission decisions on the equal opportunity principles with the intent to further the University's commitment to those principles.

The University encourages members of protected groups to participate in its campus-wide social activities and shall post notices of all campus-wide social events for the benefit of all employees and students.

The President's office, with the assistance of the Human Resources office, will monitor to ensure compliance with the affirmative action policies of the University.

Chatham University has adopted this policy on a strictly voluntary basis. The existence of this policy should not be construed as an admission by the University in whole or in part, that in fact members of protected groups have been or are presently being underutilized, concentrated, or

discriminated against in any way by the University in violation of federal, state or local fair employment practice laws.

**Non-Discrimination Policy Effective Date: May 1, 2016**

**Updated: 4-16-18**

## **II. What is Sexual Harassment Under Title IX?**

The U.S. Department of Education (DoE) defines Sexual Harassment as conduct on the basis of sex that satisfies one or more of the following:

- a. A school employee conditioning education benefits on participation in unwelcome sexual conduct (“quid pro quo”); or
- b. Unwelcome conduct that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the school’s education program or activity; or
- c. Any of the following four crimes:
  - i. **Sexual Assault:** An offense that meets the following definitions of Rape, Fondling, Incest, or Statutory Rape from the FBI’s Uniform Crime Reporting Program:
    1. Rape: the penetration, no matter how slight, of the vagina or anus, with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim. This includes the rape of both males and females. \*
    2. Fondling: the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent incapacity. \*
    3. Incest: sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
    4. Statutory Rape: sexual intercourse with a person who is under the age of consent.

*In Pennsylvania, a person under the age of 16 years old cannot consent to sexual activity with an individual who is four or more years older, and a person under the age of 13 cannot consent to sexual activity regardless of the other person’s age. Therefore, sexual contact with a person younger than 16 years old may be a crime under state law as well as a violation of this Policy. In addition, certain incidents of sexual conduct involving individuals under the age of 16 will be reported to Childline at 1-800-932-0313 as required by law.*

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- ii. **Dating Violence:** Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on the reporting Party’s statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.



For the purposes of this definition, dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of Domestic Violence.

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

To categorize an incident as Domestic Violence, the relationship between the perpetrator and the victim 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.

- iv. **Stalking:** Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others; or suffer substantial emotional distress. For the purposes of this definition:
1. Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
  2. Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.
  3. Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

*\* As required by the DoE, Chatham uses the definition of Sexual Assault from 20 U.S.C. 1092 (f)(6)(A)(v) [implementing the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act)] and the definitions of Dating Violence, Domestic Violence, and Stalking from the Violence Against Women Act (VAWA): 34 U.S.C.12291 (a)(10); (a)(8); and (a)(30), respectively.*

*Although the definitions of Rape and Fondling in the Clery Act are framed in terms of male or female victims, these crimes can happen to people regardless of their gender identification. Therefore, Chatham will apply the definitions of Rape and Fondling, and all of the definitions above, to all individuals, regardless of their gender identity.*

### III. What to do if You or Someone You know Has Experienced Sexual Harassment, Including Sexual Assault

#### a. How and to Whom to Report Sexual Harassment

For urgent, emergency cases (e.g., sexual assault), please call the 24-hour emergency Chatham Public Safety hotline at 412-365-1111 or the City of Pittsburgh Police at 9-1-1.

##### i. Who can make a report?

Any member of the Chatham community 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.

##### ii. How can a report be made?

A report of sexual harassment may be made in person, by phone, email, or letter; or through Chatham's online reporting format (see below) which goes directly to Chatham's Title IX Coordinator.

A report can be made to either (a) Chatham's Title IX Coordinator (see contact information immediately below) or (b) to any Chatham official in authority to institute corrective measures.

Reports of Sexual Harassment, including Sexual Assault, also may be made to any Responsible Employee at Chatham. Responsible Employees have an obligation to promptly report incidents of Sexual Harassment, including Sexual Assault, that have been reported to them, to the Title IX Coordinator, or to one of the Deputy Title IX Coordinators.

Responsible Employees include all Chatham employees except the professional counselors in the Counseling Center or Health Services staff. This includes: Adjunct Faculty and Teaching Assistants; all Administrators, including Vice Presidents, Assistant Vice Presidents, Program Directors, Department Chairs, Deputy Title IX Coordinators, and Intern Assistant Administrators; all Head Coaches, Assistant Coaches, and Intern Assistant Coaches; and all Residence Life staff, including Resident Assistants and Graduate Resident Directors.

Among the benefits of the Responsible Employee concept are that it cultivates a culture of reporting, provides clarity to the campus community, and provides the opportunity to respond and take corrective action as appropriate. For these reasons, and even though not every Responsible Employee will be a "Chatham official in authority to institute corrective measures," Chatham will continue to utilize the Responsible Employee model.

- iii. How to contact (1) Chatham’s Title IX Coordinator, (2) a Responsible Employee, or (3) file an online report:
  - 1. Contact Chatham’s Title IX Coordinator:  
Sean Coleman – Title IX Coordinator  
Andrew Mellon Center, 2d Floor  
One Woodland Road  
Pittsburgh, PA 15232  
(412) 302-6734  
[Scoleman1@chatham.edu](mailto:Scoleman1@chatham.edu) or [TitleIX@chatham.edu](mailto:TitleIX@chatham.edu)
  - 2. Contact a Chatham official in authority to institute corrective measures or a Responsible Employee: see the Chatham Directory on [myChatham.edu](http://myChatham.edu).
  - 3. Utilize the Online anonymous reporting form found here: [Submit an online Incident Report](#) \*

*\*The online Incident Report may be submitted anonymously. If doing so, however, please bear in mind that reports which include greater specificity and facts generally are more helpful in achieving the Title IX Office’s goals of stopping Sexual Harassment, preventing it from happening again, and helping those who have experienced it. Online Incident Reports are received by the Title IX Office and accessed by the Title IX Coordinator who will share them only with other Title IX staff, only as necessary.*

**b. Steps to Take if You or Someone You Know Has Experienced Sexual Harassment**

- iv. Ensure the safety of yourself and others.
  - Find a safe place
  - Call Campus Safety - 412-365-1111 or 9-1-1
  - Seek assistance from a person you trust
  - If a threat to campus is imminent, a Timely Warning will go out
- v. Try your best to maintain any physical evidence:
  - Try not to shower, bathe any part of your body, use medications, or brush your teeth. Stay in the clothes you were wearing or wrap them and anything else you came in contact with (bed sheets, etc.) in a clean sheet. If you choose to put these items in a bag, make sure it’s a paper bag (a plastic bag may destroy evidence).
- vi. Seek medical care for your physical and mental health and to preserve physical evidence. An exam for sexual assault can be completed up to ten (10) days following the assault. Chatham Campus Safety can transport you to and from the hospital.
  - Magee Women’s Hospital of UPMC: 412-641-4933
  - UPMC Mercy Hospital: 412-232-8111
  - Chatham Student Health Services & Counseling Center: 412-365-1282
- vii. Seek counseling support
- viii. Consider your legal options. You may wish to pursue legal action against the person who sexually harassed you.



- ix. If you're reporting sexual assault, we encourage you to do so both with Campus Police and the local law enforcement authorities. Sexual assault is a violation of both Chatham's Policy Prohibiting Sexual Harassment and criminal law, and you have the right to pursue a criminal investigation of the sexual assault, in addition to a Title IX complaint and investigation. (See page 9.)

c. **Resources and Contacts if You or Someone You Know Has Experienced Sexual Harassment**

The following Campus and External Resources are recommended:

- i. Campus Resources:

**Campus Title IX Team**

*Coordinator*

Sean Coleman, J.D.

412-365-1164 or [scoleman1@chatham.edu](mailto:scoleman1@chatham.edu)

Andrew Mellon Center, 2nd Floor

*Deputy Coordinator for Students*

Dr. Mary Utter, Assistant Dean of Students

412-365-1482 or [mutter@chatham.edu](mailto:mutter@chatham.edu)

Woodland Hall, 1st Floor, Office of Student Affairs

*Deputy Coordinator for Athletics*

Leonard Trevino, Director of Athletics

412-365-1650 or [ltrevino@chatham.edu](mailto:ltrevino@chatham.edu)

Athletics & Fitness Center, 2nd Floor

*Deputy Coordinator for Faculty and Staff*

Frank Greco, Assistant Vice President for Human Resources

412-365-1680 or [greco@chatham.edu](mailto:greco@chatham.edu)

Mellon Center, 1st Floor (across from the Office of the Dean of the School of Arts, Science and Business)

*Decision Makers:*

Dr. Jeff Bukowski, Assistant Dean, School of Arts, Sciences and Business (SASB)

Dr. Randi Congleton, Assistant Vice President for Diversity & Inclusion

Dr. Mary Utter, Assistant Dean of Students

*Investigators:*

Janelle Carlson, Administrative Assistant, Office of the President

Sean Coleman, Title IX Coordinator

Kathleen Emory, Office of International Student and Scholar Services

Dr. Ron Giles, Director of Student Health and Wellness

Cindy Kerr, Director, Office of Academic and Accessibility Resources (OAAR)

Betsy Warren, Head Coach, Women's Soccer

**Other Campus Contacts:**

Public Safety	412-365-1230
Office of Student Affairs	412-365-1286
Office of Residence Life	412-365-1518
Counseling Services	412-365-1282 (Confidential)
Student Health Services	412-365-1714 (Confidential)
Athletic Department	412-365-1519
Office of Academic & Accessibility Resources (OAAR)	412-365-1611

**Advocate Services:**

If you have experienced sexual harassment, many campus resources are available to you. Feel free to seek help and guidance from your coach, advisor, members of the Student Affairs or Residence Life staff, Counseling Services, and other Chatham staff members. Some of the roles these individuals can play are:

- Address issues related to sexual assault, harassment, and relationship violence
- Respond to charges of academic absence, conflict or appeal
- Help you withdraw from a class, if necessary
- Make referrals to counseling services and other supportive campus and community organizations
- Educate you about medical procedures and evidence preservation
- Provide information about legal advocacy
- Meet with you in a safe place to ensure your comfort
- Help you track all of the necessary details
- Assist you with filing a report and navigating the campus conduct system
- Assist your significant other and friends to help you in the best way possible

ii. Community Resources:

**Pittsburgh Action Against Rape (PAAR)**

Some members of the Chatham community may wish to seek support and advocate services off campus. Pittsburgh Action Against Rape (PAAR) offers 24/7 free confidential helpline and can provide you with advocacy and support services. PAAR representatives are available any time and can provide counseling and legal support for victims and their families. All PAAR services are confidential. Call 1-866-363-7273 to talk with a PAAR representative or to request an advocate.

**Abuse, Sexual Violence, Domestic Violence Contacts & Resources:**

Blackburn Center (Westmoreland County) 724-837-9540

National Sexual Assault Online Hotline (RAINN) <i>24-Hour Nationwide</i>	1-800-656-4673
National Domestic Violence Hotline <i>24-Hour Nationwide</i>	1-800-799-7233
Pennsylvania Coalition Against Domestic Violence	1-800-932-4623
Pittsburgh Police	412-323-7800
Pittsburgh Action Against Rape (PAAR)	1-866-363-7273
Women’s Center and Shelter of Greater Pittsburgh	412-687-8005

**Crisis and Suicide Resources:**

Re:olve Crisis Network - 24-Hour Counseling Services	1-888-796-8226
Crisis Center North, Inc. - 24-Hour Crisis Hotline	412-364-5556
PA 211 - United Way Hotline	2-1-1

**Health and Safety:**

Allegheny County Health Department	412-687-2243
Pittsburgh AIDS Task Force (PATF)	412-345-7456
Pittsburgh AIDS Center for Treatment	1-877-788-7228

**Homelessness Services:**

Allegheny County Housing Authority	412-355-8940
Bethlehem Haven	412-391-1348
FamilyLinks Downtown Outreach Center & Shelter	412-471-6160

**LGBTQ Resources:**

Gay and Lesbian Community Center (GLCC)	412-422-0114
Gay, Lesbian, Bisexual, and Transgender Helpline	1-888-843-4564
PERSAD Center	412-441-9786

**Pregnancy and Family Planning:**

Adagio Health	1-800-215-7494
Birthright of Pittsburgh	412-621-1988
Genesis of Pittsburgh	412-766-2693
Pittsburgh Family Planning Center (Planned Parenthood)	412-434-8971

**d. Pursuing a Criminal Complaint**

A Complainant has the right to proceed with a Title IX Investigation and a criminal investigation simultaneously when the alleged Sexual Harassment is a criminal offense (e.g., sexual assault). If a Complainant would like to pursue a criminal investigation, Chatham will, at the Complainant’s request, facilitate an introduction to the appropriate Pittsburgh law enforcement agency.

If the Complainant files a criminal complaint with a local law enforcement agency, Chatham will comply with the law enforcement agency's requests for cooperation. Such cooperation may require Chatham to temporarily suspend the fact-finding aspect of a Title IX investigation while the local law enforcement agency gathers evidence. In such cases, any Supportive Measures provided will remain in effect, and the parties will be notified if the timeline of the investigation will need to be amended accordingly. However, Chatham will resume its Title IX investigation as soon as notified by the law enforcement agency that it has completed the evidence-gathering process.

It is important to note that a Title IX investigation is not a criminal investigation. A Title IX investigation differs from criminal investigations in a number of respects: it applies a different standard of proof ("preponderance of the evidence" vs. "beyond a reasonable doubt"), it cannot avail itself of many of the investigative tools that law enforcement agencies and prosecutors have at their disposal (*e.g.*, subpoenas, depositions under oath, forensic tools), and it cannot result in the imposition of a jail sentence. Another difference is that law enforcement has the discretion to investigate an allegation of a sexual assault, but a university that is subject to Title IX must investigate any allegation of a sexual assault where a Complainant has filed a Formal Complaint, regardless of whether local police decide to file charges.

#### **IV. When is Chatham Required to Respond to an Allegation of Sexual Harassment?**

Chatham is required to respond to an allegation of sexual harassment when: (1) Chatham has Actual Knowledge of Sexual Harassment (*i.e.*, when a report is made to either the Title IX Coordinator or to any Chatham official with authority to institute corrective measures); (2) it occurred within Chatham's Education Program or Activity; (3) it occurred against a person in the United States.

#### ***What if an allegation doesn't meet the DoE's definitional or jurisdictional requirements of Sexual Harassment under Title IX, but may violate some other code of conduct of Chatham University?***

The DoE's Final Rule acknowledges that there may be instances when allegations that do not meet the DoE's definition of Sexual Harassment may violate other conduct policies of a Recipient. In such cases, and in keeping with past practice and Chatham's commitment to eliminating discrimination in all its forms, the Title IX Office may refer such cases to the appropriate administrator on campus (*e.g.*, the Dean of Students for possible Student Conduct Code violations, or the Assistant Vice President of Human Resources for possible Employee Manual violations).

#### **V. What Happens After a Report of Sexual Harassment Has Been Made?**

- i. Title IX Coordinator's Responsibilities when Chatham has Actual Knowledge of Sexual Harassment:

1. The Title IX Coordinator must promptly contact a Complainant or a Chatham community member that has reported experiencing Sexual Harassment to:
  - a. discuss the availability of Supportive Measures;
  - b. inform the Complainant of the availability of Supportive Measures with or without the filing of a Formal Complaint;
  - c. consider the Complainant's wishes with respect to Supportive Measures; and
  - d. explain the process for filing a Formal Complaint.
  
2. Complainant's Rights following "1" above:

The Complainant has the right to do either of two things:

  - e. The Complainant can choose not to file a Formal Complaint but accept Supportive Measures (or not accept Supportive Measures).
  - f. The Complainant can choose to file a Formal Complaint and accept Supportive Measures (or not accept Supportive Measures).

*Under the Final Rule, Chatham's response to a report of Sexual Harassment is driven by the wishes and preferences of the Complainant. However, if a Complainant elects not to file a Formal Complaint, but Chatham has Actual Knowledge of reports by multiple Complainants of conduct by the same Respondent that could constitute Sexual Harassment, the Final Rule requires the Title IX Coordinator to file a Formal Complaint against the Respondent.*

3. Title IX Coordinator's Responsibilities following "2" above:

If the Complainant chooses to file a Formal Complaint, the Title IX Coordinator must initiate the Grievance Process described in Section VII of this Policy.
  
4. Complainant's Rights following "3" above:

At any time during the investigation or hearing, the Complainant may notify the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations therein. In such case, the Title IX Coordinator may dismiss the Formal Complaint or any allegations therein.

## **VI. How Can a Complainant File a Formal Complaint Against a Respondent?**

A Formal Complaint is a document filed by a Complainant (or the Title IX Coordinator) alleging Sexual Harassment against a Respondent and requesting that Chatham investigate the allegation of Sexual Harassment. A Formal Complaint must contain the Complainant's physical or digital signature, or otherwise indicate that the Complainant is the person filing the Formal Complaint.

A Complainant may file a Formal Complaint with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information for the Title IX Coordinator found in Section III.

Only a Complainant (or the Title IX Coordinator) may file a Formal Complaint.

**VII. What Happens After a Complainant files a Formal Complaint of Sexual Harassment?**

i. The Parties' Rights During the Grievance Process

- Complainants and Respondents must be treated 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 before the imposition of any Disciplinary Sanctions or other actions that are not Supportive Measures against a Respondent.
- The Complainant and the Respondent must be offered Supportive Measures - 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 Chatham's education program or activity without unreasonably burdening the other Party. Examples of Supportive Measures include: counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, extensions of deadlines, 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, and other similar measures. Chatham must treat as confidential any Supportive Measures provided to the Complainant or Respondent, to the extent that maintaining such confidentiality would not impair the ability of Chatham to provide the Supportive Measures.
- Remedies must be designed to restore or preserve equal access to Chatham's Education Program or Activity. Such Remedies may include the same individualized services described as Supportive Measures in this Policy. However, Remedies need not be non-disciplinary or non-punitive and need not avoid burdening the Respondent.
- A Respondent shall be presumed to be not responsible for the alleged conduct until a determination regarding Responsibility is made at the conclusion of the Grievance Process. The Preamble to the Final Rule states that the presumption does not imply that the alleged harassment did not



occur, and ensures that Recipients do not take action against Respondents as though the harassment occurred prior to the allegations being proved. The Preamble further states that the presumption does not imply that a Respondent is truthful or that a Complainant is lying.

ii. The Grievance Process

1. General Provisions

a. The Grievance Process at Chatham:

- Requires an objective evaluation of all relevant evidence, including both inculpatory and exculpatory evidence, and provides that credibility determinations may not be based on a person's status as a Complainant, Respondent, or Witness.
- Requires that any individual designated by Chatham as a Title IX Coordinator, Investigator, or Decision-Maker not have a Conflict of Interest or Bias for or against complainants or respondents generally or an individual Complainant or Respondent.
- Includes reasonably prompt time frames for conclusion of the Grievance Process, including reasonably prompt time frames for filing and resolving appeals, and a process that allows for the temporary delay of the 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 reasons for the action. Good cause may include considerations such as the absence of a Party, a Party's Advisor, or a Witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities. Ordinarily, where there are no good cause delays as specified above, Chatham will endeavor to complete the Grievance Process within 60-90 days from receipt of a Formal Complaint.
- Provides that the possible Disciplinary Sanctions that Chatham may implement following any determination of Responsibility include: suspension, expulsion, transfer of residence, removal of residence privileges, mandatory community service, mandatory participation in online or in-person educational programs, mandatory consultation with a licensed therapist or other professional healthcare provider, suspension without pay, or termination of employment.
- Provides that, following any determination of Responsibility, and to restore or preserve the Complainant's access to Chatham's educational program or activity, Chatham may provide the Complainant Remedies including: counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, No-Contact or Persona Non Grata orders against the Respondent, changes in

work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.

- Uses the Preponderance of the Evidence standard to determine responsibility; applies this same Standard of Evidence for Formal Complaints against students as for formal complaints against employees, including faculty; and applies the same Standard of Evidence to all Formal Complaints of Sexual Harassment.

b. Consolidation of Formal Complaints

Chatham may consolidate Formal Complaints as to allegations of Sexual Harassment against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one Party against the other Party, where the allegations of Sexual Harassment arise out of the same facts or circumstances.

c. Dismissal of Formal Complaint

Chatham may dismiss a Formal Complaint, or any allegation 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 in or employed by Chatham; or specific circumstances prevent Chatham from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.

Chatham must dismiss a Formal Complaint if the allegations do not meet the definition of Sexual Harassment, do not fall within Chatham's education program or activity, or did not occur within the United States.

d. Informal Resolution

The Final Rule does not require Chatham to offer Informal Resolution when a Complainant has filed a Formal Complaint alleging Sexual Harassment, including Sexual Assault. The Final Rule does state that Informal Resolution may not be utilized where a Formal Complaint alleges that a Chatham employee sexually harassed a Chatham student.

2. Notice of Allegations

*General*

Upon receipt of a Formal Complaint, written notice will be provided to the parties who are known of the following:

- a. Chatham's Grievance Process
- b. The allegations of Sexual Harassment potentially constituting Sexual Harassment, including sufficient details

known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting Sexual Harassment, and the date and location of the alleged incident, if known.

- c. A statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the Grievance Process.
- d. The parties may have an Advisor of their choice, who may be, but is not required to be, an attorney. If a Party does not have an Advisor, Chatham will provide one at any time in the process.
- e. The parties may inspect and review evidence during the investigation stage of the Grievance Process.
- f. Chatham's Student Honor Code prohibits knowingly making false statements or knowingly submitting false information during the Grievance Process.
- g. Chatham cannot restrict the ability of either Party to discuss the allegations under investigation or to gather and present relevant evidence;
- h. The name(s) of the Investigator(s) and Decision-Maker(s) assigned to the matter and an opportunity for either Party to object to the assigned Investigator(s) or Decision-Maker(s) on the basis of bias or conflict of interest. Such objection(s) shall be made in writing to the Title IX Coordinator within three (3) Business Days of receiving the written notice. Upon receipt of any objection(s), the Title IX Coordinator shall reasonably promptly review and either (a) accept the objection(s) and assign a new Investigator(s) or Decision-Maker(s), or (b) not accept the objection(s) and explain why the originally assigned Investigator(s) or Decision-Maker(s) will remain in place. In either case, the Title IX Coordinator will notify both parties of the decision within three (3) Business Days of receipt of the objection(s).

#### *New allegations*

If, in the course of an investigation, Chatham decides to investigate allegations about the Complainant or Respondent that are not included in the original Notice of Allegations, Chatham must provide notice of the additional allegations to the parties whose identities are known.

### 3. Ground Rules for Advisors and Support Persons

#### a. Advisors

Both the Complainant and the Respondent are permitted to have an Advisor, who may or may not be an attorney, present during the Title IX Grievance Process.

During an interview, meeting or proceeding other than a Hearing, the Advisor may confer quietly with the Complainant or Respondent to provide advice or support, but the Advisor may not speak on behalf of the Complainant or Respondent, testify, address any other participant, interject or otherwise actively participate in, or in any manner disrupt the interview, meeting or proceeding.

During a Hearing, a Party's Advisor has the right to cross-examine the other party and any witnesses on the party's behalf. During a Hearing, the Advisor may also confer quietly with the Complainant or Respondent to provide advice or support, but the Advisor may not speak on behalf of the Complainant or Respondent, testify, address any other participant, interject or otherwise actively participate in, or in any manner disrupt the interview Hearing.

The Title IX Coordinator has the right at all times to determine what constitutes appropriate behavior on the part of an Advisor in all proceedings other than Hearings (where the Decision Maker will make that determination), and to take appropriate steps to ensure compliance with the Policy.

If either Party does not have an Advisor for the Hearing, Chatham must appoint one for them for the purposes of conducting cross-examination of the other Party and any witnesses.

Any Party who elects to have an Advisor through the Grievance Process shall inform the Title IX Office of the Advisor's identity before the Advisor attends any interview, meeting, or proceeding with the Party.

#### b. Support Persons

Each Party may have one Support Person (e.g., a victim advocate from PAAR or a similar organization) accompany them to any meeting, interview or hearing during the Grievance Process. The purpose of the Support Person is to provide the Party with emotional support. The Support Person shall not otherwise take part in any way in any meeting, interview or hearing, and in no case shall ask or pose questions or speak to any person other than the Party they are supporting.

#### 4. Investigation

##### a. General

When investigating a Formal Complaint and throughout the Grievance Process, Chatham will:

- Ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on Chatham and not on the Parties, provided that Chatham 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 the recipient obtains that Party's voluntary, written consent to do so for the Grievance Process. If a Party is not an "eligible student," as defined in 34 CFR 99.3, then Chatham must obtain the voluntary, written consent of a "parent," as defined in 34 CFR 99.3.
- Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.
- Not restrict the ability of either Party to discuss the allegations under investigation or to gather and present relevant evidence.
- Provide the parties 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, Chatham may establish restrictions regarding the extent to which the Advisor may participate in the proceedings, as long as the restrictions apply equally to both parties.
- Provide, to a Party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the Party to prepare to participate.
- 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 Chatham 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.

- Prior to completion of the investigative report, Chatham must send to each Party and the Party's Advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties must have at least 10 days to submit a written response, which the investigator will consider prior to completion of the investigative report. Chatham 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.
- Create a final investigative report that fairly summarizes relevant evidence and, at least 10 days prior to a hearing or other time of determination regarding responsibility, send to each Party and the Party's Advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response.

#### 5. Dismissal of a Formal Complaint

Chatham must investigate the allegations in a Formal Complaint. If the conduct alleged in the Formal Complaint would not constitute Sexual Harassment if proved, did not occur in Chatham's education program or activity, or did not occur against a person in the United States, then the Title IX Coordinator must dismiss the Formal Complaint with regard to that conduct for purposes of Sexual Harassment under Title IX.

If the Title IX Coordinator dismisses all or any part of a Formal Complaint for the reasons described above, opportunity must be offered to both parties to appeal that decision pursuant to the guidelines described in Section 8, Appeals, below.

#### 6. Hearing

The Grievance Process must provide for a Hearing presided over by a Decision-Maker. At the Hearing:

- The Decision-maker(s) must permit each Party's Advisor to ask the other Party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Such cross-examination at the Hearing must be conducted directly, orally, and in real time by the Party's Advisor of choice and never by a Party



personally, notwithstanding Chatham's discretion to otherwise restrict the extent to which Advisors may participate in the Grievance Process.

- At the request of either Party, opportunity must be provided for the Hearing to occur with the parties located in separate rooms with technology enabling the Decision-maker(s) and parties to simultaneously see and hear the Party or the witness answering questions.
- Only relevant cross-examination and other questions may be asked of a Party or Witness.
- Before a Complainant, Respondent, or Witness answers a cross-examination or other question, the Decision-maker(s) must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.
- If a Party does not have an Advisor present at the Hearing, Chatham must provide without fee or charge to that Party, an Advisor of Chatham's choice, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that Party.
- 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.
- If a Party or Witness does not submit to cross-examination at the Hearing, the Decision-maker(s) must not rely on any statement of that Party or Witness in reaching a determination regarding Responsibility; provided, however, that the Decision-maker(s) cannot draw an inference about the determination regarding Responsibility based solely on a Party's or witness's absence from the Hearing or refusal to answer cross-examination or other questions.
- Hearings may be conducted with all Parties physically present in the same geographic location or, at Chatham's discretion, any or all Parties, Witnesses, and other participants may appear at the

Hearing virtually, with technology enabling participants simultaneously to see and hear each other. Chatham must create an audio or audiovisual recording, or transcript, of any Hearing and make it available to the Parties for inspection and review.

#### 7. Determination of Responsibility

After the Hearing, the Decision-maker(s) must issue a written determination regarding responsibility. To reach this determination, the Decision-Maker must apply the Preponderance of Evidence Standard of Evidence.

The written determination must include:

- a. Identification of the allegations potentially constituting Sexual Harassment;
- b. 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;
- c. Findings of fact supporting the determination;
- d. Conclusions regarding the application of the Chatham's Policy and/or code of conduct to the facts;
- e. A statement of, and rationale for, the result as to each allegation, including a determination regarding Responsibility, any disciplinary Sanctions Chatham imposes on the Respondent, and whether Remedies designed to restore or preserve equal access to Chatham's education program or activity will be provided by Chatham to the Complainant; and
- f. Chatham's procedures and permissible bases for the Complainant and Respondent to appeal.

Chatham must provide the written determination to the parties simultaneously. The determination regarding Responsibility becomes final either on the date that Chatham provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

The Title IX Coordinator is responsible for effective implementation of any Remedies.

## 8. Appeals

### *Bases for Appeal*

Either Party may appeal from either (a) the dismissal of a Formal Complaint or any allegation therein or (b) a final determination regarding responsibility on the following bases:

- a. Procedural irregularity that affected the outcome of the matter;
- b. 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
- c. 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.

In addition, appeals of the dismissal of a Formal Complaint may be made on the following basis:

- a. Error on the part of the Title IX Coordinator in finding that the allegations of the Formal Complaint did not: (a) meet the definition of Sexual Harassment, (b) happen within Chatham's education program or activities, or (c) occur to someone within the US.

### *Process on Appeal*

Appeal from a Title IX Coordinator's Dismissal of a Formal Complaint:

- Appeals of a Title IX Coordinator's dismissal of a Formal Complaint shall be within five (5) Business Days of receiving the Title IX Coordinator's Notice of Dismissal.
- Such appeals must be made in writing to the Title IX Coordinator, copying the other Party, and shall describe how one or more of the permissible bases for appeal warrants a different decision.
- Such appeals will be considered on the basis of the written record at hand to date. No hearing will be held in considering the appeal.
- The other (non-appealing) Party shall have five (5) Business Days to submit a written statement to the Title IX Coordinator in support of, or against, the arguments made by the other Party in their appeal.

- Within two (2) days of receiving the original appeal, the Title IX Coordinator shall notify both parties of the individual who will be considering the matter on appeal. The decision-maker on appeal shall be drawn from the ranks of the Decision-Makers and Investigators who have not been involved in the case at hand.
- Both parties shall have two (2) days to object to the assigned decision-maker on appeal on the basis of either Conflict of Interest or Bias. Objections to the assigned decision-maker on either basis shall be made in writing and shall include sufficient information for the Title IX Coordinator to determine whether the objection is valid. If the Title IX Coordinator is persuaded that Bias or Conflict of Interest exists, the Title IX Coordinator shall assign a different decision-maker, from the same pool, to consider the appeal.
- If there are no objections to the assigned decision-maker on appeal, and once the other (non-appealing) Party has had an opportunity to file a written statement, the Title IX Coordinator will provide the decision-maker with the written record to date. This may include the Formal Complaint, the Title IX Coordinator's written decision dismissing the Formal Complaint, the parties' written statements in support of, or opposing, appeal, and the Investigative Report, if an Investigation has been conducted. When sending the written record to the decision-maker, the Title IX Coordinator shall copy the Parties to the case.
- Within ten (10) Business Days of receiving the written record from the Title IX Coordinator, the decision-maker on appeal shall issue a written decision either confirming the Title IX Coordinator's decision dismissing the Formal Complaint, or overturning the Title IX Coordinator's decision and remanding the matter back to the Grievance Process. Such Decisions shall be conveyed simultaneously to the Complainant and the Respondent.
- The decision of the decision-maker on appeal is final. No further appeal shall be allowed.

Appeal from a Decision-Maker's Final Determination:

- Appeals of a Decision-Maker's final determination shall be made within five (5) Business Days of receiving a Decision-Maker's determination.

- Such appeals must be made in writing to the Title IX Coordinator, copying the other Party, and shall describe how one or more of the permissible bases for appeal warrants a different determination.
- Such appeals will be considered on the basis of the written record. No hearing will be held in considering the appeal.
- The other (non-appealing) Party shall have five (5) Business Days to submit a written statement to the Title IX Coordinator in support of, or challenging, the final determination.
- Within two (2) days of receiving the original appeal, the Title IX Coordinator shall notify both parties of the individual who will be considering the matter on appeal. The decision-maker on appeal shall be drawn from the ranks of the Decision-Makers and Investigators who have not been involved in the case at hand.
- Both parties shall have two (2) days to object to the assigned decision-maker on appeal on the basis of either Conflict of Interest or Bias. Objections to the assigned decision-maker on either basis shall be made in writing and shall include sufficient information for the Title IX Coordinator to determine whether the objection is valid. If the Title IX Coordinator is persuaded that Bias or Conflict of Interest exists, the Title IX Coordinator shall assign a different decision-maker, from the same pool, to consider the appeal.
- If there are no objections to the assigned decision-maker on appeal, and once the other (non-appealing) Party has had an opportunity to file a written statement in support of, or opposing, the final determination, the Title IX Coordinator will provide the decision-maker on appeal with the written record to date. This will at a minimum include the Decision-Maker's Final Determination, the audio or other recording of the hearing, and any written statements submitted by either Party in favor of, in in opposition to, the final Decision-Maker's final determination.
- The individual making the determination on appeal shall:
  - a. Comply with the Preponderance of the Evidence standard.
  - b. Issue a written decision describing the result of the appeal and the rationale for the result.
  - c. Provide the written decision simultaneously to both parties, ordinarily within ten (10) Business Days of receiving the record of the Investigation and Hearing from the Title IX Coordinator.

- The decision on appeal shall be final. No further appeal will be allowed.

## VIII. How to Report Retaliation

### *Prohibition of Retaliation*

The Final Rule expressly prohibits retaliation against any individual for exercising Title IX rights. The Final Rule states “No school or person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX, or because the individual has made a report or a complaint, testified, assisted, or participated in any manner in a Title IX investigation, proceeding, or hearing. Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or harassment, for the purpose of interfering with any right or privilege secured by Title IX, constitutes retaliation.” The Final Rule also provides that the exercise of rights protected under the First Amendment does not constitute Retaliation.

### *How to Report Retaliation*

Anyone who has been subjected to retaliation for being part of a Title IX action in any capacity (e.g., Party, witness, advisor, investigator, decision-maker) may report such retaliation to the Title IX Coordinator by any of the means by which reports of Sexual Harassment can be made.

### *Procedure for Resolving Reports of Retaliation*

When a report of retaliation is made, the Title IX Coordinator shall, in a timely manner, investigate any witnesses and gather any evidence needed to make a determination, using the preponderance of the evidence standard, of whether the alleged retaliation occurred.

If the Title IX Coordinator determines that retaliation did occur, the Coordinator will determine whether any disciplinary sanctions shall be levied in consultation with the Dean of Students (for students), the Vice President of Academic Affairs (for faculty), or the Assistant Vice President of Human Resources (for non-faculty employees).

## IX. Other Elements of the Policy

### a. Definitions Used in This Policy

**Actual Knowledge:** Notice to Chatham’s Title IX Coordinator or to a Chatham official with authority to institute corrective measures on Chatham’s behalf charges Chatham with “actual knowledge” and triggers Chatham’s response obligations.



Chatham must respond when: (1) Chatham has actual knowledge of Sexual Harassment; (2) that occurred within Chatham's "education program or activity"; (3) against a person in the United States.

**Administrative Leave:** Nothing in the Final Rule precludes Chatham from placing a non-student employee Respondent on administrative leave during the pendency of a Grievance Process as defined in this Policy.

**Advisor:** Both the Complainant and the Respondent are permitted to have an Advisor, who may or may not be an attorney, present during the Title IX Grievance Process. During the live hearing, a Party's Advisor has the right to cross-examine the other Party and any witnesses on the Party's behalf. During an interview, meeting or proceeding other than a hearing, the Advisor may confer quietly with the Complainant or Respondent to provide advice or support, but the Advisor may not speak on behalf of the Complainant or Respondent, testify, address any other participant, interject or otherwise actively participate in, or in any manner disrupt, the interview, meeting or proceeding.

The Title IX Coordinator has the right at all times to determine what constitutes appropriate behavior on the part of an Advisor in all proceedings other than live hearings (where the Decision-Maker will make that determination), and to take appropriate steps to ensure compliance with the Policy.

If either Party does not have an Advisor for the Hearing, Chatham must appoint one for them.

Any Party who elects to have an Advisor through the process shall inform the Title IX Office of the Advisor's identity before the Advisor attends any interview, meeting, or proceeding with the Party.

**Amnesty:** In order to encourage and facilitate reporting, Chatham may choose not to charge students who report Sexual Harassment and any material witnesses with conduct that would otherwise be considered violations of the Student Honor Code (*e.g.*, consuming alcohol underage or consuming illegal drugs).

**Appeal:** Both parties (Complainant and Respondent) can appeal either the Title IX Coordinator's dismissal of a Formal Complaint or the Decision-Maker's determination of responsibility on any of the following bases: (i) procedural irregularity that affected the outcome of the matter; (ii) 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; or (iii) 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:** A predisposition to think about a specific group and its individual members in a preconceived way. The fact that a Complainant or Respondent knows, or has studied in the past, with the Title IX Coordinator, Investigator, or Decision-Maker does not alone demonstrate Bias. Complainants and Respondents must provide specific evidence of past interactions with, or statements of, the individual to demonstrate Bias.

**Complainant:** An individual who is alleged to be the victim of conduct that could constitute sexual harassment.

**Confidential or Confidentiality:** A school must keep confidential the identity of complainants, respondents, and witnesses, except as may be permitted by FERPA, or as required by law, or as necessary to carry out the Title IX proceeding.

**Conflict of Interest:** A conflict between the private interests and the official responsibilities of a person in a position of trust. The fact that a Complainant or Respondent knows, or has taken a course in the past with, a Title IX Coordinator, Investigator, or Decision-Maker does not by itself demonstrate Conflict of Interest.

**Consent:** Consent is: clear, and knowing, and voluntary, words or actions, that give permission for specific sexual activity.

Additional clarification:

Consent is active, not passive.

Silence, in and of itself, cannot be interpreted as consent.

Consent can be given by words or actions, as long as those words or actions create mutually understandable permission regarding willingness to engage in (and the conditions of) sexual activity.

Consent to any one form of sexual activity cannot automatically imply consent to any other forms of sexual activity.

Previous relationships or prior consent cannot imply consent to future sexual acts.

Consent can be withdrawn once given, as long as that withdrawal is clearly communicated. Once consent is withdrawn, sexual activity must stop reasonably immediately.

In order to give consent, one must be of legal age.

Based on the definition of Consent drafted by ATIXA (Association of Title IX Administrators).

**Decision-Maker:** The individual who presides over the hearing during the Grievance Process and makes the determination regarding responsibility. The Decision-Maker cannot be the Title IX Coordinator but doesn't need to be a Chatham employee.

**Disciplinary Sanctions (or Sanctions):** If a Decision-Maker finds a Respondent responsible for Sexual Harassment, sanctions for the Respondent will be tailored to the specific situation. Possible sanctions include, but are not limited to: suspension, expulsion, transfer of residence, removal of residence privileges, community service, mandatory participation in online or in-person educational programs, mandatory consultation with a licensed therapist or other professional healthcare provider, suspension without pay, or termination of employment.

**Education program or activity:** includes locations, events, or circumstances over which a university exercised substantial control over both the Respondent and the context in which the alleged Sexual Harassment occurred, and also includes any buildings owned or controlled by student organizations officially recognized by a university (such as fraternities or sororities).

**Emergency Removal:** Nothing in the Final Rule precludes a Recipient from removing a Respondent from its education program or activity on an emergency basis, provided that the Recipient undertakes an individualized safety and risk analysis, determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of Sexual Harassment justifies removal, and provides the Respondent with notice and an opportunity to challenge the decision immediately following the removal.

**Exculpatory Evidence:** Evidence having a tendency to clear a Respondent of the allegations made by a Complainant in a Formal Complaint (*i.e.*, evidence having a tendency not to support the allegations made in a Formal Complaint).

**Final Rule:** Issued on May 6, 2020, the U.S. Department of Justice's Final Rule recognized for the first time that sexual harassment, including sexual assault, is unlawful sex discrimination and provided the rules by which recipients of federal financial assistance, such as Chatham, must implement Title IX on their campuses.

**Formal Complaint:** A document filed by a Complainant or signed by the Title IX Coordinator alleging sexual harassment against a Respondent and requesting that Chatham investigate the allegation of Sexual Harassment.

“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 Chatham) 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 Chatham’s education program or activity.

**Grievance Process:** The process (including investigation, live hearing, and determination of responsibility) that follows a Complainant’s or the Title IX Coordinator’s filing of a Formal Complaint alleging Sexual Harassment against a Respondent.

**Hearing:** A hearing in which the evidence is presented to a Decision-Maker in-person, through the testimony of the Parties and witnesses, with opportunity for the parties and the witnesses to be cross-examined, rather than through written or pre-recorded testimony.

**Inculpatory Evidence:** Evidence having a tendency to support the allegations the Complainant has made against a Respondent in a Formal Complaint.

**Investigator:** An employee of Chatham who is trained to conduct investigations during the Title IX Grievance Process.

**Party:** The Complainant or the Respondent in a Title IX case.

**Preponderance of the Evidence:** The standard that Chatham uses to determine whether a Respondent is responsible for the conduct alleged in a Formal Complaint. Preponderance of Evidence means “more likely than not” - that there is a greater than 50% chance that a claim is true.

**Privileged:** Certain evidence, even if relevant, is “privileged” under the law and the holder of the privilege cannot generally be compelled to disclose it. Examples include The Attorney-Client Privilege, medical provider/records privilege. and spousal privilege. The Grievance Process may not require, allow, rely upon, or otherwise use questions or evidence that constitute or seek disclosure of information proffered under a legal privilege, unless the person holding the privilege has waived it in writing.

**Rape Shield Bar (RSB):** A modified version of a legal rule that bars the consideration of evidence, offered as substantive evidence or for

impeachment, of past sexual history or predisposition. The purpose of the RSB is to safeguard against the invasion of privacy, embarrassment, and sexual stereotypes, and to encourage victims to come forward. The RSB covers Complainants only.

**Recipient (Interchangeable with School):** any secondary or postsecondary school that receives federal financial assistance. Chatham University is a Recipient for purposes of Title IX.

**Relevance or Relevant:** Only relevant evidence can impact a finding of a violation of this Policy. Relevant evidence “has a significant and demonstrable bearing on the matter at hand” or “tends to prove or disprove the matter at hand.” Parties also may provide evidence that is not relevant but is directly related to the allegations in a Formal Complaint.

**Remedy:** After a determination of responsibility has been made, Chatham may provide the Complainant with remedies designed to restore or preserve equal access to Chatham’s education program or activity. Examples of remedies include: counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, No-Contact or Persona Non Grata orders against the Respondent, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.

**Respondent:** An individual who has been reported to be the perpetrator of conduct that could constitute Sexual Harassment.

**Responsible:** If at the conclusion of the Grievance Process the Decision-Maker finds that it is more likely than not that the Respondent committed Sexual Harassment against the Complainant, the Decision-Maker will determine the Respondent to be “responsible” for the conduct alleged in the Formal Complaint.

**Responsible Employees** have an obligation to promptly report incidents of Sexual Harassment that have been reported to them to the Title IX Coordinator or to one of the Deputy Title IX Coordinators. Responsible Employees include all Chatham employees except the professional counselors in the Counseling Center or Health Services staff. The following are Responsible Employee for purposes of Chatham’s Policy Prohibiting Sexual Harassment: all Faculty, including Adjunct Faculty and Teaching Assistants; all Administrators, including Vice Presidents, Assistant Vice Presidents, Program Directors, Department Chairs, Deputy Title IX Coordinators, and Intern Assistant Administrators; all Head Coaches,

Assistant Coaches, and Intern Assistant Coaches; and all Residence Life staff, including Resident Assistants and Graduate Resident Directors.

**Retaliation:** The Final Rule, in expressly prohibiting retaliation against any individual for exercising Title IX rights, states “No school or person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX, or because the individual has made a report or a complaint, testified, assisted, or participated in any manner in a Title IX investigation, proceeding, or hearing. Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or harassment, for the purpose of interfering with any right or privilege secured by Title IX, constitutes retaliation.” The Final Rule also provides that the exercise of rights protected under the First Amendment does not constitute Retaliation. Chatham 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, or as required by law, or to carry out the purposes of the Final Rule, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

**School (Interchangeable with Recipient):** refers to a secondary school or a postsecondary institution such as a college or university.

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

- An employee of a school conditioning the provision of an aid, benefit, or service of the school on an individual’s participation in unwelcome sexual conduct; or
- 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 school’s education program or activity; or
- “Sexual assault” as defined in 20 U.S.C. 1092(f)(6)(A)(v), “dating violence” as defined in 34 U.S.C 122291 (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).

**Standard of Evidence:** The standard by which evidence in the Title IX Grievance Process is weighed in determining Responsibility or an appeal from a determination of Responsibility. Chatham uses the Preponderance of the Evidence Standard of Evidence in the Title IX Grievance Process.

**Support Person:** Each Party may have one Support Person (e.g., a victim advocate from PAAR or a similar organization, a parent) accompany them to any meeting, interview or hearing during the Grievance Process. The purpose of the Support Person is to provide the Party with emotional support. The Support Person shall not otherwise take part in any way in any meeting, interview, or hearing, and in no case shall ask or pose questions or speak to any person other than the Party they are supporting.

**Supportive Measures:** 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 Chatham’s education program or activity without unreasonably burdening the other Party, including measures designed to protect the safety of all parties of Chatham’s educational environment, or deter sexual harassment. Supportive measures include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, extensions of deadlines, 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, and other similar measures. Chatham must treat as confidential any supportive measures provided to the Complainant or Respondent, to the extent that maintaining such confidentiality would not impair the ability of Chatham to provide the Supportive Measures. The Title IX Coordinator is responsible for coordinating the effective implementation of Supportive Measures.

**Title IX Coordinator:** The Chatham employee whom Chatham has designated and authorized to coordinate its efforts to comply with its Title IX responsibilities.

**Witness:** Someone who testifies and/or presents evidence during a Title IX investigation or live hearing.

- b. What Governs How a Recipient Must Administer its Policy Prohibiting Sexual Harassment?

Guidance on how Recipients implement Title IX come principally from two sources: (1) the United States Department of Education (DoE) and its Office of Civil Rights (OCR), in the form of regulations or guidance, and (2) federal courts (case law).

In 1975, the DoE's predecessor, the Department of Health, Education and Welfare (HEW), first promulgated implementing regulations governing Title IX. Among other things, the 1975 regulations require recipients of federal financial assistance to create and disseminate a policy of non-discrimination based on sex, designate a Title IX Coordinator, and adopt and publish grievance procedures.

In a series of decisions following the 1975 regulations, the US Supreme Court addressed the obligations of recipients to address sexual harassment as a form of discrimination. However, no Title IX regulations were promulgated after 1975 to address sexual harassment as a form of sex discrimination. Instead, this subject was addressed through a series of guidance documents from the DoE, including: Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties, 62 Fed. Reg. 12034 (March 13, 1997); Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students and Third Parties (January 19, 2001)(2001 Guidance); Dear Colleague Letter: Sexual Violence (issued April 4, 2011)(2011 Dear Colleague Letter); and Questions and Answers on Title IX and Sexual Violence (issued April 29, 2014)(2014 Q&A).

In September 2017, the DoE rescinded the two Obama administration guidance documents (2011 Dear Colleague Letter and the 2014 Q&A), left in place the 2001 Guidance, and issued Question and Answers on Campus Sexual Misconduct (2017 Q&A) as an interim question and answer document to identify Recipients' obligations under Title IX. The DoE then undertook a period of notice and comment rulemaking, including a public comment period on proposed new regulations which generated over 100,000 public comments.

In May 2020, the DoE issued its Final Rule (the "new regulations") which stated for the first time that sexual harassment is discrimination based on sex under Title IX and provided rules by which Recipients must implement Title IX on their campuses. The Final Rule required all Recipients to begin implementing the Final Rule on August 14, 2020.

#### c. Record Keeping

Recipients are required to 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, a Recipient 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 Recipient’s education program or activity. If the Recipient does not provide a Complainant with Supportive Measures, then the Recipient 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 a Recipient in the future from providing additional explanations or detailing additional measures taken.

- Any appeal and the result therefrom;
- Any informal resolution and the result therefrom; and
- All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process. A Recipient must make these training materials publicly available on its website, or if the recipient does not maintain a website the recipient must make these materials available upon request for inspection by members of the public.

d. Training

Chatham’s Title IX Coordinator, Decision-Makers, and Investigators received training in preparation to implement the Final Rule. The training was commissioned by the Pittsburgh Council on Higher Education (PCHE), the consortium of higher education institutions in the Pittsburgh area, including Chatham. Participants were required to attend three sessions:

- A 1-hour webinar by the Department of Education, Office of Civil Rights;
- A 3-hour webinar conducted by attorney Pam Connelly of Strassburger McKenna Gutnick & Gefsky; and
- a 2-hour webinar by Pittsburgh Action Against Rape (PAAR) on trauma-informed practice.

Material presented at each of the three sessions may be found below.

**PCHE Title IX Education 2020 Sessions:**

Session #1 - OCR Webinar: [Title IX Regulations Addressing Sexual Harassment](#)

Session #2 - [PCHE Summer 2020 Training Session 2](#)

Session #3 - [PCHE Summer 2020 Training Session 3](#)